

Are Pre-Nups Enforceable - Supreme Court upholds Court of Appeal decision in Radmacher

It would appear that now they are. The Supreme Court has ruled that they are to be given compelling or decisive weight which means that unless the outcome is unfair they will be enforceable.

This is a landmark ruling towards Pre-nup's, including those signed aboard, prior to a marriage or civil partnership, becoming legally enforced by the Courts of England and Wales. Historically the Courts' attitude to pre-nups has been ambivalent and often stated to be "contrary to public policy."

Until this decision such agreements have not been considered enforceable as "contracts" but have generally been taken into account by the Courts as a factor when having regard to all the circumstances of the case and the conduct of each of the parties.

"This decision has been long awaited" confirms Sarah Jenkins a Family Law Specialist Solicitor at www.parfittcresswell.com. 'England was fast becoming the preferred country to start divorce proceedings for the financially weaker party as the courts starting position was for an equal division of the joint assets. The Court has now made it clear that when couples enter into an agreement setting out how they will divide the assets if their relationship ends, the agreement will be upheld by the court provided it is fair'.

Although this decision still falls short of making pre-nups unequivocally legally binding the Court is clearly concerned with ensuring fairness is upheld on a case by case basis. Indeed this is currently an overriding factor in all cases of ancillary relief.

Many people wish to protect assets they owned before they even knew their future spouse/civil partner, particularly those who are going down the aisle for the second, third or even fourth time. Many may even wish to preserve family assets acquired during a prior relationship where one of the partners has died for the benefit of the children of that relationship.

Sarah Jenkins, goes on to advise that "despite this new ruling it is paramount and always advisable that individuals seek independent legal advice regarding the preparation of a pre-nuptial agreement well in advance of their wedding/civil partnership ceremony to ensure that the Pre-nup is given decisive weight by the Court should the parties be in the unfortunate situation of subsequently separating and wishing to commence proceedings to dissolve their marriage or civil partnership".

Sarah Jenkins is an Associate Solicitor and trained Collaborative Lawyer at Parfitt Cresswell. If you have plans to marry or enter a civil partnership and wish to consider whether or not it is appropriate and advisable to enter into a Pre-nup or you simply wish to learn more about Pre-Nuptials/Pre-Marital Agreements call +44 (0)207 381 8311 or visit www.parfittcresswell.com