

At the start of the relationship, the parties may enter into a domestic agreement, the status of which has been considered by the courts in recent years. The traditional position in English law is that pre-marriage contracts carry little weight in a court's consideration of any application under Matrimonial Causes Act 1973 (MCA). The Matrimonial Causes Act 1973 (MCA 1973) and the Civil Partnership Act 2004 (CPA 2004) gives the courts wide discretion to make financial orders to achieve a fair outcome between spouses/civil partners. The statutory provisions within s.25 MCA 1973 together with case law assists the courts in the exercise of their discretion. Under s.25(1) MCA 1973, the court must have regard to "all the circumstances of the case", which is where the court can use discretion and consider the content of pre-nuptial agreements between the parties. The reasoning behind the traditional approach is that parliament has given the courts the job of determining how property should be distributed on divorce, and parties cannot oust the jurisdiction of the court. It was perceived that pre-marriage contracts were contrary to public policy in that they require people to enter marriage while contemplating its breakdown (M v M). It was suggested that marriage involved a duty to live together and an agreement making provision for the possibility of separation might act as an encouragement to separate therefore such agreements were void and court would pay no regard to them as per *Cocksedge v Cocksedge*. Further in *Hyman v Hyman*, it was firmly established that nuptial agreement could not oust the statutory powers of the courts to award financial provision should the couple divorce. Recently *Hyman v Hyman* has been affirmed by the case of *Radmacher v Granatino* in which the supreme court majority held that 'there can be no question of this court altering the principle that it is the court, and not any prior agreement between the parties, that will determine the appropriate ancillary relief (financial provision on divorce) when marriage comes to an end, for that principle is embodied in legislation'. Thus, confirming that prenuptial agreement does not have a binding status.

The current approach of the court is governed by the decision in *Radmacher v Granatino* (2010). In *Radmacher v Granatino*, a German wife and French husband signed a pre-nuptial agreement in Germany which stated that neither would have a financial claim on other, in the event of divorce. Baron J, the judge at first instance, placed negligible weight on the agreement and granted the husband who was less wealthy of the two spouse, over 5 million. The court of Appeal held that Baron J had erred. The law on pre-marriage contracts was moving on and there was a clear trend to give greater weight than previously to pre-marriage contracts. The agreement should have carried due weight, in some cases the agreements should have 'decisive weight' and even of 'magnetic importance'. The husband appealed to the Supreme Court. The decision of Supreme Court in *Radmacher* forms three distinct parts. The first is the judgement of majority of 8 of 9 who upheld the decision of the Court of Appeal. The second is the dissenting judgement of Lady Hale. The third is contained in the brief comments of Lord Mance who shared some of the Lady Hale's reservations but nevertheless, formed a part of the majority.

The majority in *Radmacher* held that the "court should give effect to a nuptial agreement that is freely entered into by each party with a full appreciation of its implications unless in the circumstances prevailing it would not be fair to hold the parties to their agreement". The agreement could only carry weight if the spouses "enter into it of their own free will, without undue influence or pressure, and informed of its implications", if there was a material non-disclosure by one of the parties to the agreement, that could render it of no or little effect.

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