

PRE-NUPTIAL AGREEMENTS

It would be surprising if anyone has missed the media coverage of the Supreme Court's decision in *Radmacher vs Granatino* where media headlines to the effect that such agreements were binding caught the reader's eye.

Certainly Ms Radmacher's case has changed the legal landscape and thrown up challenges and issues to those who want to arrange their finances in advance and for those who advise them. The tenor and effect of the Supreme Court's decision is to convert the previous beliefs that such agreements were void in to being legally acceptable where the terms are considered to be fair. However that statement is subject to caveats namely that the agreement has to be fair in all the circumstances when it was entered into and what was fair then may become unfair with the passage of time and the onset of children.

The shift in legal thinking when coupled with social change where individuals are entering into second marriages and others are marrying later on in life means that anyone entering into a marriage should consider a pre-nuptial. It is more likely than not they will have acquired assets prior to tying the knot albeit that is not the only reason. Individuals may inherit wealth and assets during the course of the marriage or expect a business or opportunity unconnected with the marriage to mature.

The Supreme Court's decision has been subject to legal analysis as to what is meant by fair and what change in circumstances will result in an agreement being set aside. After all Ms Radmacher was worth in the region of £100 million at the time of the divorce. The view is that the court should give effect to agreements that are entered into freely between the parties no matter what their wealth is; where those agreements have been fully explained to them and cannot be said to have been entered into under duress even where the terms that have been entered into would not be considered to be fair.

So as to achieve those objectives individuals will need:-

1. to obtain legal advice – this will apply to all the jurisdictions in which individuals hold assets,
2. to complete the agreement sometime before the wedding and at least 3 weeks beforehand,
3. give full and frank disclosure of all their assets, and
4. ensure that the other party to the marriage has also had independent legal advice.

Nevertheless, pre-nuptial agreements are not without their emotional hiccups as all individuals are looking forward to an event which they hope and anticipate will bring a lasting relationship. Our team at Lee Bolton Monier-Williams are well aware of the emotional difficulties such issues may cause and are practiced in reaching conclusions in negotiations whether by round the table meetings or otherwise in what can only be described as sensitive discussions. For further information please contact Philip Sergeant on 020 7222 5381 or e-mail on Philip.Sergeant@lbmw.com or Clifford Woodroffe on 020 7222 5381 or e-mail on Clifford.Woodroffe@lbmw.com.