

Prenuptials gain more weight

Mark Heselton, partner in the family department, considers the latest landmark case concerning prenuptial agreements

HISTORICALLY prenuptial agreements have not been enforceable under English law; however, a recent case involving a German heiress, Ms Radmacher, saw the UK Supreme Court take a prenuptial agreement to be binding.

This has created lively commentary in the newspapers and there is quite an interesting philosophical argument between the major positions. On the one hand there are those who support a change in the law and point to the fact that we are one of only a very few European countries which does not accept prenuptials. They argue that agreements properly entered into should be valid and that this would provide certainty and consistency. It is open to both parties either to agree terms or refuse to sign. Both can take independent legal advice and if they are mature enough to decide that they want to get married, they are mature enough to make decisions about the financial consequences of divorce.

Life isn't always like that, of course. Those against enforceable prenuptials (including Lady Hale in her dissenting judgement in the Radmacher Case) point out it is the economically stronger spouse – usually, but not always, the husband – who will benefit. Is it just that a rich husband can protect himself against claims by his wife particularly, for example,



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when they've been together for many years and dealt with everything equally? Regardless of comparative economic worth, no party can predict the future. It may be relatively straightforward to foresee what will happen within the first five years or so of marriage but should an agreement bind a couple after 20 or 30 years? Many argue that such important issues should not be dealt with by the judiciary but reviewed and legislated upon by Parliament once there has been a proper public debate.

For the moment, those wishing to protect assets when entering marriage should get advice as it is now more likely that prenuptials will be taken into account in subsequent divorce proceedings. However, for it to be binding, you need independent legal advice and full disclosure as to financial circumstances so make sure you do it properly or it could be worthless. However, for those who want to keep their options open, you could always refuse to sign...

For further advice on any area of family law, contact our Family Law team on: 020 8370 2898 or by e-mailing markheselton@vanderpumps.co.uk. We offer a fixed fee of £75 plus VAT, for first appointments.
