

## **BENNETT GRIFFIN FAMILY NEWS PRENUPTIAL AGREEMENTS**

A prenuptial agreement is a written contract between two people intending to get married that details what will happen to their assets should the marriage break down. Often prenuptial agreements state how inherited assets should be dealt with if the marriage breaks down, or how money that has been brought into the marriage by one party should be divided, if at all. Prenuptial agreements may also state what percentage should be used to split the assets between the parties.

Prenuptial agreements were frequently mentioned in the news in 2007. The cases of *Ella v Ella* and *Crossley v Crossley* brought prenuptial agreements into the headlines, in addition to the big money case of *Charman*. Interestingly enough, the case of *Charman* did not actually involve a prenuptial agreement, but after the wife was awarded £48 million, being the biggest divorce pay-out decided by British Courts to date, couples who are about to marry are perhaps even more wary of the potential financial settlement on divorce.

Prenuptial agreements are still not enforceable in this country. However, the trend appears to be that judges are placing more evidential importance on them now than ever before.

In *Ella*, both parties had dual British and Israeli nationality, but had been resident in this country for most of their marriage. The prenuptial agreement had been drafted and signed in Israel and provided that on the breakdown of the relationship, any dispute involving their property was to be resolved in Israel. The Wife tried to bring the case in the England, but the husband was successful in having those proceedings stayed so the case would be heard in Israel. In making her decision, the judge had been correct to regard the prenuptial agreement as a major factor.

Subsequently, the case of *Crossley* was heard. This case demonstrates that a judge has the discretionary power to require a party to show why a contractual agreement should not rule the outcome of a case.

These two cases demonstrate that prenuptial agreements are being given more weight by the English Courts. However, a prenuptial agreement cannot preclude the Courts from looking at s25 of the Matrimonial Causes Act 1973. This provides for the judge to consider firstly the welfare of any children of the parties, then the parties' needs, and finally how to divide any remaining assets. When looking at s25, the judge will take into account all the circumstances of the case, including how much emphasis to place on the prenuptial agreement.

Prenuptial agreements tend to be given less weight when there is a lengthy marriage or one party has given up a career to care for the children, or if the agreement would lead to injustice. They are also given less weight if they

were not entered into correctly. The judge will take into account the amount of time before the marriage that the agreement was entered into, whether both parties had independent legal advice and whether they both gave full disclosure of their assets, and also whether one party was put under pressure to sign the agreement.

It is also worth noting that the English Courts may take into account where a prenuptial agreement was drafted and signed, and may place more emphasis on it if in that country the agreement would be binding.

Consequently, if you are thinking about making a prenuptial agreement you should obtain legal advice. You must make sure your intentions are drafted clearly, and that the agreement is entered into properly.

We can draw up a prenuptial agreement for you, or give you advice on one that has previously been drawn up. We appreciate that this is a sensitive area, and we will provide helpful and practical assistance to make this as simple as possible for you.

The growing importance of prenuptial agreements gives rise to the growing importance of obtaining legal advice prior to signing one.