



A guide to family law from



WHISKERS LLP
SOLICITORS & NOTARIES

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IN BRIEF

ADOPTION IS FINAL

Parents whose children were wrongly thought to have suffered 'non-accidental' injuries and were adopted after being put into care could not reverse the adoption orders after the injuries were shown to be the result of dietary deficiencies. Once adopted, a child is the child of the new parents: there is no going back.

SHARED RESIDENCE DOES NOT CREATE PRIORITY HOUSING NEED

The House of Lords has recently decided that when the court makes a shared residence order relating to the children of a divorced couple and one of the couple is homeless, that does not mean that the parent qualifies to be treated as a 'priority need' case for social housing.

PRE-NUPTIAL AGREEMENTS – PARLIAMENT MUST ACT IF LAW TO CHANGE

Pre-nuptial agreements are persuasive, not binding, in English law and look set to remain that way for the foreseeable future, following a decision by the Privy Council, which stated that 'the validity and effect of ante-nuptial agreements is more appropriate to legislative rather than judicial development'.

The decision not to enforce a pre-nuptial agreement was taken by the Privy Council in a hearing involving two US Citizens who are resident in the Isle of Man. The case was the first substantial one following the referral of the law on pre-nuptial agreements to the Law Commission last year.

Accordingly, any alteration in the law relating to pre-nuptial agreements will have to await a change in the law by Parliament.

However, the Law Lords agreed that an agreement entered into after a marriage is contracted (a 'post-nuptial' agreement) would generally be enforceable, provided there was no exploitation of a dominant position by one of the parties to it.

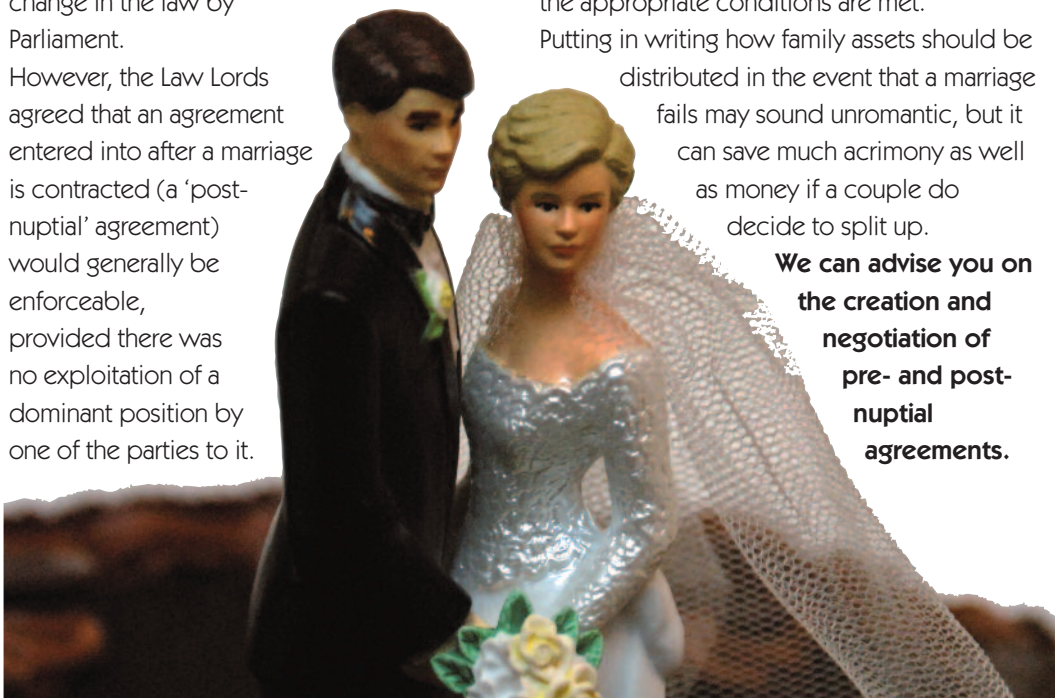
Such an agreement should always be made with the benefit of independent legal advice on both sides.

The position remains, therefore, that a pre-nuptial agreement which has been properly drafted with legal advice taken on both sides, whilst not binding, is persuasive to the court regarding a couple's intentions as regards the distribution of their assets should their marriage fail. Accordingly, a 'pre-nup' will, in many cases, be worth consideration, especially where the non-matrimonial assets are very substantial.

If a pre-nuptial agreement is not made, it is sensible for married couples who are able to do so to consider making a post-nuptial agreement, which will normally be effective if the appropriate conditions are met.

Putting in writing how family assets should be distributed in the event that a marriage fails may sound unromantic, but it can save much acrimony as well as money if a couple do decide to split up.

We can advise you on the creation and negotiation of pre- and post-nuptial agreements.





TYCOON FAILS IN BID TO RENEGOTIATE DIVORCE SETTLEMENT

A city tycoon has failed in his attempt to reduce the divorce settlement agreed with his wife in 2008.

Under the settlement, the ex-wife received property and cash valued at £11 million. Her husband retained shares in a company valued at the time at £15 million. Then came the credit crunch. The husband's shareholding is now valued at less than £2 million and, with debts taken into account, he now claims to have negative net worth.

In the Court's view, the 'natural process of



price fluctuation, however dramatic', did not satisfy the legal test for a change in a settlement.

The ruling will come as a blow to many wealthy divorcees who were hoping to renegotiate their settlements. It is expected that the decision will be appealed to the House of Lords.

We can help you negotiate a fair divorce settlement which incorporates, if necessary, protection against short-term changes in asset values.

STAY WHERE YOU ARE!

The Court of Appeal has issued a ruling relating to residence orders that will have implications for a number of divorced couples.

The case dealt with a child whose divorced parents had a shared residence order over her. Her mother wished to move from London to Somerset, where she had been offered a job. The child's father claimed the move would seriously interfere with his role in her upbringing and that it was part of a plan by the mother to disrupt his relationship with his daughter.

In the view of the Court, the father had played a

substantial role in his daughter's life. The mother's proposed move would undermine the father's right of access to his child. The move was not therefore in the girl's best interest.

We can advise you on all aspects of family breakdown.



CHILD MAINTENANCE CHANGES

With nearly £4 billion worth of child maintenance estimated to be outstanding, the Child Support Agency was clearly not fit for purpose.

To remedy the situation, the Child Maintenance and Enforcement Commission, a non-departmental public body has been set up to take responsibility for the child maintenance system in Great Britain.

The Commission will have considerable powers to ensure payment of child maintenance, including the right to seize the assets and passports of defaulters.



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