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# FOR RICHER OR POORER? - THE RISE OF PRE-MARITAL AGREEMENTS

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**The think-tank, Civitas, recently concluded that marriage is more popular than ever but as couples decide upon the arrangements for their big day should they also ensure that they have signed their Pre-Nuptial Agreement?**

The recent McCartney divorce generated a considerable amount of press coverage and discussion regarding the law regulating division of assets on divorce. Many commentators speculated about the arbitrary and discretionary nature of how cases are determined, and expressed surprise that they had not entered into a Pre-Nuptial Agreement.

Society has changed considerably over recent years with people leading more international lifestyles, thus there has been an introduction, and acceptance, of ideas and concepts from Europe and worldwide. One of these is Pre-Nuptial Agreements and the ability to 'regulate' your finances, should the marriage break down. The idea of a Pre-Nuptial Agreement is now not confined only to the super-rich or those on second or third marriages.

*It should be noted at the outset, that Pre-Nuptial Agreements are not yet legally binding in England and Wales but they are a factor which the Court may take into consideration upon a divorce.*

## CROSSLEY V CROSSLEY

The most recent case regarding Pre-Nuptial Agreements is the case of *Crossley v Crossley* [2008] which shows a willingness of the English Court to look favourably upon properly constructed Pre-Nuptial Agreements.

The Husband and Wife in this case were both independently wealthy - the Husband had a fortune of £45m and the Wife a fortune of £18m. They met in June 2005 and were engaged by September. Thereafter, very experienced matrimonial lawyers settled the terms of a Pre-Nuptial Contract before the wedding, which provided that "Neither party should apply to any Court in any jurisdiction for a new Order for financial provision of any kind based upon the marriage". They married on 5 January 2006, but by March 2007 they had separated with the Wife petitioning for divorce.

The Wife subsequently applied to the Court to deal with the finances arising out of the marriage. The Husband issued his own Application asking why the Wife should not be held to the terms of the Pre-Nuptial Agreement. The Judge took the view that the couple had to explain in their financial forms (Form Es) why the Pre-Nuptial was or was not a "knock out blow". The Wife had to show why she should not be held to the Agreement she had signed. She appealed against the Judge's approach but her appeal was rejected.

*Crossley* shows the Court's willingness to look at Pre-Nuptial Agreements not just as a peripheral factor but one of significant importance. Lord Justice Thorpe, one of the Judges involved in the case, called for new legislation to define the legal status of Pre-Nuptial Agreements and the Law Commission recently announced that this is an area which they are going to consider and report upon in 2012.

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*The number of people entering into Pre-Nuptial Agreements has increased considerably over recent years. They are not confined to the super-rich but those with assets that have accrued pre-relationship, those with Trust assets and business interests already established.*

Pre-Nuptial Agreements need to be carefully drafted – with the benefit of independent legal advice – fair and reasonable (given the parties' circumstances) and should be entered into, if possible, in good time before the wedding. The parties need to be honest – as they should be pre-wedding – with both providing full details of their assets and resources.

The Agreements are being entered into by a variety of couples from those on first marriages to others on third; people who are (or potentially) beneficiaries of trust funds to those who have built up/sold business assets pre-relationship – the whole spectrum.

The Court, when deciding how to resolve the financial matters arising from the divorce, has a considerable discretion and will “consider all the circumstances of the case” – which means the Pre-Nuptial Agreement will be considered, although the amount of weight attached to it may vary. So, whilst not yet legally binding, it is a document that may well have a crucial role, and could even prevent litigation, saving money and emotional turmoil at an already difficult time.

This article offers general guidance only. It reflects the law as at July 2008. The circumstances of each case vary and this article should not be relied upon in place of specific legal advice.

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