

If you are taking the plunge and asking the big question this Christmas don't forget your pre nup.....

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You have the sparkling diamond from Hatton Garden, and the Dom Perignon is on ice. You are all set to 'pop the question', you think: somewhat less romantically, though, do you also need to consider a pre-nuptial agreement? Discussing such matters with your future partner is not always easy, but increasing numbers of couples are entering into such agreements. This may be because one of you has already accrued considerable wealth or stands to benefit from a substantial inheritance, but even if this is not the case, a pre-nup can still save significant future legal fees and, more importantly, future stress. Though judges in the English Family Courts have considerable discretion in the awards they make, the presumption now is that pre-nuptial agreements will be binding, provided certain key conditions are met – most importantly, that the settlement is seen to be fair at the time of the divorce. As such, agreements offer the best form of asset protection in the event of a separation. If the impetus to pursue a deal is seen to come from parents or trustees rather than one of the partners themselves, so much the better. Do not wait until it is too late. Too often we see clients for the first time only a few weeks before the big day – this tends to make the whole process far more fraught than it needs to be. With dress fittings, flowers and food, you will have plenty to think about in the final couple of months before the ceremony – you want to have the pre-nup signed and sealed well in advance. In an ideal world, it must be signed off at least 28 days before the marriage. Any suspicion of duress or undue influence, and you run the risk that the agreement may be set aside. Similarly, recent Supreme Court rulings show that judges take a dim view of non-disclosure, so it is essential to be as frank as possible, not just about your current financial position, but about your future inheritance prospects too. Both sides will need to have independent legal advice as well. We often use a 'collaborative law' approach, with both parties and their lawyers in the room together, to negotiate everything as openly and transparently as possible. This avoids those awkward conversations at home – “My lawyer said X”; “No, my lawyer said Y” – and all the unnecessary stress and tension they entail. So if the time is ripe, be bold and ask the big question; but don't be shy of asking your family lawyer for advice too – you won't have to go down on one knee for that either.

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