

# **MENNEER SHUTTLEWORTH**

## **Family Law**

### **Factsheet 6**

#### **PRENUPTIAL AGREEMENTS**

A pre nuptial agreement is an agreement that a couple enter into prior to marriage or a civil partnership. The agreement typically sets out how the assets are to be divided and whether one person is to pay maintenance to support the other in the event that the marriage or civil partnership breaks down.

Pre nuptial agreements are not binding in English law but the courts have considered them and given weight to them. In particular the Court of Appeal recognised a pre nuptial agreement in the recent Radmacher case.

The wife in this case was born in Germany into a wealthy family. Prior to the parties' marriage, the wife requested that they enter into a pre nuptial agreement which provided that, should they subsequently divorce, neither party would claim financially from the other. A pre nuptial agreement was signed in August 1998. Neither party disclosed to the other their financial assets. The couple married in November 1998 and then went on to have two children. The parties then separated in October 2006 and the husband, then a student, applied for financial provision.

The Judge hearing the case in the High Court made it clear that a pre nuptial agreement was not enforceable at common law and was just one factor to be taken into consideration in deciding financial issues. The Judge set out the following reasons why the agreement was defective:

- (1) No independent legal advice had been received by the husband prior to him signing the agreement
- (2) The agreement prevented him from making any claims whatever his circumstances and even in the event that he was in real need.
- (3) The wife had not disclosed her assets prior to entering into the agreement
- (4) No negotiation had been taken place prior to the agreement
- (5) There was no provision in the agreement for the eventuality of them having children.

The Judge awarded the husband a lump sum of £5.56 million to meet his needs and to enable him to purchase a home in the wife's name so that he could use the home in order to maintain contact with the children.

The wife then appealed this decision. The Court of Appeal took the view that pre nuptial agreements should be given decisive weight and that the old law that held that pre nuptial agreements were against public policy was out of date.

The Court of Appeal held that the High Court Judge had incorrectly found the pre nuptial agreement defective. At the time the agreement was entered into the husband could have entered into negotiations over the terms and he was aware that he was marrying into a wealthy family.

Further, when he entered into the marriage the husband had agreed with his wife that he should not have any entitlement to her wealth should they divorce so it was not unfair in the circumstances for him to be held to the agreement.

The Court found that pre nuptial agreements should be given decisive weight and the Court limited the husband's financial award to the years that he would have parental responsibility for his children.

It is clear from this case that a court will consider and give weight to pre nuptial agreements. Particular weight will be given to pre nuptial agreements where:

- the parties have entered the agreement by their own free will ie. without duress
- Independent legal advice has been taken by both parties prior to making the agreement
- The parties have both understood the agreement and how it could have an impact on their future should they divorce or dissolve a civil partnership
- Both parties fully disclose their assets to each other and enter into the agreement intending that their finances will be divided in accordance with the terms of the agreement in the event that the marriage / civil partnership comes to an end
- The Court is satisfied that the provisions of the agreement are fair according to the circumstances and facts of the particular case

The information contained above is intended for general guidance only. It is not intended to be a substitute for specific legal advice.

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