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Appeal Court ruling helps couples making pre-nuptial agreements

Couples wishing to draw up legally binding pre-nuptial agreements have received a welcome boost from a landmark ruling by the Court of Appeal.

It means courts will have to give agreements far more weight in future and it may eventually pave the way for them to become legally binding

The case involved the wealthy German heiress Katrin Radmacher and her former husband, Nicolas Granatino, who is French. When they married they drew up a pre-nup saying that he would not make a claim on her money if they ended up divorcing.

That pre-nup would have been enforceable in their native Germany and France but they married in England, where the legal position has been less certain.

British courts will take pre-nups into account but they are still not legally binding under UK law. This has led to some debate as to their value, especially last year after the High Court decided that it would be unfair to hold Mr Granatino to the pre-nup agreement and awarded him £5.8m from Miss Radmacher's fortune.

However, that ruling has now been overturned by the Court of Appeal which has cut the payment to £1m – a figure Miss Radmacher was happy to accept. In giving his judgment after the hearing, Lord Justice Thorpe said it was becoming “increasingly unrealistic” for courts to disregard pre-nups. He believed that a “carefully fashioned contract” could provide a valuable alternative to the “stress, anxiety and expense” of going to court.

He said judges “should give due weight to the marital property regime into which the parties freely entered”.

The uncertainty about pre-nups will remain until parliament clarifies the law but this ruling by the Court of Appeal means they are far more likely to be enforced than they were in the past. It has major implications, not just for the wealthy but for millions of ordinary couples as well, as Lord Justice Thorpe was keen to point out.

“There are many instances in which mature couples, perhaps each contemplating a second marriage, wish to regulate the future enjoyment of their assets and perhaps to protect the interests of the children of their earlier marriages upon dissolution of a second marriage.

“They may not unreasonably seek that clarity before making the commitment to a second marriage.”

The Court of Appeal ruling will influence future divorce settlements with the presumption being that pre-nups should be enforced unless there are compelling reasons to doubt their validity.

Such doubts might arise if one party signed without getting proper legal advice or if someone failed to disclose all their assets when the contract was being drawn up.

The ruling means that people drawing up pre-nuptial agreements can feel more confident that their wishes will be followed. This is of particular value to older couples who may be far from rich but may still have built up considerable assets such as a home or small business which they may want to protect for their own benefit and that of their children from a previous marriage.

Please contact Patrick Troy if you would like more information about pre-nuptial agreements.

Now it's easier to protect your future with Lasting Powers of Attorney

New forms making it easier to protect your future by registering Lasting Powers of Attorney (LPA) have been presented to Parliament and will soon be available for the public to use.

LPAs allow you to nominate someone you trust to make decisions about your financial and/or personal affairs if an accident or illness prevents you from being able to do so yourself at some time in the future.

The person you choose, often but not always a family member, is known as the attorney.

Martin John, Chief Executive of the Office of the Public Guardian, said many people had found the existing forms too long and too easy to get wrong. The new forms have been designed to be simpler to use and understand without compromising the necessary safeguards.

There are two new forms, one relating to Property and Financial Affairs and the other to Health and Welfare.

LPAs should be drawn up with the help of a solicitor in order to protect your interests and to ensure that they fully represent your wishes. The LPA then needs to be registered with the Office of the Public Guardian for a fee of £120 before they can be used.

Justice Minister Bridget Prentice, said: "An accident or illness that robs you of your ability to make decisions is traumatic enough without having legal worries to contend with too. This is a straightforward solution, now all the more simpler, that makes sure the legal system protects and helps people rather than hindering them, exactly as it should do."

The new forms were designed with help from Solicitors for the Elderly, Society of Trust and Estates Practitioners and the Law Society.

The Office of the Public Guardian aims to make the forms available from 1st October this year.

Please contact Christopher Jackson if you would like more information about Lasting Powers of Attorney.

Wills and probate rules to become more user-friendly

The system for administering wills and probate is to be given a major overhaul for the first time in more than 20 years.

Probate is the process of administering a person's estate in accordance with their wishes as expressed in their will. A grant of probate is basically a court order confirming that a will is valid and that the executors can proceed with putting it into effect.

Now a working group is to be set up to review the Non Contentious Probate Rules. These are the rules that set out the procedure to be followed for obtaining a grant of probate when there is no dispute regarding the will.

The group is being established by Sir Mark Potter, President of the Family Division. Sir Mark said: "The current rules are far from user-friendly and provide little guidance. They have not been widely updated since 1987 and I hope that the rules produced by the working group will be more readily understood by the public, as well as bringing the procedures into line with more recent legislation."

As Sir Mark indicates, the whole area of wills and probate can be complicated. It is wise take legal advice when dealing with such matters to make sure everything is carried out correctly in accordance with the law so that any potential problems can be identified and avoided.

Please contact Christopher Jackson if you would like more information about any aspect of wills and probate.

Court says woman has no rights over house she helped to buy

A woman who helped her brother buy a house has been told she has no claim on the property and cannot force it to be sold to enable her to get her money back.

The house was bought in the brother's sole name in 1999. The sister said she contributed a substantial sum of money towards the purchase on the basis of an express agreement that he would hold the property on trust for her.

She said she didn't register an interest in the property at the time because she had complete trust in her brother and believed that he would reimburse her.

The property was then let out for about five years with the sister acting as her brother's agent.

However, in 2004, the brother decided to move into the house with his wife. The relationship between sister and brother then broke down. The sister sought an order for the sale of the property so she could get her money back. She told the court she would not have made such a substantial contribution towards the purchase price if she had not thought she was acquiring an interest in the property.

However, the court has ruled against her. It held that, on the balance of probabilities, the money she had contributed was no more than an unsecured loan for which she had expected a substantial commercial return, to be earned from letting the property.

If it was not a loan, it was difficult to see why the property had not been purchased in both names. The sister's claim for a beneficial interest in the property was therefore dismissed.

The case highlights the need for people to draw up the appropriate legal documents when making substantial investments of this kind. Casual verbal arrangements can become blurred and lead to disagreements several years down the line – even among close family members as in this case.

Please contact Christopher Jackson or Ian Armstrong if you would like more information about this or any aspect of buying and selling property.

Woman receives compensation for hearing loss caused 30 years ago

A woman has been awarded £3,000 in compensation for hearing loss caused by exposure to loud noise at the mill where she worked 30 years ago.

The woman had been a ring doffer at a textile mill between 1972 and 1981. Twenty one years after leaving that job she noticed that her hearing in her left ear had decreased. She was unable to hear people properly even though they were close to her and she found herself having to lip read.

The volume on the television needed to be turned up for her and people said she tended to shout rather than speak to them.

Her doctor diagnosed that she was suffering from sensorineural hearing loss.

She brought a compensation claim on the basis that the mill had been negligent in exposing her to harmful levels of noise for long periods. The mill admitted liability and she agreed to accept £3,000 in an out-of-court settlement.

Anyone who suffers injury as a result of someone else's negligence is entitled to claim compensation. Please contact Martin Crossley if you would like more information.