

## **PRENUPTIAL AGREEMENTS: MARRY IN HASTE, REPENT IN PLEASURE?**

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Since the UK's House of Lords ruled in 2000 that Pamela White, a Somerset farmer, was entitled to 50 per cent of her husband's assets, the divorce world has been on fire. The establishment of the "yardstick of equality" from that seminal divorce case has meant that the UK has become the jurisdiction of choice for wives divorcing their rich husbands.

Last year, 63 per cent of UK divorces saw wealth split on a 50:50 basis. John Charman, a UK millionaire and chairman of Axis Capital Holdings, is challenging this notion of fairness in the House of Lords, after his wife Beverley won 37 per cent of his £130m self-made fortune last year. Mr Charman feels this sum is way in excess of her contribution to the marriage and potentially damaging to his business interests.

Further large pay-offs – in particular, the one made to Melissa Miller for £5m in 2003 for a marriage that lasted less than three years – sent shivers through rich, unhappy husbands. The court ruled in this case that the shortness of the marriage was not relevant and took into account Alan Miller's infidelity, even though Mrs Miller had done little to contribute to her husband's £32m fortune.

Decisions such as these stem from the recognition of marriage as a partnership. Judges in the UK now have huge discretion in divorce cases as they seek to apply the equality principle laid down from the White case.

But as this principle is meant as an aid not a rule, it has also given rise to a degree of worrying uncertainty for divorcing couples.

Pre-nuptial agreements are one way for the wealthy to combat this lack of clarity. They can be a means to safeguard assets in a divorce regime where sometimes the lawyers and even the judges do not know the answer to legal questions, and a contested divorce has the possibility of ending up in the House of Lords.

Mark Harper, a family lawyer at London-based Withers, says: "Anyone with significant money would be mad not to have a pre-nup."

However, unlike the US and continental Europe, pre-nuptial agreements are not legally binding in the UK. And although leading family lawyers in the UK advise high net worth clients to take the pre-nuptial precaution, there is some confusion as to how successful these agreements are in practice. For example, several high net worth City lawyers (specialising in other areas of law) who have divorced recently and have personal but informed opinions, question the point of pre-nups if they are not binding.

Their view is upheld by the paucity of reported cases where prenuptial agreements have been significant or successfully upheld. Family lawyers say the cases may be few in number but do constitute turning points. They cite two in particular which are known only by their initials, for privacy reasons: *M v M* (2002) and *K v K* (2003). These involved pregnant women who signed pre-nuptial agreements shortly before entering into brief marriages. Despite the existence of children and the potential accusation of signing the pre-nups under duress, both agreements were considered significant and the women received considerably less from their divorce settlements.

In the latter case, Mrs K signed the agreement the day before the wedding, was married for fourteen months and received a lump sum payment of £100,000 from a husband who was worth £25m.

Valentine Le Grice QC, a family barrister practising at 1 Hare Court Chambers in London, says part of the confusion comes from the loose use of the phrase “binding agreement”. “It can mislead. The fact that pre-nups are not automatically upheld doesn’t mean they are in any sense irrelevant,” he says.

William Massey, a partner at Farrer & Co, believes that if a pre-nup is “reasonably fair”, there is a good chance that it will be influential, if not upheld. To meet this level of fairness, both parties need to have obtained independent legal advice, given full financial disclosure, and negotiated the pre-nup at least 21 days before the wedding.

Prenuptial agreements represent a modest investment for a couple, starting at £3,000 for a simple agreement to £30,000 for a complex, global one. They are most likely to work in short, childless marriages, but can also be significant during preliminary divorce negotiations. And as most divorces tend to settle out of court, lawyers say their importance should not be underestimated.

“For pre-nups in England to be effective, they have to be negotiated partially with a regard to the wishes of the parties but also with some regard as to what an English court might consider appropriate,” says Mr Le Grice. However, with the current uncertainty in the UK divorce world, a prenuptial agreement taken out in 2007 may not be considered fair if the couple divorces in 2017.

In addition, couples wanting to take out pre-nups now are hoping to avoid some of the more draconian settlements coming out of British courts, so taking these into account in the pre-nup could potentially cancel out its own *raison d’être*. Mr Harper feels that a well thought out pre-nup can actually help couples confront difficult issues about money. “Unless money issues have been resolved they can be a running sore in the marriage, especially where one has more than the other,” he says.

But Mr Harper warns that pre-nups come with big emotional health warnings. “They can damage your marriage before you’ve even got married. I have had a case where the marriage has not gone ahead because of the pre-nup negotiation,” he says.

Many lawyers say the only foolproof method of protecting assets for the very wealthy is not to get married at all or to make sure the divorce happens outside England and Wales. Neither solution is necessarily desirable – either for the institution of marriage or for London as an economic hub.

Karen Jones, managing director of Citywealthmag.com, an expert on high net worth issues, says: “I

believe with the current divorce regime in the UK, high net worth people will reconsider moving [from overseas] to London.

“Lots of ultra high net worths are attracted to the UK for favourable tax reasons but the unwary will now understand that they can be penalised up to 50 per cent of their fortunes by British courts should they get divorced [in the UK].”

### **Splitting headaches: recent high-profile divorce cases**

- Roman Abramovich vs Irina Abramovich: He: an oil tycoon, she: former Aeroflot stewardess: year of divorce: 2007: value of settlement: £150m–£5bn (estimate)
- David Rowland vs Zoe Rowland: City financier listed as the 53rd richest man in Britain & account director at Lime Communications: 2006: £690m
- The Aga Khan vs Princess Begum Inaara: Spiritual, general leader of the Ismaili Nizari & former pop singer: 2004: £540m
- Adnan Khashoggi vs Soraya Khashoggi: Arms merchant, businessman & housewife: 1980: £548.4m
- Shwan Al-Mullavs Suzan Al-Mulla : Businessman (construction & telecommunication), & housewife: 2006: £500m (claim)
- Steve Morgan vs Pamela Morgan Bell: Jersey building tycoon & housewife: 2000: £100m
- Peter Harrison vs Joy Harrison: Businessman (computers) & housewife: 2003: £100m
- Stephen Marks vs Alisa Marks: chairman and CEO of FCUK & former fashion journalist : 2004: £50m
- John Charman vs Beverly Charman: CEO of Axis Capital Holdings & housewife: 2006: £48m
- Martin Sorrell vs Sandra Sorrell: CEO of WPP Group & housewife: 2005: £30m
- Mark Dixon vs Trudy Dixon: CEO of Regus Group & former local journalist for the Luton News: 2005: £28m
- Abdullah Masry vs Mona Al Khatib: Businessman (communications) and former Saudi education minister & housewife: 2002: £26.3m
- Sir Terence Conran vs Lady Conran: Interior designer, restaurateur, retailer, writer; writer, Habitat founding partner: 1996: £10.5m
- Francois Graff vs Zeta Graff: Managing director, Graff Diamonds & actress: 2003: £10m
- Chris Tarrant vs Ingrid Tarrant: TV presenter, Who Wants To Be A Millionaire host & former reporter, TV presenter: 2007: £10m
- Harry Lambert vs Shan Lambert: Founder, proprietor of the Adscene newspaper chain & housewife: 2001: £10m
- Allan Miller vs Melissa Miller: City fund manager & pharmaceuticals company executive: 2005: £5m
- Michael Cowan vs Jacqueline Cowan: Bin liner entrepreneur & housewife: 2001: £4.4m
- Charles Currey vs Henrietta Currey: Boat builder & housewife: 2004: £1.5m
- Earl of Normanton vs Lady Victoria Normanton: Landowner & entrepreneur: 2000: £1m
- Ray Parlour vs Karen Parlour: Footballer (ex-Arsenal) & housewife: 2004: £444,000 pa (reviewed after four years)
- Kenneth McFarlane vs Julia McFarlane: Head of corporate tax planning at Deloitte & former solicitor: 2006: £250,000 p.a. (extendable period of five years)
- Charles Ashton vs Helen Ashton: Solicitor at Hunton, Williams & housewife: 2004: £110,000 p.a. (plus pension share)