With this contract, I thee wed . . .

January 2009

With recent high profile divorces such as those of Paul McCartney and Heather Mills, Madonna and Guy Ritchie, the world of matrimonial law has frequently featured in the headlines. It is, however, a multi-million pound Isle of Man divorce case that has provided one of the most important and ground-breaking developments of recent times.

On December 17 2008, the Judicial Committee of the Privy Council, the highest Isle of Man appeal court, gave its judgment in the case of Marcia and Roderick MacLeod, the facts of which have been reported elsewhere. The case concerned the division of the couple's assets, including Mr MacLeod's £14million fortune, following divorce and turned on whether agreements made between the couple both before and during their marriage should be enforced.

A pre-nuptial agreement is an agreement made by a couple who intend to marry. It is signed before the marriage and usually it deals primarily with arrangement of the family finances should the marriage break down or one of the parties die.

A post-nuptial agreement is an agreement made by a couple who are already married. It can be entered into at any stage during a marriage: after a marriage has broken down, when the marriage is going well and a breakdown is not on the cards, even on honeymoon. If a post-nuptial agreement is entered into after separation, it is known as a separation agreement and will obviously deal with arrangements in light of the separation. If a post-nuptial agreement is entered into when the relationship is going well, it can deal with similar issues to a pre-nup, i.e. division of finances upon separation/divorce or the death of one of the parties, but also (if required) financial and other arrangements during the continuation of the relationship.

In the MacLeod case, the Law Lords considered the pre-nuptial agreement signed by the parties before their marriage on Valentine's Day 1994 and stated that it was not for them to declare *pre-nuptial* agreements legally binding: they said that this was a matter for a change in legislation. Critically however, the judges did largely uphold a *post-nuptial* agreement made between Mr and Mrs MacLeod some eight years after their marriage: they said that the existing legislation permits this, subject to the court's power to vary such an agreement in certain circumstances.

Legal recognition of pre-nuptial agreements therefore remains unchanged following the MacLeod judgment. They are of some value but are just one factor that the court may take into account in deciding upon what is a fair settlement following divorce in all the circumstances of a particular case. There are various factors which will make a court more likely to take into account the terms of a pre-nuptial agreement, not least the provision of independent legal advice to both parties.

In light of the MacLeod judgment however, it may well be worth entering into an agreement *after* marriage – a post-nuptial agreement. A post-nuptial agreement, entered into on the basis of sound legal advice, should help to protect your assets and also save legal costs should your marriage break down. Even if you have already entered into a pre-nuptial agreement, as a result of this case, it is important to consider confirming the terms of the pre-nup in a post-nuptial agreement which is more likely to be enforced by the courts.

Whilst is important for married couples to consider entering into an agreement, it is even more important for unmarried couples to do so. Legally, unmarried couples do not have the protection which the courts offer to married couples. Further, unmarried couples have much greater freedom to contract than married couples.

This is the first in a series of articles intended to raise awareness of family law issues and thereby enable people to take steps to protect themselves and their families as far as possible, especially given the uncertainties of the current financial climate.

Caroline Jennings

Contact Us:

For further information please contact Caroline Jennings at Simcocks by telephone (+44 1624 690 300) or by fax (+44 1624 690 333) or by email at cmurphy@simcocks.com

In the Isle of Man:
Simcocks Advocates Limited
Ridgeway House
Ridgeway Street
Douglas
Isle of Man
IM99 1PY
Tel: +44(0)1624 690300
Fax: +44(0)1624 690333

This document is intended to provide a general overview and should not in any way be construed as legal advice. Always seek specific advice in respect of any particular issue.

Issued by: Simcocks, Ridgeway House, Ridgeway Street, Douglas, Isle of Man, IM99 1PY
Tel: 01624 690 300 Email: enquiries@simcocks.com Web: www.simcocks.com