



Rechtwijzer 2.0
Online Problem-Solving Dispute Resolution for Divorce
Evidence base

1. Divorce as a problem

Divorce numbers

European countries such as Spain, Portugal, Luxembourg, the Czech Republic and Hungary have divorce rates (= number of divorces as a % of number of marriages in a given year) higher than 60%. Belgium has the highest rate at 70%. The yearly number of divorces per 1000 of population tends to be around 2 in European countries. Business Insider's 2014 mapping of worldwide divorce rates (Divorce Demography: <http://imgur.com/dep7XIZ>) shows high rates in the US at 53%

Predictors of divorce

The causes and consequences of divorce are well researched.

Demographic and economic predictors of divorce are marrying as a teen, being poor, unemployment, low education levels, cohabitation, premarital birth, bringing children from a prior relationship to the marriage, marry out of race, second or third marriages, growing up in a household without two continuously married parents (Amato 2010).

Interpersonal predictors of divorce include domestic violence, frequent conflict, infidelity, perceived relationship problems, weak commitment to marriage and low levels of love and trust between spouses.

Number and situation of children involved

In a country such as the Netherlands, with a population of 17 million, current divorce rates add up to 34 000 new divorces/separations of couples with children per year. According to recent estimates, between 53 000 and 55 000 children become involved in divorce or one of their parents leaving the home.

After separation, 75% of the children live mainly with their mother, around 20% lives in a co-parenting situation where they live partly at the home of both parents (Ter Voert en Geurts 2013).

Impact on children

Children with divorced parents tend to score lower on a variety of emotional, behavioral, social, health, and academic outcomes. Adults with divorced parents obtain less education, have lower levels of psychological well-being, report more problems with their own marriages, are less close to their parents and are at greater risk of their own divorce (Amato 2010).

Children can be better off after divorce, though, if they live in a situation where they are exposed to open, chronic and intense conflict between their parents. This is an exceptional situation (Ter Voert en Geurts 2013).

Impact on divorcees

The Social Readjustment Rating Scale considers divorce along with death and illness as one among the top 5 life-events that cause deep stress and anxiety (Holmes en Rahe 1967).

Divorced individuals have more symptoms of depression and anxiety, more health problems, more substance abuse and a greater risk of overall mortality. Divorce is generally followed by short-term declines in

psychological, social and physical well-being. After a few years, most individuals had adapted well to their new lives, although a significant minority remained seriously troubled (Amato 2010).

The consequences for income and quality of life can be substantial. A 2006 survey of divorce costs in the UK showed an average spending on legal fees of £1,818. Costs of setting up a new home were £5,146 on average. Almost 50% of divorcees also experienced an impact on savings of an additional £16,600. Total average costs associated with divorce were estimated to be in the range of £28,000.

Legal costs

According to data from the Dutch judiciary, there are around 4 court procedures per year for each divorce. Many of these procedures are follow up procedures after the initial divorce. In the Netherlands, legal divorce costs are reported to be at least €2,500 to €3,000 (Consumentenbond 2013). The average legal and administrative cost of a divorce in the United States is reported to be \$15,000 (Cole 2011). However, uncontested divorce by self-representing litigants are unlikely to be that costly, so this estimate may not be that relevant for the user group of citizens that need legal aid.

For legal aid related to family problems (a substantial proportion of it is divorce related), England and Wales spends €16 per capita, the Netherlands €5, and Belgium €1. Per divorce (assuming 2 divorces per 1000 inhabitants) these are substantial amounts, ranging from €500 in Belgium to perhaps €2000 up to €4000 in the Netherlands and the UK (Hiil Innovating Justice 2014). For governments, the costs of family court procedures and the costs of state agencies dealing with consequences of divorce are substantial as well.

Risk factors

Risk factors for the well-being of the children include:

- Declines in household income,
- Poor psychological functioning of resident parent,
- Ineffective parenting,
- Loss of contact with nonresident parent,
- Continuing conflict
- And lack of cooperation among parents (Amato 2010).

The most current model for explaining the effects of divorce on children assumes that divorce is a process that unfolds with time. The event of (legal) divorce itself has little impact. The short term and long term tensions related to the process are the main risk factors. Every major change may cause such tensions: parent leaving home, drop in income, moving to another city, new school and entry of a new partner. Children differ in their coping capabilities, however, and thus on how sizable these effects are (Ter Voert en Geurts 2013).

For legal costs, the risk-factors are likely to be:

- Non-transparent pricing (hourly fees),
- Polarization in court procedures,
- Formal and complicated court procedures,
- Continued appeals and repeated litigation.

2. Current divorce interventions: what works

Information and education.

One meta-study (Fackrell, Hawkins en Kay 2011) reports that court-affiliated divorcing parents education programs are generally effective. Those who participated were about 50% better off in terms of program outcomes compared to those who did not participate. The studies examined five specific outcomes: co-parenting conflict, parent-child relationships, child well-being, parent well-being, and re-litigation. Much seems to depend on the quality of the information delivered. There is little research yet about the most effective ways to deliver information.

Dialogue and negotiation

In most divorces in the Netherlands, there is now at least some form of agreement between the parties that is submitted to the court (82% of the divorces with children). These documents vary in how precise the arrangements are. Parents differ in their preferences for this. Formats tend to be used. Lawyers tend to leave the responsibility to make a parenting plan to the parties themselves, letting them work from a template (Ter Voert en Geurts 2013).

Mediation and online mediation

Mediation is quite common in divorce situations. Estimates in a Dutch study commissioned by a mediation provider, imply that in up to 50% of Dutch separations a mediator may be involved at some time. Many studies reveal that mediation leads to greater satisfaction with post-divorce outcomes, more contact between non-resident parents and children, more communication between parents, and less conflict between parents (Amato 2010). Baitar and colleagues found that divorce mediation is significantly more likely than litigation to produce high-quality divorce settlements (Baitar, et al. 2013).

Mediation is not often compared, though, with unassisted negotiation. A meta-analysis of mediation studies found that it has small to moderate effect sizes overall (Shaw 210), so it is not a panacea. Evaluative mediation styles, in which the mediator also presses for a solution, seem to be more effective in reaching settlements (Wall and Dunne 2012).

A study of online divorce mediation found that both parties assigned relatively high scores to both the procedure and the outcome. The findings suggest that online divorce mediation is a viable alternative to both offline mediation and other more traditional modes of dispute resolution in divorce (Gramatikov en Klaming 2011).

A study by the University of Leuven reported high satisfaction levels with online mediation and resolution rates of 75%. More than 80% of the users would use it again for future conflicts and recommend it to others. Parties reported high levels of distributive, procedural, interpersonal as well as informational justice. Although men and women do not differ regarding perceptions of distributive and informational justice, women perceive significantly more procedural and interpersonal justice than men (Bollen, Verbeke en Euwema, Computers work for women: Gender differences in online divorce mediation 2014).

An online intake process before actual mediation, is also reported to mitigate the effects of hierarchical differences on mediation satisfaction. Supervisors feel more satisfied with the mediation when involved in a face-to-face mediation, but subordinates and supervisors feel equally satisfied when an online intake is used before the mediation (Bollen en Euwema 2013)

What works in conflict resolution and what is challenging?

Conflict resolution research tends to agree that the following types of interventions help to resolve or to mitigate the consequences of conflict (Barendrecht 2009a, Canary and Lakely 2013, Barendrecht 2009b):

- Interventions and incentives aimed at restoring or improving communication between the parties (active listening, open questions, positive reframing)
- Integrative negotiation techniques, aimed at letting people explore their interests, understand and acknowledge the interests (needs, wishes, fears) of the other party, and then to explore possible solutions
- Stimulating the parties to work on a joint problem, see this as a challenge; avoiding terminology and a setting that refers to conflict, opponents or a competition for resources
- Avoiding the factors that negatively influence how people cope with conflicts, such as moods, stress, anger, depression and noise
- Offering people information about how other people resolved similar conflicts in a fair, acceptable and effective way (objective criteria, rules and precedents)
- Access to a neutral decision if the parties do not reach an agreement
- Monitoring and ensuring compliance by creating sufficient (positive) incentives for this
- Avoiding and managing aggression and similar behaviour

- Improving the way people are accountable to each other and take responsibility
- Improve and manage impact of personal behaviour patterns (stimulate agreeableness; manage neuroticism, argumentativeness, externalisation of causes)
- Improve the way the parties perceive, and interpretation of, the causes of conflict

Current conflict resolution platforms also struggle with a number of challenges:

- Alternative dispute resolution mechanisms such as mediation or arbitration can be very effective. They can be customized to specific disputes and easily integrate state of the art dispute resolution methods. They tend to suffer from rather low usage rates, however. One of the fundamental reasons for this has been called the “*submission problem*”. Once there is a conflict, a party is unlikely to agree to a dispute resolution trajectory proposed by the other party.
- Because of low usage rates, organizations specializing in mediation and arbitration have little capital to invest. Building good procedures, and supporting them online, requires substantial investments, though.
- Court procedures have a solution for this submission problem. A defendant has to appear in court; otherwise the court will pronounce a decision by default. However, court procedures suffer from their own problems. They are not very likely to be kept up to date, because updating procedures is difficult and may even require formal legislation.
- Moreover, court procedures are not always linked to negotiation processes. Although the parties experience a negotiation process in which going to court is an option, the court procedure tends to be designed as a separate process that is geared towards a decision by adjudicators.
- Currently, settlement options are built into most courts procedures. The court procedures do not yet facilitate the step by step process of negotiation, however. If negotiation is facilitated, this usually happens at a late stage of the procedure, in the court hearing, or by referring cases to a mediation process.

Adjudication practice in family courts

In most countries, divorce is a matter for which court intervention is obligatory. The partners must request the court to terminate their marriage. The court then decides whether the grounds for divorce are met and, if needed, will also take decisions on issues such as guardianship, child support, housing arrangements, alimony and assets. An important criterion is what is in the best interest of children. Usually, the courts will follow the agreements made by the parties, and will even expect the partners to make such agreements.

In the Netherlands, 60% of divorces takes place on request of both of the parties, based on an agreement. 18% takes place on request of one of the parties in an adversarial procedure. In the remaining 20% the procedure is one-sided, without the defendant appearing, and it is not certain whether this is because of a conflict between the parents. Parents of children younger than 16 years are obliged to submit an agreement to the court on how they will take care of the children (Ter Voert en Geurts 2013).

Courts have little information based on which they can monitor whether these agreements are sufficient and appropriate. Typically, the scheduling for hearings allows them to spend 10 minutes or 20 minutes on a hearing in a divorce case (Ter Voert en Geurts 2013). Court decisions on key issues such as child support and alimony, tend to be based on calculation schemes and schedules, but courts do not make transparent how they use these tools in the specific case.

Much depends on the structure of the adjudication process. There is increasing evidence that interest based adjudication processes are effective. The preferred model is that the adjudicators build on the negotiation process that takes place between the parties. By coordinating and supervising this process, and deciding issues that the parties fail to decide, judges or arbiters can effectively stimulate negotiation and conflict resolution by the parties themselves. The responsibility for the outcomes is left with the parties, and not shifted to the adjudicator, as may be the case in traditional arbitration or litigation. This so-called chilling effect of arbitration is mitigated (Malin 2013).

In an overview article, John Lande describes the trends in US Family Court practice in a way that is likely to be representative for the practice in many other countries (Lande 2012). He emphasizes the following elements:

- Self-representation, a majority of litigants in divorce cases appearing in court without a lawyer, with support of self-help tools and self-help centers at courts.
- Unbundled legal assistance, where legal services providers perform specific task, and both the clients and the lawyer does parts of the work to be done.
- Mediation as the most prominent one of these unbundled services.
- A family lawyer practice that moved away from the adversarial approach towards a counseling and problem solving model, based on constructive advocacy.
- Courts moving from an “umpiring” to a problem-solving approach aimed at restructuring family relationships, in which they offer a variety of interventions, such parent education, appointing guardians or advocates for children, child custody evaluations, early neutral evaluation, appointment of parenting coordinators, methods for screening and dealing with domestic violence and private arbitration.

Benefits of online, asynchronous communications in dispute processes

Although personal and immediate interaction can be very helpful to establish better communication (active listening, acknowledgement) it can also have detrimental effects on the conflict resolution process (because it may lead to stress, anger or argumentativeness). There is growing evidence that online, asynchronous communication can be helpful to stimulate reflection, to create time to digest information and to avoid negative patterns of interaction (Van Veenen 2011).

According to a study on diverse effects of sight, sound and synchronicity on negotiation, non-cooperatively oriented negotiators are more likely to achieve high quality negotiation outcomes when their conversation lacks visual channels, vocal channels, or synchronicity (Swaab, et al. 2011). The article further suggests that cooperative intentions can be sufficient to achieve high-quality interaction outcomes without seeing, hearing, or directly responding to others. In the case of an escalated divorce, enmity could be waiting on the doorstep of impending face-to-face conversations, and seeing or hearing each other may only intensify the antagonism and competitive spirit (Swaab, et al. 2011).

Justice research

Research into procedural and substantive justice (Vermunt en Törnblom 2007) consistently shows that people value procedures more if they offer better opportunities for:

- Voice & participation, neutrality (procedural justice)
- Respect for every person involved, privacy (interpersonal justice)
- Empowerment to navigate the procedure, through information about what is expected (informational justice)

With regard to outcomes, people value:

- Fairness in distribution of assets, contribution to losses or responsibilities
- Restoration of harm done, by apologies, and other remedies
- Effective and realistically workable solutions, that are likely to be complied with
- Clarity and transparency of outcomes, based on objective criteria

Self-help and empowerment

Recent research into legal needs and paths to justice suggests that many people want to stay in control of the process of dispute resolution. A well-known paths to justice researcher recently reported data from a study in Canada, where 75% of participants who solved the problem by themselves would still have done so if assistance would have been available at no cost for them. In common law countries (UK, Canada, US), many divorcees manage the process without the help of a lawyer. This leads to a mismatch at courts, who not always offer procedures that can be managed by so-called “self-represented litigants”.

In US courts, a range of self-help services has been tried. These include a desk or office in the courthouse, state or local online or telephone services provided remotely, supervised volunteer college students, public library access to legal information, court website access to information in English and other languages, FAQs, videos,

and online forms (Centre on Court Access to Justice for All 2012). A California study reported that these self-help arrangements can be cost-effective for courts (Greacen 2009).

3. Rechtwijzer solution

The Rechtwijzer solution builds on this knowledge about what works in separation processes. It combines the now increasingly common elements of modern dispute resolution processes and integrates them into a dispute resolution system.

Step by step process that reduces tensions

Rechtwijzer allows a person to:

- **Diagnose** the problem and explore needs and options, with information tailored to the problem and to the specific situation of the user.
- **Intake** Start a resolution procedure, by moving through a number of questions. These questions are related to issues that need to be resolved, stimulate reflection and communication about overall goals, and enable informed choice by offering initial ideas for solutions that could work for both parties and are used in similar situations by others. These questions are based on best practices in (divorce) mediation, elicited from literature and practitioners. The perspective is neutral where possible.
- **Involve the other party** in the process. The other party can first go through the same process, before learning about the ideas submitted by the other party. This is designed to avoid some of the pitfalls of the traditional procedure: polarization, argumentativeness.
- Enter a **dialogue and negotiation** phase, where they can see on which topics they have similar initial ideas, and are stimulated to come to concrete outcomes. They can also work on texts for solutions, and communicate through a chat function. Moreover, the parties have access to information and tools (child support calculator, check lists, etc.)
- Ask (unilaterally) for **mediation** if one or more issues cannot be resolved by unassisted negotiation. The mediator can then work on the text as well, and participate in the chat conversation.
- Ask (unilaterally) for a **neutral decision** if one or more issues still cannot be resolved. The decision maker (judge, arbiter, adjudicator) is then the only person who can work on the solution (in the textbox designed for this). The parties and the decision maker can participate in the chat conversation.
- Ask for a neutral **review** and quality control of the final agreement when all issues are resolved, and submitting this to the court.
- Ask for assistance from a **help desk**, or from a trusted person who can help with working in the interface.
- **Continue the process** in a controlled way, even if the other party does not (fully) cooperate.
- Use additional offline modes of communication (telephone, meeting, hearing) if that is useful.

Managing risk factors

The Rechtwijzer aims at reducing the risk factors associated with negative effects of divorce in the following ways:

- **Assuming, stimulating and facilitating cooperation.** The interface stimulates the parties in many ways to jointly find solutions for issues. The parties are invited to give their initial views on solutions that would work for them both. The online interface reduces visual cues and direct negative interactions that may make communication more difficult. It brings people in a reflective mode and motivates them to work on solutions.
- **Declines in household income** will be avoided by letting people reflect on this as an issue, stimulating them to find solutions for increasing their joint income and to manage costs. Legal costs will be fully transparent and not exceed a maximum amount.
- **Poor psychological functioning of the resident parent** is a risk factor that can hardly be influenced directly by Rechtwijzer. But by offering a structure for coping with the many consequences of divorce, and offering neutral assistance, psychological distress may be diminished.
- **Managing and not escalating conflict.** Continuing conflict being one of the main risk factors, Rechtwijzer systematically reframes conflicts as issues for which solutions have to be found. The platform does not offer options for an adversarial positioning, or for claims and counterclaims,

although the interfaces cannot completely avoid that this happens. The platform does offer options to bring up additional issues.

- **Avoiding loss of contact with the other parent.** The cooperative interface, and the option to work at a distance, offer additional channels for communication and make it less likely that contacts and communication between parents (and their children) break down. Even if one party stops communicating via Rechtwijzer, he or she will be able to follow the process, and to resume cooperation at any time.
- **Reduction of uncertainty and tensions.** The step by step, issue by issue process, with help being available at all times and in different forms, makes the process less stressful for the parents. They may disagree at moments, but there is always a clear process on how to move towards an acceptable and fair outcome. People are not punished for not-cooperating, or for not asserting their rights in a sufficient way.
- **Reduction of legal costs.** Costs can be saved, because the interface offers a step by step protocol and all interventions are limited in scope. Each of them is priced in a completely transparent way. Mediators, decision makers and reviewers cannot create new work for themselves in the same case. The platform allow mediators, decision makers and reviewers to focus on their primary tasks using their divorce- and conflict resolution expertise. They do not have to spend time on or worry about intake of information, sharing of information with other professionals, or filing documents. They can monitor progress in each of the cases in which they are involved.

Procedural and outcome justice

The Rechtwijzer platform is also expected to lead to processes and outcomes that parties value in terms of procedural and outcome justice, by:

- Granting a high level of voice and participation for each of the parties;
- Offering neutrality: tools and legal information, neutral assistance by mediators, decision makers and reviewers;
- Stimulating respectful communication, and reducing conflict communication;
- Guiding the parties through the process, thus empowering them and leading to increased informational justice;
- Offering clear information about how other people resolved similar issues, which is likely to enhance their rating of distributive justice, and making decisions more transparent.

Self-Reliance & User Experience

Rechtwijzer centers the couple as the drivers of their divorce process. When people have ownership over a problem-solving process, agreements are more sustainable when couples choose to comply with outcomes of their own authorship. Built with assistance of UX experts and designers, this platform grows out of the rise of online legal information and services to cater to the increasing self-reliance of justice users. Legal needs research has indicated that information, advice and guidance are helpful and needed to offer people morale and confidence to create their solutions.

Denvir et al. 2013 outline the need for knowledge and advice about obligations, rights, remedies and procedures (Denvir, Balmer en Pleasence 2013). For information to be useful, it needs to be understandable, offer limited options, arrive just in time and be accessible (Verdonschot 2013). Rechtwijzer uses simple & clear language, interface and knowledge-unbundling methods to communicate to users what is expected of them and secures their informed consent. In so doing, Rechtwijzer works to:

- Improve knowledge of rights: actionable and practical information on *how* to practice rights rather than merely *what* a couple's rights are
- Deliver information in a timely manner (objective criteria/model solutions when needed)
- Build confidence, empower users to pursue a justice journey
- Promote early action and prevent dispute escalation

Semi-binding, problem-solving adjudication, building on negotiation process

The Rechtwijzer organizes a negotiation process with the possibility for each of the parties to involve a mediator or an adjudicator. This ensures facilitation and supervision over the process, as well as the possibility to overcome a stalemate. Each of the parties can decide for herself or himself that mediation or a decision is

needed. These options of mediation and problem solving adjudication are elements that conform to the trends in family court adjudication.

Each of the parties submits to the process, which has these options to move towards mediation or a decision as an integral part. This process is clearly described on the information pages and in the user conditions, as to ensure informed consent. This consent is given at the moment that each of the parties agrees to the user conditions.

The interface does not bind the parties in a strong way, however. It enables the parties to gradually grow towards agreed solutions. At the same time, it ensures that they keep moving towards solutions that they will actually apply to their relationship. A party cannot block the process. When there is no agreement, there is always a next option available to the other party. This semi-binding process is organized in the following way.

- The parties can work on solutions for each issue. As soon as they are satisfied with the solution for this issue, they express this by hitting the **“Agree”** button.
- This agreement can be undone, however, because it may be that a party wants to reconsider the solution in the light of other issues. The issue is then **“Open”** again. The parties are warned, however, that they should not use this **re-opening** option for the issue lightly.
- Similarly, each of the parties can **submit an issue to mediation or to a decision**. This helps to solve the submission problem. Only when all issues are either agreed by a party, or moved towards mediation or decision, the case actually moves to the next stage.
- First mediation is tried, and the mediator tries to bring more issues to the **“agree”** mode. Decision is the next stage. So **mediation or adjudication has a limited scope**. A mediator or a decision-maker becomes only involved for the particular issue for which one of the parties believes that it is not
- Once every issue has been agreed by both parties, or decided, a reviewer comes in. This is a lawyer who reviews the agreements. The reviewer uses a protocol that ensures the parties do not make common mistakes that are likely to make the agreements legally unsound, unworkable or unfair. The reviewer can reopen issues for this purpose. So at this stage, the solutions to which the parties agreed are **subject to review**.
- After the review, the reviewer **formalizes the set of solutions** on behalf of the parties. Depending on the national legislation, the reviewer files the plan with the solutions with the court. Courts usually have additional processes to ensure that such a plan is legally sound, fair and likely to be effective. Rechtwijzer ensures that these standards are met, so that it is unlikely that a court will undo the arrangements, but the court offers additional protection.
- An additional option for **reconsideration in case of fundamental objections** is offered within Rechtwijzer. If one party has serious objections and substantiates that because of this a solution has severe consequences for one of the members of the family involved, this party can ask for reconsideration. The Rechtwijzer can then ask the reviewer to reopen an issue or appoint another decision maker to reconsider the decision.
- The parties are both expected to cooperate with this process. It may happen, however, that **one of the parties stops** working on solutions via Rechtwijzer or does not follow the process. In that case, the other party can continue the process. The Rechtwijzer automatically assigns a mediator, who will work with the remaining party of solutions that are also fair and effective from the perspective of the other party. The solutions will then be also subject to review so that the interests of both parties are still protected. In case formalization of the solutions by a court is necessary, the reviewer will submit the agreement to the court on behalf of the remaining party. The reviewer will then continue to work with the court in order to achieve reasonable and fair solutions, improving on the results achieved via Rechtwijzer where necessary.
- The Rechtwijzer has elaborate **procedures for keeping the other party involved** even if this party does not participate actively. So outcomes are unlikely to be unexpected or one-sided. The Rechtwijzer informs the other party at all stages. It sends invitations by mail, allows the other party to log in and become up to date with the progress. The other party is also contacted by phone to hear about impediments to participation. The mediator will contact the other party as well. In this way, the Rechtwijzer builds on and improves what traditional court procedures do to keep the other party informed if she does not formally participate in the procedure.
- Rechtwijzer solutions for ongoing issues in the relationship are not forever. The parties to the conflict may want to change solutions in the light of new developments. In divorce cases, there may be

changes in housing situation or income, for instance. A module for **Aftercare** will be developed for this and also aims to address the problem of too many follow up procedures in divorce conflicts.

International Scalability

Rechtwijzer is a user-centric and needs-based cost-saving model, especially for countries facing budget cuts. While currently built in the Dutch and English languages, Rechtwijzer's language-agnostic technology can be translated for different geographies. And, the Rechtwijzer approach is configurable to other problems such as landlord-tenant and neighbour disputes.

4. Evidence about Rechtwijzer 1.0 usage and user experience

Available on demand.

5. Rechtwijzer 2.0 monitoring and user experience

The monitoring arrangements for Rechtwijzer 2.0 are available on demand. Currently, the following arrangements are under consideration:

- Monitoring of user satisfaction for each stage
- Monitoring which solution packages are selected most frequently
- Tracking of how the different tools and information components of the platform are used

Next versions of Rechtwijzer will be developed. New releases are expected every three months. Topics for improvement for the next releases include:

- An aftercare module, ensuring that the parties can adjust their agreed solutions.
- Information about which packages for solutions are used most frequently.
- Approaches that ensure that both parties base their consent on the same information.

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