

Wealthy would be mad to marry without one, says lawyer in £48m divorce

Amelia Hill, social affairs correspondent
Sunday May 27, 2007
[The Observer](#)

Wealthy people would be 'mad' to marry without a prenuptial agreement after last week's decision by senior judges that a woman can keep her £48m divorce settlement - and they could be legally enforceable within months, said the lawyer acting for her husband.

Mark Harper, solicitor for John Charman, who lost his appeal against the biggest divorce settlement in British legal history, warned that the case highlights the need for legally binding prenuptial agreements that would allow couples to specify before marriage how their assets should be divided on divorce.

'The decision made by the judges in the Charman case means that anyone with any money would be mad not to enter into a prenup before they marry,' said Harper, a partner in the family team at international law firm, Withers. 'Even though at this point these agreements are influential rather than binding, it is increasingly obvious that no wealthy, engaged and sane individual should be without one.'

He believes that cases like the Charman's will catalyse the government into ordering an overhaul of divorce law.

'I expect prenups to become legally binding within three to five years at the very outside,' he said. 'But we won't have to wait anything like that length of time if, instead of waiting for parliament to overhaul the law, that same legal recognition comes about via a major new decision by a judge on one of the dozens of test cases currently in the pipeline. If that happens - and it might well do so - prenups could become legally enforceable within months.'

Magnus Mill, solicitor for Beverley Charman, also supports the legalisation of prenuptial agreements. 'It would be a good thing if prenups did become legally binding because they go hand-in-hand with dividing assets fairly,' he said. 'Prenups can cover every single eventuality when it comes to dividing assets, at a time when the couple are still in a mood most favourable to establishing the fairest situation for them both. That's the beauty of them.'

'I think most family lawyers would agree with me and I think it will happen,' he added. 'We are already moving in that direction, in a step-by-step fashion. It's just a case of when parliament decides to take action.'

Mills also believes that prenups would speed up divorce cases: 'The Charman case has been dragging on for three years, incurring legal fees of around £5m and a great deal of pain and upset for the parties involved. That is not a desirable state of affairs.'

Support for the prenup was also indicated by the judges who threw out Charman's appeal against the settlement. In a postscript to his judgment, senior family court judge Mark Potter called for reform of the 30-year-old law on post-divorce money battles.

He urged the Law Commission to examine the issue and put forward proposals for legislation, including the possibility of giving statutory force to prenuptial agreements. 'London has become the divorce capital of the world for aspiring wives,' Potter said. 'There are now expensive legal battles between international couples over whether a divorce claim should be heard in England.'

Harper warned, however, that couples should only draw up a prenuptial agreement if they never expect to call on it. 'Any client who comes to me wanting a prenup who is concerned about protecting their assets, the advice I give has to be they shouldn't get married,' he said.

