

International Prenuptial Agreements Part VIII: The New Developments in the United Kingdom

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In the landmark case of *Radmacher v. Granatino*, the Supreme Court of the United Kingdom gave substantial weight to an international prenuptial agreement for the first time in U.K. case law. Prior to the case, U.K. courts had given little to no weight to a couple's prenuptial agreement in when dividing the couple's assets. The courts refused to recognize the significance of a couple's prenuptial agreement based on the grounds that to do so would only incentivize couples to separate or divorce. Couples who moved to the United Kingdom after signing a valid agreement in another country had no assurance that their agreement would be enforced by a U.K. divorce court. The decision follows a general trend among U.K. courts to recognize a couple's freedom to contract, however, the long term effects of the decision are not clear. A thorough analysis of the case is required to understand the current state of prenuptial agreements in the United Kingdom. On the other hand, if couples get married in the UK and then seek a divorce in Thailand, they should consult experienced [Thailand divorce attorneys](#) to mitigate any issues with a possible prenuptial agreement signed elsewhere.

The U.K. Trend

The Supreme Court followed the general trend among U.K. courts of increasingly allowing spouses the right to contract in regards to marital property. The Maintenance Agreement Act of 1957, made marital agreements valid and legal yet subject to alteration by courts within divorce proceedings. Prior to the act, all marital agreements (including separation agreements) were invalid and had absolutely no effect. (See *Bennett v. Bennett*) Courts originally read the act narrowly and gave weight to only separation agreements (*Edgar v. Edgar*). However, in line with the trend in the U.K., courts later expanded this to include postnuptial agreements. (*MacLeod v MacLeod*) The Supreme Court decision in *Radmacher v. Granatino*, follows this trend by expanding the couple's right to contract in regards to the couples assets. The case merely expands the couple's right to contract to include prenuptial agreements as well as post nuptial and separation agreements.

The Current State

In *Radmacher v. Granatino*, the Supreme Court found that a couple's prenuptial agreement should be given weight by the courts. The court reasoned that the logic which had previously prevented the enforcement of these agreements was no longer valid. The court found that the fear that allowing prenuptial agreements would increase the divorce rate could not outweigh the benefits of predictability and freedom to contract. The court further reasoned that there was no logical reason why post nuptial agreements were enforced yet prenuptial agreements were not. The court held that a prenuptial agreement would be given substantial weight in the court's division of the couple's assets unless: the circumstances accompanying the formation of the prenuptial agreement were unfair, or that the foreign aspects of the case indicate that

the agreement should not be enforced, or that under the current circumstances it would be unfair to hold the couple to their previous agreement.

Conclusion

Radmacher v. Granatino follows the U.K. trend of expanding a couple's right to freedom of contract. The immediate effect of the case is to give prenuptial agreements weight in the division of the couple's assets. Couples with prenuptial agreements who think they may get divorced in the U.K. should consult with legal counsel who has practical experience with prenuptial agreements and the recent U.K. case law.

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