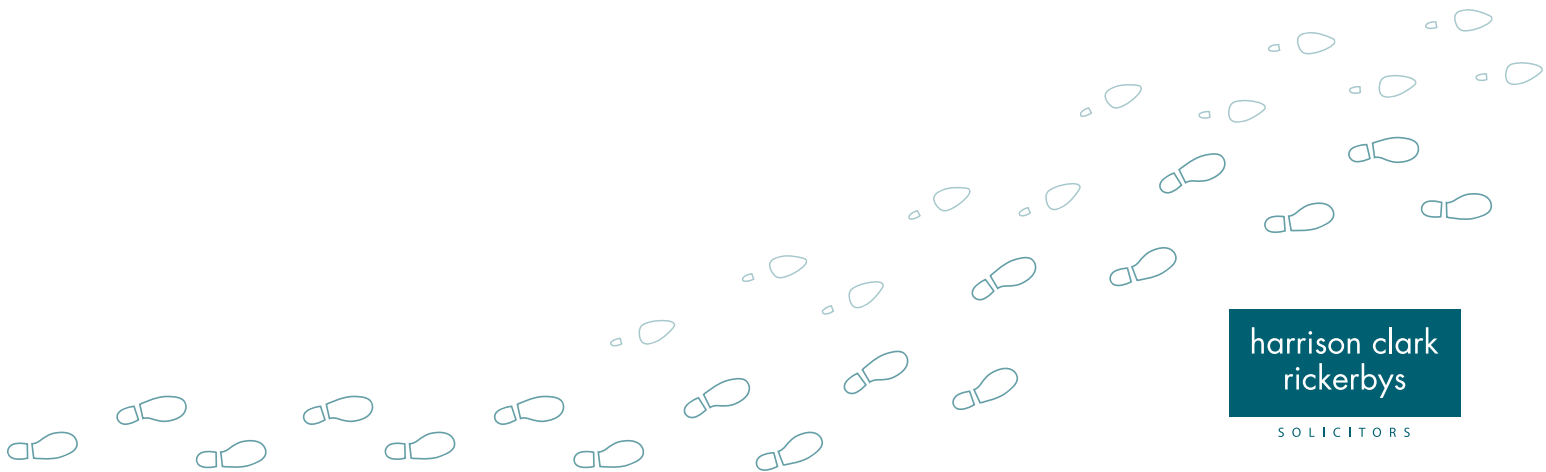




MOMENTS THAT MATTER

BEYOND THE BIG DAY



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BEYOND THE BIG DAY

The proposal has been accepted; the ring bought and a toast to the happy couple raised, resulting in smiles all round - but what next for those planning to spend the rest of their lives together? It's easy to get caught up in the plans for 'the big day' but what else should couples be considering apart from outfits, the cake and where to honeymoon?



In this, the second edition of Moments that Matter, senior lawyers from our private client and family law teams look at pre and post-nuptial agreements, making wills and buying the matrimonial home, ensuring that even if, sadly, the marriage does not last, the legal and financial fallout is as straightforward as possible. Whilst no one can predict the future, with the best legal advice from the outset you can be confident that you have covered all bases, leaving you to enjoy your special day.



Andrew Caldicott
Partner, Head of Family Law Team

Andrew Breakwell
Partner, Family Law



Is any pre-nup better than none? Not at all...

A pre-nuptial agreement is a legal agreement entered into by two individuals ahead of their marriage, and a post-nuptial agreement is the same but after the event. The agreement will usually set out how the couple wish their assets and income to be divided should they later separate or divorce. Whilst these types of contracts have long been common place in America, there is increasing evidence that more and more couples in England and Wales are considering whether they should put such a document in place before they get married.

It's absolutely correct to say that pre-nuptial agreements are not currently legally binding in England and Wales; however, the court will probably take a pre-nuptial agreement into account when overseeing a case and is likely to uphold it, as long as certain safeguards have been met. In fact, in December 2018, the Court of Appeal ruled that 'a fair and valid agreement will restrict a divorce court award and protect family or trust assets and the reputation of the family and its advisers, and an unfair agreement will be destined to fail.'

The facts of the case in question *Brack v Brack* [2018] EWCA Civ 2862 are somewhat unusual in that the parties signed up to no less than three different nuptial agreements all prior to their marriage. The marriage lasted for 20 years and by the time the couple separated they had two children and combined estates of £11m.

Had the court upheld the agreements, the wife would have only received £560,000, amounting to just 5% of the couple's combined wealth. The court not surprisingly ruled that whilst the agreements were validly made, they were only one of the factors to consider, and in this case, their application would not meet the wife's reasonable needs.

There are valuable lessons to be learnt from this case. A pre or post-nuptial agreement can be very important in protecting your finances where one party to the marriage has, or acquires significant assets, perhaps from family wealth or the sale of a business. But the drafting of such a document must be fair and reasonable and any document that is essentially capricious or designed to 'rip off' a spouse will fail.

Key moment actions

- A pre-nuptial agreement must be signed at least one month before the wedding, allowing both parties time to consider the contract they are entering into.
- Each party will need to provide full financial disclosure of their own assets, a schedule of which forms part of the agreement.
- Each party will need to instruct their own solicitor from different law firms to advise them.

Zoe Touhey
Partner, Real Estate



Make your property work for you



Married or not, when you buy a home with someone else you need to think about the legal aspects of ownership. Most people don't know that it's possible to own a property with a partner in unequal shares - but it is. Legally, you can be joint tenants where you have equal rights to the whole property, or tenants in common where you own different shares of the property. There are consequences and considerations for both types of ownership so it's important to choose what is right for you. Imagine the following scenario (with apologies to Billy Crystal and Meg Ryan):

When Harry met Sally they (eventually) fall in love, and buy their first home together for £300,000. Harry and Sally were able to combine their individual resources and buy the house without the need for a mortgage. Harry contributed £100,000 whilst Sally was able to contribute £200,000. Costs and disbursements were met by the two equally.

After consulting with their solicitor, they opted to proceed with a split of 33.4 per cent to 66.6 per cent in favour of Sally, reflecting their respective shares. This was formally recorded on the 'deeds' to the property and it was agreed that this was how the proceeds would be divided on sale.

Now consider some time has passed, Harry and Sally are married and want to buy another property but this time

as an investment. The property has a potential monthly rental yield of £1,000. At this point in their lives, Sally has a successful career as a journalist and pays income tax at the highest rate. Harry stays at home and looks after their young children. He does not have any income. Harry and Sally can once agree how they own the property, putting 99 per cent in favour of Harry and 1 per cent in favour of Sally and thus avoiding paying the higher rate of income tax on £999 (monthly) of the rental income. This will make good use of Harry's annual personal allowance for income tax.

Now suppose the children are older and do not need full time care. Harry has returned to work as a top political consultant. Unfortunately, Sally's mother, Meg, requires full time care and Sally has opted to retire early from journalism and care for her. Harry and Sally's financial incomes are reversed. They visit their solicitor and reverse the percentage share of their investment property to once again maximise their income tax allowances.

Everyone's circumstances are different of course and you should always seek the advice of your accountant or wealth adviser when making changes to the ownership of property, taking into account any pre or post-nuptial agreements in place and making sure that your wills deal with the property in the correct way.

Weddings and wills – do they go together?



Whilst most of us don't wish to think about what life will be like for our loved ones when we die, getting married is a time when we should put making a will firmly at the top of the 'to do list'.

As a matter of routine, wills should always be put in place, or existing ones reviewed, when you come to significant life events - getting married or separating from a spouse or civil partner are no exceptions to this. Having a valid will in place is the only way to ensure that the assets you have worked hard to own during the course of your life such as property, businesses, cash and investments, pass on to those people you choose to receive them.

Sadly if someone dies without leaving a valid will, they have no control whatsoever over who gets what. Instead, their assets will be distributed in line with current legal rules which set out strictly how the estate must be divided between their surviving family members. Whilst these rules do benefit married spouses and civil partners, what they will receive depends upon whether the person who has died had any children. The way in which assets are distributed under these rules may not therefore necessarily reflect what you would have wanted to happen and can have unintended and unacceptable consequences.

What most people don't know is that marriage revokes an existing will so it's something that needs to be considered at the time of your wedding and not a few years down the line when perhaps starting a family. It's especially important if you are marrying for a second time and have children from a previous relationship, and the provisions you make to benefit your new spouse under your will should always reflect the terms of any pre or post-nuptial agreement that you are entering into.



Nerys Thomas
Solicitor, Wills, Trusts and Estates

A portrait of Dawn Oliver, a woman with short blonde hair, smiling and wearing a mustard yellow jacket. She is seated in an office environment with a green plant and a window in the background.

Dawn Oliver

Partner, Head of Wills, Trusts and Estates

Simplifying financial arrangements after a relationship breakdown - some new proposals

The Law Commission made a number of recommendations in its final report on Matrimonial Property, Needs and Agreements when it was published in February 2014. It included a call for clarification of the law defining financial needs on divorce or the dissolution of a civil partnership in order to encourage greater consistency in financial settlements. The Commission also proposed the introduction of a form of pre-nuptial agreement to be known as a 'Qualifying Nuptial Agreement' which would essentially allow couples to enter into a legally binding agreement that would determine the division and disposal of their assets on the breakdown of a marriage or civil partnership.

Crucially however, the terms of the agreement would apply only after each spouse's respective needs, as well as the needs of any children, had been met and would not affect those basic principles enshrined in current financial settlements. Whilst that would have been a welcome clarity for many marrying couples, the Government has declined to respond so far to the recommendations and with the introduction of the new online divorce service in April 2018, the Ministry of Justice seems to be simplifying the process of divorce, but only in cases where all matters have been agreed between the parting spouses. We await further developments with interest and in the meantime continue to advise our clients on the options open to them based on their own circumstances.

YOUR JOURNEY

A PASSION FOR PEOPLE

Beginning a
relationship



Living together

Owning your home



Protecting you at
work

Getting married



Becoming parents

Writing your will



Leaving a
relationship

Planning for your
future



Looking after your
family

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S O L I C I T O R S

Talk to us

If you would like to know more about our services or how we could support you, please call us for an informal, no-obligation chat.

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