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## SOLICITORS

### Hot Topic – Family Law

Edition: February 2009

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#### Law Lords fail to support Pre-Nuptial Agreements

The past few years has seen increasing numbers of couples entering into Pre-Nuptial Agreements (a.k.a. Pre-Marital Agreements) before they marry. Although traditionally these have not been automatically upheld by the Courts in the event of a divorce, they have increasingly been gaining favour with the Courts.

Resolution (formerly the Solicitors Family Law Association) stated in 2005 that “*Pre-marital agreements should be come legally binding and enforceable, subject to a single over-riding safeguard of significant injustice*”. In 2007, the Court of Appeal in the case of *Crossley v Crossley* described Resolution’s argument in favour of Pre-Marital Agreements as being “*very convincing*”. That same year, the President of the Family Division, Sir Mark Potter, giving judgement in the case of *Charman v Charman*, referred to Resolution’s “*well argued report urging the Government to give statutory force to nuptial contracts*”.

Pre-Marital Agreements have become increasingly used in cases where there are no children, where the parties are marrying for a second time, and for middle aged or elderly clients who are keen to preserve assets that have been built up over decades.

The Privy Council (which is comprised of the Law Lords acting as a supreme court for some Commonwealth countries and Crown territories outside the UK) has now decided that the Courts have taken such approval of Pre-Marital Agreements as far as it can go and has slammed the door shut on any future development of this area of law by the Court. In *McLeod v McLeod*, a case from the Isle of Man, the Privy Council decided that it was for Parliament rather than the Courts to decide if the time had come for Pre-Marital Agreements to be regarded as binding under English law. Parliament had laid down the circumstance in which a valid and binding agreement relating to arrangements for a couples’ property and finances could be varied by the Court and had preserved the parties rights to apply to the Court for an order containing financial arrangements.

The Privy Council also held that there are circumstances where agreements made after the parties had married which provided for a possible future separation could be enforced by the Courts in the same way that Separation Agreements made after the breakdown of the marriage. Post-Nuptial agreements were held to be very different from Pre-Marital Agreements.

Is there still any point in entering into a Pre-Marital Agreement? There may be - an agreement in which “fair provision” has been agreed may be upheld by a Court, although what is “fair” will depend upon the circumstances of the case.

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