

# Legal Matters

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### IN CENTRAL WIMBLEDON



#### NEW HOPE FOR PRE-NUPTIAL AGREEMENTS AND EMPLOYERS, ARE YOU UP ON YOUR IMMIGRATION RULES?

In this issue of Darling Magazine Vandana Chitroda discusses these two important issues that could affect most women at some stage.

**T**here has been a recent ruling in the Court of Appeal where a married couple had entered into a prenuptial agreement. This case has given new hope for changes in the law with respect to enforceability of prenuptial agreements.

“Pre-nups” are often seen as an American evil and do not have the same impact on the outcome of a divorce that they do in America. Pre-nups are not legally binding in the UK, however they can still be relevant as they are taken into account by the Courts when deciding how to divide matrimonial assets. The Law Commission is reviewing the status of prenuptial and postnuptial agreements and their findings, which are expected in 2012, could result in new legislation.

Despite the common view that pre-nups are unromantic, it does not have to be this way and they can be a realistic measure to provide certainty for couples when they get married. They are advisable in cases where either one or both parties want to preserve their pre-marital wealth. They could also be worthwhile in situations where a party has inherited money or expects to receive an inheritance in the future and wants to preserve this and take financial management or wealth protection measures. Couples who are marrying for a second time may want to protect



their pre-marital wealth for the benefit of their children from their first marriage. These are just some of the examples when a person might want to consider entering into a pre-nup.

A prenuptial agreement will detail the reasons for the agreement and there can be circumstances where particular assets can be ring fenced in the agreement.

**THERE ARE SOME VITAL ELEMENTS THAT NEED TO BE FULFILLED BEFORE THE AGREEMENT IS SIGNED:**

- **Provision must be made for children**
- **Both parties must have taken independent legal advice before signing the agreement**
- **The agreement must not be profoundly unjust**
- **Both parties must provide full financial disclosure of their assets**
- **The agreement must have been signed at least 21 days before the date of the marriage**

The recent case which has caused a stir in the legal world is that of a wealthy German lady, Mrs Radmacher and her French husband Mr Granatino. They had entered into a prenuptial agreement four months before their wedding which stated that they would go their own separate ways if they divorced. The Court awarded Mr Granatino £5.6m as part of the divorce settlement and Mrs Radmacher appealed this decision. The Court of Appeal cut Mr Granatino's settlement to £1m and he was awarded a further £2.5m which was to be a loan from Mrs Radmacher.

This decision showed that the Courts are giving more importance to prenuptial agreements although this was a case where there was an international connection. The Court had considered in this case whether the starting point in a divorce should be a valid pre-nup where one had been entered into. This is a clear sign that the Courts are recognising these agreements.



A prenuptial agreement entered into now could limit future financial claims in the event of a divorce and even if the Courts did not make an order based on the exact intentions of the terms of the pre-nup, the areas in dispute could be limited by referring to the pre-nup. Prenuptial agreements should only at this stage be seen as a way of minimising financial risks rather than removing them altogether but it seems as if prenuptial agreements will be enforceable in the not too distant future.



**BUSINESSES AND THE NEW IMMIGRATION RULE: HAVE YOU COMPLIED?**

The law on immigration has changed drastically over the last year, which in turn has completely altered the immigration rules. One of the changes relates to people coming in to the United Kingdom in order to work. These rules impact both on employees and employers, and non-compliance of these rules can result in serious penalties both financially and in some cases imprisonment for either party. For example, an employer can face up to two years imprisonment for employing a person who is not allowed to work under the terms of the current immigration rules.

If you are an employee who may be subject to immigration control, you must ensure that the company you are working for has the relevant licence.

One of the difficulties an employer may face is knowing whether their employees are allowed to work for them under the new immigration rules. Ideally employers should carry out checks on every single employee to ensure that there have been no breaches of the regulations. Checks should be carried out on existing staff as well as any future employees. This is essential as there is no way of knowing if a person has the correct status which allows them to work legally, for example they may have been in the United Kingdom for the majority of their life, but this may not necessarily guarantee them the right to work. It may be that they were allowed to work previously, but their visa has since expired or they may never have been entitled to work. Set checks should also be carried out on all staff in order to avoid claims of discrimination.

If an employer complies fully with the immigration rules in relation to these checks and all procedures are followed, this will act as a complete defence to any claim made against the employer for employing a person illegally. If only part of the procedures are followed, or the procedures have not been complied with fully, this may reduce the fine or any conviction.

***If you would like any advice on the contents of this article or any other legal matter, please email me at: [vchitroda@courtyardsolicitors.co.uk](mailto:vchitroda@courtyardsolicitors.co.uk)***

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