

How To Get A Divorce In Nsw

Navigating the Complexities of Divorce in NSW: A Comprehensive Guide

Divorce, a significant life transition, can be daunting, especially with the legal intricacies involved. This comprehensive guide provides a detailed understanding of the divorce process in New South Wales (NSW), Australia, offering practical advice and insights to help you navigate this challenging journey. Understanding the Fundamentals of Divorce in NSW

Divorce in NSW, like elsewhere, hinges on the principle of irretrievable breakdown of the marriage. This means that the relationship has reached a point where it cannot be repaired. The law does not require one party to prove wrongdoing by the other; the focus is on the irretrievable breakdown of the relationship. This shift from fault-based systems recognizes the complex and often painful nature of separation.

Grounds for Divorce in NSW

The NSW legislation, primarily the Family Law Act 1975, outlines the grounds for divorce. Crucially, the concept of "irretrievable breakdown" is central. You don't need to establish fault, but you must demonstrate to the court that the marriage has irrevocably failed. This is typically shown by proving that the marriage has broken down for at least 12 months.

The 12-Month Separation Requirement

A key element of the NSW divorce process is the requirement for a 12-month separation period. This doesn't mean the couple must live in separate houses continuously. Separation can occur while co-habiting under the same roof, as long as there is a complete and final cessation of the matrimonial relationship.

Applying for Divorce in NSW

The application for divorce in NSW is made to the Federal Circuit and Family Court of Australia. The process requires meticulous attention to detail and adherence to the specific procedures outlined by the court.

Steps in the Divorce Application

1. **Obtain the necessary forms:** The court provides these forms online, and it's essential to complete them accurately. 2.

Prepare the supporting documents: This might include proof of marriage, evidence of separation, and details of any children involved. 3.

Filing the application: Ensure you comply with all court filing requirements and deadlines. 4. **Serving the**

application: Serving a copy of the application on your spouse is crucial and is done according to court guidelines. 5. Court

hearing: If the divorce proceedings progress normally, a hearing is likely, allowing the court to hear arguments and evidence.

Case Study: The Smith Family

The Smiths had been married for 15 years and had two children. Their marriage had deteriorated gradually, with frequent arguments and a growing emotional distance. After 12 months of living apart, with efforts to reconcile unsuccessful, they filed for divorce. The court acknowledged the 12-month separation period and granted the divorce.

Financial Settlements and Children

Divorce in NSW isn't just about dissolving the marriage; it also encompasses crucial aspects like financial settlements and arrangements for children.

Child Custody and Support

The court's primary concern in cases involving children is the best interests of the child. Arrangements for child custody and support are tailored to each unique situation.

Financial Settlements

Financial settlements are complex and often contentious. The court considers each party's financial contributions during the marriage and aims for a fair division of assets and liabilities.

Alternative Dispute Resolution

Alternative dispute resolution methods, like mediation, are often encouraged before a court hearing. This can lead to quicker and

less adversarial solutions for complex issues like property division and child arrangements.

Real-Life Application: The Jones Family

The Jones family employed mediation to resolve their property division disputes. This approach enabled them to reach a mutually acceptable agreement, avoiding the prolonged and emotionally taxing court process.

Essential Documents and Legal Advice

Proper documentation and expert legal guidance are crucial.

Cost and Timelines

The costs associated with a divorce in NSW can vary depending on the complexity of the case and the need for legal representation. Timelines can also fluctuate depending on the court's schedule and any disputes that arise.

Key Benefits of Seeking Divorce in NSW

- *Formal closure of the marriage:* Allows both parties to move forward in their lives.
- Legal standing for financial settlements and child arrangements: Enables the establishment of fair and binding agreements.
- **Potential for reconciliation:** While not guaranteed, the initial steps in a divorce process may offer an opportunity for reflection and reconciliation.
- **Clarity and certainty:** Provides a clear legal pathway to separation,

reducing ambiguity. • **Peace of mind:** With the support of legal guidance and proper documentation, individuals can transition into the next chapter of their lives with more assurance.

Conclusion

Navigating divorce in NSW requires careful consideration of the legal frameworks and potential implications. Seeking qualified legal advice is crucial, particularly when it involves complex financial settlements or child arrangements. Understanding the emotional toll of divorce is also vital. By being well-informed and seeking appropriate support, individuals can navigate this difficult transition with greater resilience and clarity.

5 FAQs

1. Q: Can I get a divorce if my spouse refuses to participate? A: Yes, but the court will need to be satisfied with other evidence that demonstrates the irretrievable breakdown of the marriage.
2. Q: How long does the divorce process typically take? A: The duration varies significantly depending on the complexity of the case and the availability of the court.
3. *Q: What if we have children?* A: The court prioritizes the best interests of the child, with specific arrangements for custody and support being considered.
4. *Q: How can I afford legal representation during a divorce?* A: Several options exist, including legal aid schemes, affordable legal packages, and pro bono services, depending on individual circumstances.
5. *Q: What are the long-term implications of a divorce?* A: Divorce can have profound

implications for individuals and their families, demanding proactive steps to manage these impacts, including financial planning and support networks. This comprehensive guide aims to provide a better understanding of the process, but legal advice specific to your situation is essential. Contact a qualified legal professional for personalized guidance.

Navigating the Process: How to Get a Divorce in NSW

Ending a marriage is undeniably one of life's most challenging experiences. It's a period filled with emotional turmoil, significant life changes, and, for many, a daunting legal process. If you're finding yourself in this situation and reside in New South Wales (NSW), understanding "how to get a divorce in NSW" is the first crucial step towards moving forward. This guide aims to demystify the process, providing clear, actionable information to help you navigate this complex journey with as much ease as possible.

It's important to note that a divorce in Australia, including NSW, is a legal dissolution of your marriage. This is distinct from property settlements and parenting arrangements, which are often decided before or concurrently with the divorce application. While these matters are deeply intertwined with the decision to divorce, they are separate legal processes. In NSW, like the rest of Australia, divorce applications are handled by the Federal Circuit and Family Court of Australia.

Understanding the Grounds for Divorce in NSW

In Australia, there's only one ground for divorce: that the marriage has irretrievably broken down. This means that you and your spouse have no reasonable prospect of reconciliation. To demonstrate this irretrievable breakdown, you must have lived separately and apart for a continuous period of at least 12 months immediately preceding the filing of your divorce application. This separation period is a fundamental requirement and cannot be bypassed.

Even if you and your spouse are still living under the same roof, you can still be considered separated. This is often referred to as "separation under one roof." However, proving this type of separation requires compelling evidence, such as sleeping in separate rooms, no longer sharing meals, not engaging in marital intimacy, and informing friends and family about the separation. Documenting these changes can be vital.

Key Requirements for a Divorce Application in NSW

Before you even think about filling out forms, it's essential to ensure you meet the basic eligibility criteria:

1. **Marriage Certificate:** You'll need your original marriage certificate. If it's not in English, you'll need an official translation.

2. **Residency:** At least one of you must have been an Australian citizen, ordinarily resident in Australia and a resident of Australia for at least 12 months immediately before filing the application, or your marriage was registered in Australia.
3. **12 Months Separation:** As mentioned, you must prove you've been separated for at least 12 months.
4. **Children Under 18:** If you have dependent children under the age of 18, the Court will require additional documentation and may require you to attend a court hearing to ensure proper arrangements are in place for their care.

The Divorce Application Process: A Step-by-Step Guide

Here's a breakdown of the typical steps involved in applying for a divorce in NSW:

Step 1: Gather Your Documents

This is where you'll need your marriage certificate. If your marriage took place overseas, you'll need to obtain an official copy or a certified extract from the relevant registry. Ensure you have any necessary translations if your certificate isn't in English.

Step 2: Complete the Application for Divorce Form

This form is available online through the Federal Circuit and Family Court of Australia's website. You can file it online through the Commonwealth Courts Portal. There are two main types of

applications:

1. **Sole Application:** Filed by one party to the marriage.
2. **Joint Application:** Filed by both parties together.

The choice between a sole or joint application often depends on the level of agreement and communication between you and your spouse. A joint application can sometimes expedite the process as it indicates mutual consent.

Step 3: Pay the Application Fee

There is a filing fee for a divorce application. This fee can change, so it's crucial to check the Federal Circuit and Family Court of Australia's website for the current amount. If you are experiencing financial hardship, you may be eligible for a fee waiver or reduction.

Step 4: Serve the Application (if filing a Sole Application)

If you file a sole application, you are legally required to "serve" a copy of the application on your spouse. This means formally delivering the documents to them. There are specific rules about who can serve the documents and how it must be done.

Generally, the applicant cannot serve the application themselves. You'll need to arrange for a third party (like a friend, family member not involved in the proceedings, or a professional process server) to hand-deliver the documents. You will then need to file an Affidavit of Service with the Court to prove it has been done.

If you file a joint application, service is not required as both parties are jointly applying.

Step 5: Court Hearing (if applicable)

In most cases, if you have no dependent children under 18 and the application is straightforward, the Court may grant the divorce without a hearing. However, a hearing is usually mandatory if:

1. You have dependent children under 18.
2. You are applying for a divorce when you have been separated under one roof.
3. The Court requires further clarification or evidence.

If a hearing is required, you and your spouse (or your legal representatives) will attend court. The judge will review your application and evidence to determine if the grounds for divorce have been met.

Step 6: The Divorce Order

If the Court is satisfied that the grounds for divorce have been met, it will make a Divorce Order. This order will typically become final one month and one day after it is made. This is a crucial waiting period, and you cannot remarry until the Divorce Order is final.

Separation and Children Under 18 in NSW

The presence of children under 18 significantly impacts the

divorce process in NSW. The Court's primary concern is the "best interests of the child." This means you'll need to satisfy the Court that proper arrangements have been made for the children's welfare and upbringing. This typically involves providing details about:

1. Where the children will live.
2. How much time they will spend with each parent.
3. How each parent will financially support the children.
4. Any other relevant arrangements for their care.

These arrangements can be formalised through a Parenting Plan or a Consent Orders made by the Court. Even if you've reached an agreement with your spouse, the Court will scrutinise these arrangements to ensure they are in the children's best interests before granting the divorce.

Separation Under One Roof in NSW

As mentioned, it's possible to be divorced after separating while still living in the same house. However, this is a more complex situation and requires strong evidence. You will need to convince the Court that you have:

1. Ceased to live together as a married couple.
2. Taken steps to inform others of your separation.
3. Slept in separate bedrooms.
4. No longer shared household duties or finances in a marital sense.
5. Not engaged in sexual relations.

You'll likely need to provide sworn affidavits from yourself, your spouse (if they agree), and potentially from friends or family members who can attest to your separation. The Court will also require you to have lived this way for at least 12 months.

Common Pitfalls and How to Avoid Them

Navigating the divorce process can be fraught with potential issues. Here are some common pitfalls and how to steer clear of them:

1. **Not having the correct documentation:** Ensure your marriage certificate is valid and, if necessary, translated.
2. **Incorrectly serving documents:** Serving a sole application incorrectly can lead to delays or dismissal. Follow the Court's rules precisely.
3. **Ignoring the 12-month separation period:** This is a strict requirement. Don't apply before you meet it.
4. **Failing to make proper arrangements for children:** The Court takes children's welfare very seriously.
5. **Delaying the application after the separation period:** While there's no strict time limit to apply for a divorce after the 12 months, it's generally advisable to do so sooner rather than later, especially if property or parenting matters are complex.
6. **Not understanding the difference between divorce and property/parenting settlements:** These are separate legal processes.

When to Seek Legal Advice

While the divorce application process can sometimes be handled without legal representation, there are many situations where seeking advice from a family lawyer in NSW is highly recommended:

1. **Complex parenting arrangements:** If you and your spouse have disagreements about custody, visitation, or child support.
2. **Disputes over property and financial matters:** Dividing assets and debts can be complicated and require legal expertise.
3. **Separation under one roof:** Proving this type of separation can be challenging and benefits from legal guidance.
4. **International marriages or assets:** If your marriage or assets are located overseas, legal advice is crucial.
5. **You are unsure about any part of the process:** A lawyer can provide clarity and peace of mind.
6. **Your spouse is uncooperative or hostile:** A lawyer can act as an intermediary and protect your interests.

A qualified family lawyer can guide you through the application, advise on necessary supporting documents, ensure proper service, and represent you in court if required. They can also help you resolve property and parenting matters, which are often more contentious and legally complex than the divorce itself.

The Final Word: Moving Forward

"How to get a divorce in NSW" is a question that leads to a process requiring patience, attention to detail, and an understanding of legal requirements. While the legal dissolution of your marriage may seem like an endpoint, it's often the beginning of a new chapter. By understanding the steps involved, meeting the requirements, and seeking professional guidance when needed, you can navigate this transition with greater confidence and lay the groundwork for a more stable future.

How to Get a Divorce in New South Wales: A Comprehensive Guide Navigating the emotional and legal complexities of divorce is a significant life decision, and in New South Wales (NSW), understanding the formal process is essential to ensure a smooth and lawful transition. While the emotional journey is deeply personal, familiarizing oneself with the legal framework and procedural steps can empower individuals to make informed choices and manage expectations effectively. NSW follows the Family Law Act 1975, which governs divorce proceedings and outlines the criteria and processes available to couples seeking to end their marriage. The legal grounds for divorce are straightforward: either spouse must have been living separately and unreasonably separated for at least 12 months, and the couple must no longer intend to live together as a marriage. Importantly, this separation must be total, meaning shared residence and daily living as a couple cease, making

reconciliation unlikely. The initial step in the process involves consulting a legal professional who specializes in family law. While it is possible to begin proceedings without immediate legal counsel, having expert guidance ensures clarity on rights, responsibilities, and available options. A family law attorney helps assess the situation, clarify entitlements—especially regarding property division and spousal maintenance—and prepare the necessary documentation. This professional support is invaluable, particularly when negotiations become complex or when assets, debts, or children’s arrangements are contested. Once prepared, the next formal step is lodging a petition for divorce with the Family Court of NSW. This petition must clearly state the grounds for divorce, provide evidence of separation, and outline proposed arrangements for children, finances, and living arrangements. The court then reviews the application, often scheduling a hearing to assess the case. During this stage, both parties have an opportunity to present their views, supported by evidence such as financial records, correspondence, or testimony. The court’s primary focus is the best interests of any children involved, ensuring their well-being remains central throughout the process. A key benefit of pursuing divorce through the formal court system is the enforceability of court orders. Once granted, divorce decrees carry legal weight, enabling clear resolution of custody, division of property, and ongoing support obligations. This structured approach also encourages transparency and fairness, reducing the risk of prolonged conflict or unfair outcomes. For those seeking a quicker resolution, alternative methods like mediation

or collaborative divorce may be available, though they require mutual agreement and are less suitable for high-conflict situations. Looking ahead, the landscape of family law in NSW continues to evolve, with increasing emphasis on supportive processes, mental health resources, and child-centered outcomes. As societal attitudes shift toward greater understanding of relationship dynamics, legal systems are adapting to offer more accessible and compassionate pathways. Couples are increasingly encouraged to engage in open communication early, explore options for shared parenting, and consider post-divorce support to ease transition. Ultimately, getting a divorce in NSW is a journey defined by legal precision and personal healing. By understanding the procedural steps, seeking qualified support, and prioritizing clarity and fairness, individuals can navigate this challenging phase with confidence and a stronger foundation for the future.

Navigating the Path to Divorce in NSW: A Comprehensive Guide

The decision to end a marriage is undoubtedly one of the most challenging and emotionally taxing experiences an individual can face. In New South Wales (NSW), the legal framework governing divorce provides a structured pathway to dissolve a marriage. While the process might seem daunting, understanding the steps involved, the criteria you must meet, and the potential complexities can significantly ease the journey. This in-depth

guide aims to demystify the process of getting a divorce in NSW, offering clear, actionable advice for those seeking to move forward.

Whether you're contemplating divorce or have already made the decision, this article will equip you with the knowledge to navigate the legal landscape of divorce in NSW. We'll cover everything from the fundamental grounds for divorce to the specifics of filing applications, serving documents, and the finalisation of your decree nisi. Understanding these nuances is crucial for a smoother and less stressful resolution.

Understanding the Grounds for Divorce in NSW

The Sole Ground: Irreconcilable Breakdown

In Australia, including NSW, divorce is granted solely on the grounds of the irretrievable breakdown of the marriage. This means you don't need to prove fault, such as adultery or cruelty. The law requires that the marriage has broken down so completely that there is no reasonable likelihood of reconciliation.

To demonstrate this breakdown, you must provide evidence that you and your spouse have lived separately and apart for a continuous period of at least **12 months** immediately preceding the filing of your divorce application. This 12-month separation period is a cornerstone of the divorce process in NSW.

The 'Separation Under One Roof' Nuance

A common point of confusion arises when couples separate but continue to live in the same home. This is known as "separation under one roof." While it might seem counterintuitive, it is legally possible to be considered separated even if you share a residence. To prove separation under one roof, you will need to demonstrate to the court that you have:

1. Stopped living together as a married couple.
2. Slept in separate rooms.
3. Ceased to share household duties (e.g., cooking, cleaning) for each other.
4. Informed friends and family of your separation.
5. Reduced or eliminated social and intimate contact.
6. Began making independent financial arrangements.

Gathering evidence to support separation under one roof is vital. This could include statutory declarations from friends or family who are aware of your separation, separate utility bills, or proof of separate living arrangements within the shared home. Consulting with a family lawyer in NSW can provide tailored advice on how to best demonstrate this specific type of separation.

Preparing Your Divorce Application

Eligibility Criteria: A Checklist

Before embarking on the application process, ensure you meet the fundamental eligibility criteria for a divorce in NSW:

1. **Marriage:** You must be legally married. This includes marriages recognised under Australian law, even if solemnised overseas.
2. **Separation:** As mentioned, you must have lived separately and apart for at least 12 months.
3. **Jurisdiction:** At least one of the parties must have been an Australian citizen, ordinarily resident in Australia and to whose marriage the Matrimonial Causes Act 1959 (Cth) applies, or have been married in Australia and ordinarily resident in Australia at the time of filing the application.

Gathering Necessary Documentation

The primary document for initiating a divorce in NSW is the **Application for Divorce**. You can typically find the official forms on the Federal Circuit and Family Court of Australia (FCFCOA) website. You will need:

1. **Marriage Certificate:** An original or certified copy of your marriage certificate is essential. If your certificate is not in English, you will need an official translation.
2. **Proof of Identity:** You will need to provide proof of your identity, such as a driver's licence or passport.
3. **Separation Documents:** While not always mandatory for the initial application, be prepared to provide evidence of your

separation if required by the court, especially in cases of separation under one roof or if children under 18 are involved.

Filing the Application: Online and In-Person Options

The Federal Circuit and Family Court of Australia (FCFCOA) handles all divorce applications in Australia. You have two primary options for filing:

1. **Online Filing:** The FCFCOA offers an online portal for filing divorce applications. This is often the quickest and most convenient method. You will need to create an account and follow the prompts to complete and submit your application.
2. **In-Person Filing:** You can also file your application in person at a registry of the Federal Circuit and Family Court of Australia.

A filing fee is associated with submitting a divorce application. If you are experiencing financial hardship, you may be eligible for a fee reduction or exemption. Information on fee waivers can be found on the FCFCOA website.

Serving Your Spouse: The Importance of Notification

What is 'Service'?

"Service" in legal terms means formally notifying your spouse

that you have filed for divorce. This is a mandatory step in the divorce process to ensure fairness and due process.

Methods of Service

There are several acceptable methods for serving your divorce application on your spouse:

1. **Personal Service:** This involves having a third party (someone other than yourself, over 18 years of age) personally hand the application documents to your spouse.
2. **Registered Post:** You can send the application by registered post to your spouse's last known address. You will need proof of postage and delivery.
3. **Service by Court:** In some circumstances, you can request the court to serve the documents on your behalf. This may be appropriate if you have difficulty locating your spouse or if they are evading service.
4. **Substituted Service:** If you are unable to serve your spouse by any of the above methods, you may apply to the court for permission to serve them in an alternative way (e.g., via email, social media). This requires strong evidence that this alternative method is likely to bring the application to their attention.

The Affidavit of Service

Once service has been completed, the person who effected service (or yourself, if using registered post with confirmation of delivery) must complete an **Affidavit of Service**. This document

formally swears that the application was served correctly. This affidavit must then be filed with the court.

Court Hearings and Divorce Orders

When is a Court Hearing Required?

In most straightforward divorce cases where there are no children under 18, a court hearing may not be necessary. The court can grant a divorce order based on the filed documents alone.

However, a court hearing is generally required in the following situations:

1. **Children Under 18:** If you have dependent children under the age of 18, you must satisfy the court that you have made proper arrangements for their welfare and upbringing. This often involves attending a hearing where the judge will ask questions about these arrangements.
2. **Service Issues:** If there have been difficulties with service, or if your spouse contests the divorce application.
3. **Separation Under One Roof:** If you are seeking a divorce based on separation under one roof, you will likely need to attend a hearing to present evidence.

The Decree Nisi and Decree Absolute

If the court is satisfied with your application and supporting documentation (and any evidence presented at a hearing), it will

make an order for divorce. This order is initially called a **Decree Nisi**.

The Decree Nisi is a preliminary order. There is a mandatory waiting period of **one month and one day** from the date of the Decree Nisi before it becomes final. After this period, the Decree Nisi automatically becomes absolute, and the divorce is finalised. You will then receive a **Decree Absolute**, which is the final legal document confirming your divorce.

Special Considerations and Common Pitfalls

Divorce and Property Settlements

It's crucial to understand that a divorce order legally dissolves the marriage, but it does not automatically resolve financial matters or property division. If you have accumulated assets and liabilities with your spouse, you will need to negotiate a property settlement. This can be done by agreement (through a Binding Financial Agreement or Consent Orders) or through court proceedings. It is highly recommended to finalise property matters **before** your divorce is made absolute, as there are time limits for commencing property settlement proceedings after a divorce becomes absolute (typically 12 months).

Children's Issues

When children are involved, their best interests are paramount.

The court will not grant a divorce if it is not satisfied that proper arrangements have been made for the children's welfare. This includes considerations of where they will live, how much time they will spend with each parent, and financial support. You may need to provide Parenting Plans or Consent Orders outlining these arrangements to the court.

Seeking Legal Advice

Navigating the divorce process in NSW can be complex, especially if your situation involves significant assets, complex financial arrangements, or disputes over children. Engaging the services of an experienced family lawyer in NSW is strongly recommended. A lawyer can:

1. Advise you on your eligibility and the best course of action.
2. Assist with preparing and filing all necessary court documents.
3. Explain the implications of divorce on property and children's matters.
4. Represent you in court if required.
5. Help you understand the nuances of service and how to gather evidence.

While the legal framework for divorce in NSW is designed to be accessible, the emotional and practical aspects can be overwhelming. By understanding the steps, meeting the criteria, and seeking appropriate legal guidance, you can navigate the path to divorce with greater confidence and clarity, setting the stage for a more positive future.

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Questions & Answers About how to get a divorce in nsw

No	Question	Answer
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1	What are the absolute must-know legal grounds for divorce in NSW?	In NSW, the sole legal ground for divorce is the irretrievable breakdown of the marriage. This is proven by demonstrating a separation period of at least 12 months and one day, with no reasonable likelihood of reconciliation.
2	Do I need a lawyer to get a divorce in NSW, or can I do it myself?	While you can technically file for divorce yourself, especially if it's uncontested, it's highly recommended to consult with a family lawyer. They can ensure all paperwork is correct, advise on the process, and protect your interests, particularly if children or significant assets are involved.
3	How long does the divorce process typically take in NSW?	If your divorce is straightforward and uncontested, it can take around 4-6 months from filing the application to the final court order. This includes the 12-month separation period, processing times, and a mandatory one-month waiting period after the court hearing.
4	What are the costs involved in getting a divorce in NSW?	The primary cost is the court filing fee, which is subject to change. You might also incur legal fees if you hire a lawyer. Other potential costs could include serving documents or obtaining marriage certificates. Fee waivers may be available for those experiencing financial hardship.

5	What happens to property and children during a NSW divorce?	A divorce order legally ends the marriage but doesn't automatically finalise property settlements or parenting arrangements. These matters need to be resolved separately, either through agreement (and consent orders) or court intervention, before or after the divorce is granted.
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Core Discussion

Digital books help readers maintain productivity.

Practical Use

How To Get A Divorce In Nsw eBooks support consistent study routines.

Conclusion

Digital reading improves access to information.

Extended focus improves comprehension and retention.

Accurate reference improves outcomes.

Offline functionality ensures uninterrupted learning regardless of connectivity.

Centralized content improves trust.

Methodical study improves mastery.

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