

Look before you leap

Prenuptial agreements are gaining ground on this side of the Atlantic, according to Glazer Delmar solicitors



Mention prenuptial agreements, and most British people will think you are talking about Paul and Heather Mills McCartney. Prenups are traditionally seen as celebrity territory, or the preserve of the super rich. They are not romantic, either – who wants to argue over the garden shed or the laptop when you are enjoying weekends in Paris and sharing a spaghetti bolognese a la *Lady and the Tramp*?

Two out of five marriages end in divorce and these pre-marriage agreements, in which a couple set out the way they would like to divide their assets in a legal document, are gaining ground on this side of the Atlantic. As second marriages increase, couples want to protect what they have gained from the first, and provide for any children from their previous relationship.

Although it is important to point out that judges in England and Wales are not legally



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bound by a prenup, courts increasingly take them into account. They can be a useful tool to show intention of the parties – especially if one half of the couple is wealthier, has children from a previous marriage or owns several properties.

Here's a possible scenario:

Jane met Ben when she was in the throes of divorcing her first husband, Pete. Their split had been fairly amiable, and their toddler, Luke, spent half the week with his father. The couple had a successful shared business, a family home in west London and a villa in Crete.

Ben was a little younger than Jane and less established in his career. His work as a chef in a fashionable restaurant was satisfying but he had only just bought his first flat. Jane and her ex were anxious to protect Luke and safeguard his home, and were unwilling to break up the business, which they ran together. Jane and Ben went to a family lawyer seeking a prenuptial agreement to solve these problems.

The rising number of cases where prenups are considered has galvanised the judiciary into issuing guidelines. Couples need to be honest and open about all their assets – no ignoring a bequest from Granny stowed away in an ISA.

Each person needs independent legal (and in some cases financial) advice in good time before the ceremony date. If the courts are looking at whether or not to take the prenup into account, they have to ensure it was set up properly with the full understanding of both, especially the person with the most to lose. Neither must have been put under pressure to agree to something they were not sure about. Consideration should also be given to the needs of existing or future children.

So, Ben would have to be clear he understood what he was signing up to. For example, he and Jane might agree that, if his career took off, with book and TV deals during their marriage, they would share those assets, but the fruits of her first marriage would be channelled towards Luke and her ex-husband, rather than shared by Ben.

However, everything changes if Ben and Jane have a child. The court would have to take into account the child's interests and whether the prenup was fair to him or her. The agreement could be altered to encompass this and any other issues.

When a couple's assets are before the court for division on divorce, everything will be looked at, with a prenup being one element. Although a prenup may be seen as a safety net for people with more assets to protect, if it is set up fairly, it can provide a guide to the couple's financial intentions, which will help the court and the divorce to proceed more smoothly.

Even though prenups are not legally binding, they are becoming accepted, and with changes in society signalling that we expect people to have several important relationships during their lifetime, they will eventually become more commonplace.

Joanna Brown, head of the family and relationships department at Glazer Delmar says that planning ahead with a legal adviser before marriage or civil partnership may head off tension and financial hardship in the future.

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