

## **Pro- Pre-Nuptial Agreements?**

The Supreme Court is due to give a detailed ruling later this week in the appeal case of Radmacher v Grantiano.

The essence of the case is this :

- Rich couple fall in love
- Rich couple sign a Pre-Nuptial Agreement in Germany
- Rich couple move to England
- Rich couple's marriage ends
- Rich couple end up divorcing here
- Husband no longer agrees to the Agreement
- Wife says "Tough"
- Lawyers are instructed
- Three appeals happen

Pre-Nuptial Agreements are binding in most major European countries, as well as in many US states, Australia and New Zealand. In England and Wales, they are not : the courts here have absolute discretion as to whether or not they take a Pre-Nuptial Agreement into account. The trend in recent years has been to give such Agreements weight if they have been undertaken with a suitable level of serious intent (generally speaking, this would require both parties to have had independent legal advice, to have exchanged financial disclosure and that neither has been put under unfair pressure to sign) ; but even then, it would be up to the judge to decide if the Agreement results in a fair outcome.

Not so in many other countries where adults entering into Agreements are taken at their word and assumed to understand what they are about. Even if – as in Radmacher v Grantiano – the husband argues that he did not know the true extent of his wife's wealth, did not have his own legal advice and did not have German as his first language!

The Supreme Court's decision will (it is to be hoped) give clarity to couples and divorce lawyers so that the merits of entering into a Pre-Nuptial Agreement can be accurately assessed.

The case is not just relevant to very wealthy people ; a great deal of bad feeling can be caused in divorce cases by one spouse having brought assets or inheritances into the marriage which are unmatched by the other. All go into the “pot” for division – the court may or may not allow you to retain “your asset” but if needs must, it will probably be used to achieve overall fairness.

Pre-Nuptial Agreements can assist in these cases by making clear who gets what in the event of divorce by “ring-fencing” certain assets or sources of income.

A note of caution though ; if you are trying to structure a financial settlement before marriage which after this week may bind you if you divorce, it is vital that you give searching and honest thought to your expectations and sense of what is “right”. What if children come along? What would happen if one of you came into a windfall from an inheritance or Lottery win? What if one of you became chronically ill or unemployed? These Agreements are not to be undertaken lightly or two weeks before you are due to marry!

A Pre-Nuptial Agreement cannot legislate for every eventuality in life. What they do require is:

- Financial honesty and an up front approach to what matters to you about money and security (this inevitably reveals your values in life generally so be prepared for it to be a real examination of what makes you both “tick”)
- Good lawyers who can help you sensitively negotiate an Agreement (the Collaborative Law model is especially good in helping you both understand the other person’s viewpoint in a supported and transparent way).

Yvette Rooke is a Partner in Trethowans Family Team