



England moves closer to Europe on Marriage Contracts

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London has a longstanding international reputation as the "Divorce Capital of the World", known for the high level of financial settlements awarded by the courts here.

The Supreme Court in London has today moved one step closer to the rest of the world by upholding a German pre-marital contract which severely restricted the husband's claims. For the first time, the English courts have said that there is a presumption that marriage contracts will be upheld.

In most continental European countries, and many non-European countries, it is standard practice for couples who marry to enter into a pre-nuptial contract in which they choose their marital property regime. That contract sets out how they will hold their property during marriage, on death, and in the event of divorce. In England, these agreements have until recently been rare. The courts have not upheld them, and they have been considered contrary to the vows made on marriage.

The Supreme Court has today opened the floodgates by finding that the generous "sharing principles" applied in the English courts can be overridden by a properly prepared contract. The key findings are that:-

- 1 There is a presumption that pre-nuptial contracts will be upheld by the courts, subject to proper procedures being followed;
- 2 There must still be provision for the needs of children, and for the spouse in the weaker financial position – but provision will normally be limited to meeting needs.
- 3 It is now possible to over-ride the principle of sharing that governs most English financial settlements, and which has often led to an equal sharing of assets on marriage breakdown.
- 4 The same weight is attached to Pre-Nups and to Post-Nups, so agreements entered into following marriage can also have a profound impact.

Background

The case before the Supreme Court (*Radmacher v Granatino*) concerned a German heiress and her French husband who was

a banker. They signed a Pre-Nup in Germany in 1998, married the same year, moved to live in London, and had two children.

After the marriage broke down in 2006 the husband was originally awarded £5 million out of a very substantially greater fortune. That was subsequently reduced to a much smaller sum, sufficient only to meet basic needs while the children were dependent on him. He was therefore held to the terms of the German Pre-Nup, which said that he would not be entitled to pursue financial claims.

Key Points for International Families

- 1 Families who have connections with the UK or hold assets here should review the terms of marriage contracts in the light of this judgment.
- 2 The terms of an existing marriage contract should be reviewed if a couple move to live in a different country, or if there is a significant change in financial circumstances.
- 3 Parents who wish to hand assets on to the next generation can do so with greater confidence if there is a properly prepared pre-nuptial or post-nuptial agreement in place. It is now more realistic to ring-fence specific inherited assets so that they are better protected from possible future claims.
- 4 Advice should be obtained in all relevant jurisdictions, including the countries of birth and residence, and the countries in which assets are situated. The choice of jurisdiction and the choice of the marital regime that applies to a couple can have a profound impact on asset distribution both on marriage and on death.
- 5 Particular care should be taken to ensure that any marriage contract, and supporting Wills, deal with the effect of the death of either spouse as well as a possible future separation.
- 7 Disclosure of each party's financial position at the time of the agreement is also recommended.

Pre-Nups are still not 100% binding; the court retains power to review an agreement at the time of a divorce. There is also still uncertainty about how far a court would go in departing from an agreement where there had been a radical change of circumstances

since it was signed, particularly after a long marriage. However there is no doubt that this case heralds a significant social change in attitudes to marriage and divorce; the traditional English distaste for Pre-Nups is challenged by the Supreme Court's decision.

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