

To prenup, or not to prenup?

Asha Sumputh, Head of Family & Relationships at Glazer Delmar Solicitors, on prenuptial and post-nuptial agreements

ANYONE CONTEMPLATING a prenuptial agreement could be forgiven for being confused. The law is in a state of flux and recent case law has muddied the waters further. The good news is these agreements are becoming more widely accepted by the British courts, especially if converted into a post-nuptial agreement once the couple is married.

Because of the showbiz element to 'prenups', and the high-profile cases in the media, people believe they are only for the wealthy. But anyone with assets to protect, or children from a previous relationship, should consider one. They are helpful because they give an indication of how a couple's assets should be divided if they divorce - they cut out some of the wrangling because the basis of an agreement is already laid out.

For example, if one partner has children from a previous relationship, they might want

some profits from a business, or money from a house lived in with a former spouse, to be set aside to help the children.

In the UK, prenups need to follow certain guidelines to be recognised by a court: they must be made at least 21 days before a marriage takes place; certain conditions must be followed; both partners must take independent legal advice and make a full disclosure of their finances; and the contract has to be converted into a post-nuptial agreement. British courts tend to give more weight to post-nuptial agreements, which need to be reviewed regularly to take account of the couple's change in circumstances, especially if they have children.

Two recent cases involving prenups awaiting final decisions have added to the confusion. *MacLeod v MacLeod* (2008), involved a couple with a prenup that was altered twice during their marriage. When they split up, the wife argued the agreements should be disregarded. The judge varied the terms of what had been agreed and ruled that she could have more money than the prenup gave her. On appeal it was found that the first judge hadn't made proper provision for the children, so the husband made a further appeal. In the case of *Radmacher v Granatio* (2009), the wife had inherited money from her parents and insisted on a prenup. Husband and wife were from different European countries and, though the documents were prepared in German, the

wife's native language, which the husband didn't fully understand, he signed them.

Conditions for a valid prenup were not properly fulfilled, plus the High Court ruled that the husband didn't know what he was giving up when he signed the prenup, thus it was not binding. He was awarded £5.6m to buy a house, clear his debts and for capital maintenance.

When the wife appealed, the Court of Appeal ruled the husband should have got a lawyer to look at the prenup and thus wasn't entitled to the extra money. There has been a further appeal and a decision is awaited.

Because case law is so confused, it is better to protect your assets with a prenup. The Law Commission is due to report on it in 2012, but the Conservatives want it done more quickly and to make them enforceable in law. Until this is done, the prenup should be converted into a post-nuptial once you are married so it is considered to be within the Matrimonial Causes Act in the event of a divorce.

Taking proper legal advice can make the difference between plain sailing and years of painful disagreement.

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