

Press Release: will the law lords make prenuptial agreements binding?

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CATEGORY:
ARTICLE

The Judicial Committee of the Privy Council is the final Court of Appeal for UK overseas territories, Crown dependencies and for those Commonwealth countries that have retained the right to Appeal to the Queen. It sits in Downing Street and has the same Judges as the House of Lords. Its rulings are treated as binding by courts throughout Britain.

Divorce law in the Isle of Man is identical to England & Wales so the decision will be binding and followed here.

Issue

Over the past ten years the Courts have grappled with the impact of pre and postnuptial agreements on divorce and have been placing increasing weight on such agreements.

Facts

The parties are American. They were married for ten years. Both had previously been married and have children from those relationships. There are five children of the marriage. There was no premarital cohabitation. The Husband was wealthy prior to the marriage and his assets had doubled during the marriage. The parties lived in Florida at the time of their marriage and executed a prenuptial agreement on their wedding day. That agreement would have been binding had they been divorced in Florida. A year after the marriage they moved to the Isle of Man. They agreed a variation of the terms of the prenuptial agreement by entering into a Deed of Variation one year before the initial divorce application was filed, when the marriage was already 'on the rocks' and wife was in an adulterous relationship. The Judge in the Isle of Man High Court (known as a Deemster) found that despite the wife's claims to the contrary, there had been proper financial disclosure, independent legal advice, no undue pressure and the deed had been negotiated over a 14 month period with suspension of negotiation around birth of fifth child. Also, various parts of the deed of variation had been implemented.

The High Court in the Isle of Man held the Wife to the basic structure of the Deed of Variation of the prenuptial agreement (as varied), but allowed her a substantial additional sum for housing, paid outright to her rather than in trust to accommodate the children during their education (as the husband contended).

Outcome

The Husband lost his appeal to the Isle of Man Court of Appeal.

The Court confirmed that agreements reached with the benefit of independent legal advice, full disclosure and no undue pressure are very important matters to be taken into account but are not determinative of a party's claims on divorce. The decision has been appealed to the Privy Council.

- This is the first family law case which has been dealt with by the Privy Council for many years.
- It is also the first time that a Court of this level will consider the impact of prenuptial agreements on divorce (under the current matrimonial legislation).
- Previously, the highest Court to consider this issue was the Court of Appeal in *Crossley v Crossley* [2008] 1 FLR 1467 in which the Court held that the prenuptial agreement in that case (when the parties had been married for fourteen months) was in Lord Justice Thorpe's words 'a factor of magnetic importance'.

Suzanne Todd, a Partner in the family team at international law firm Withers LLP comments:-

'It is the first time since the House of Lords case of Hyman in 1929 that a Court of this level has had the ability to lift the block on enforcing prenuptial agreements. In that case, such agreements were judged to be contrary to public policy. This is a chance for the House of Lords to acknowledge the evolution of social values since then and to decide whether it is appropriate for couples to take control of their own destiny in the event of a divorce – hopefully in one unified judgment.'

James Copson, a Partner in the family team at international law firm Withers LLP comments:-

'It will be interesting to see whether the Privy Council will be prepared to bring England more in line with many other jurisdictions across the globe which recognise and uphold prenuptial agreements.'

Michael Gouriet, a Partner in the family team at international law firm Withers LLP comments:-

'The Law Commission do not intend to publish a draft Bill in this area until 2012 at the earliest so this is a great opportunity for the highest Court in the land to make prenuptial agreements more binding and provide clarity to practitioners.'

'It remains to be seen whether the Privy Council will take the opportunity to comment on the broader direction of family law and add to the growing body of professional opinion in favour of reform where the legislature has been reluctant to intervene.'

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