

# NUPTIAL AGREEMENTS

**Nicholas Yates KC**

1 Hare Court

**What counts and will sway the court over pre and post-nuptial agreements?**



**PRENUPTIAL AGREEMENT**

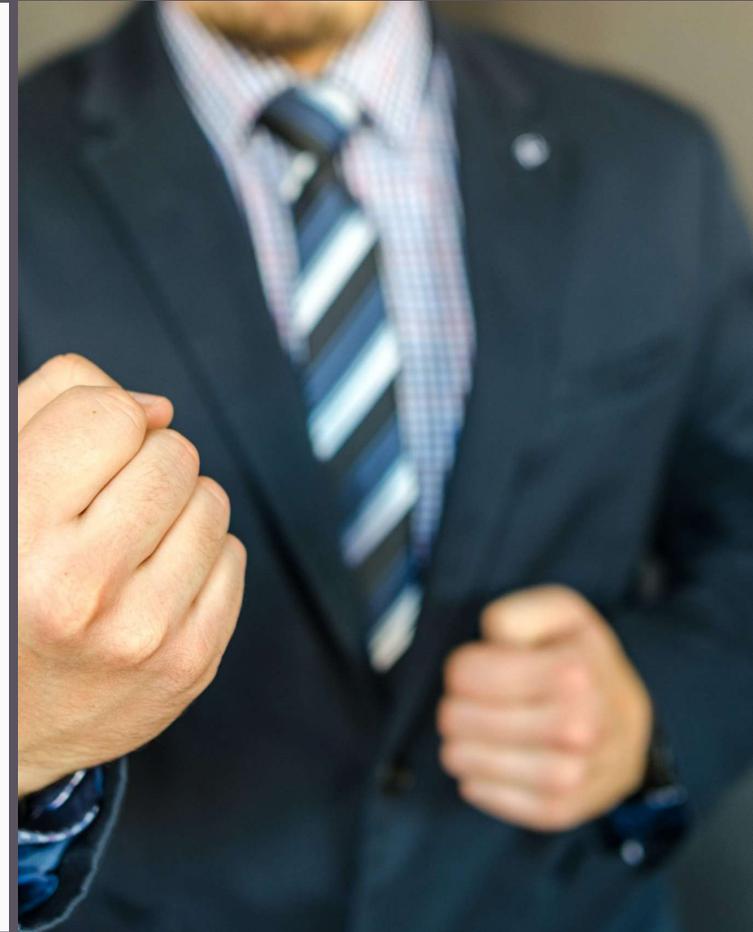
KNOWN, this Agreement is entered into by and between \_\_\_\_\_ ("Prospective Wife") (collectively, the Parties)

WHEREAS, the Parties contemplate marriage, and it is their mutual intent to enter into a marriage, and control the assets of the Parties

**NA v MA [2006] EWHC 2900 (Fam)**

**RBS v Etridge (No 2) [2001] 2 FLR 1364**

*[7] Here, as elsewhere in the law, equity supplemented the common law. Equity extended the reach of the law to other unacceptable forms of persuasion. The law will investigate the manner in which the intention to enter into the transaction was secured: "how the intention was produced", in the oft repeated words of Lord Eldon LC, from as long ago as 1807 (Huguenin v Baseley(1807) 14 Ves 273 , 300). **If the intention was produced by an unacceptable means, the law will not permit the transaction to stand. The means used is regarded as an exercise of improper or 'undue' influence, and hence unacceptable, whenever the consent thus procured ought not fairly to be treated as the expression of a person's free will. It is impossible to be more precise or definitive. The circumstances in which one person acquires influence over another, and the manner in which influence may be exercised, vary too widely to permit of any more specific criterion.***



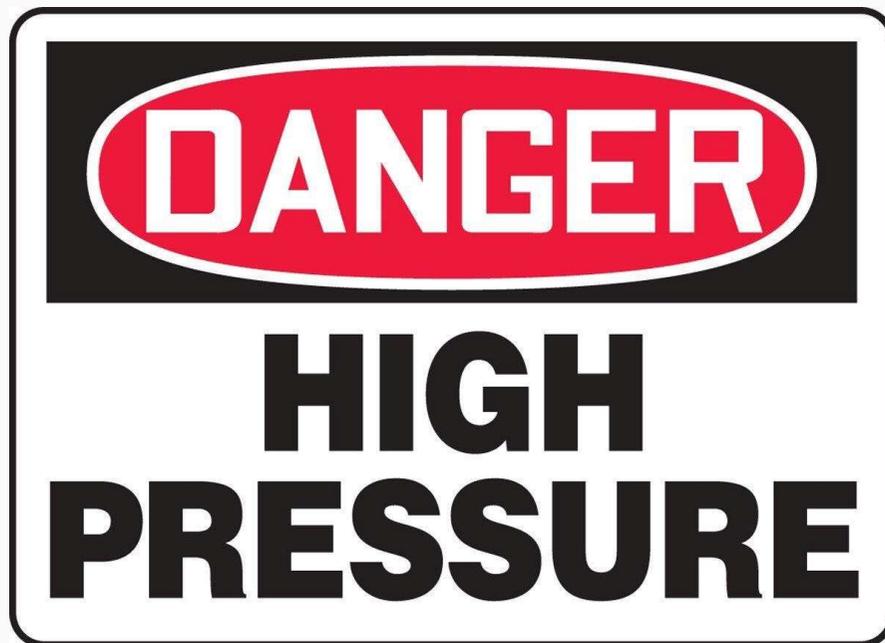
***NA v MA [2006] EWHC 2900 (Fam)***  
***RBS v Etridge (No 2) [2001] 2 FLR 1364***

In *NA v MA* Baron J said:

*I have to be satisfied that this Wife's will was overborne by her Husband exercising undue pressure or influence over her.*



What might constitute undue pressure?



# The Cayman Islands



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***Radmacher (formerly Granatino) v Granatino  
(pre-nuptial contract) [2010] UKSC 42***

*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.*

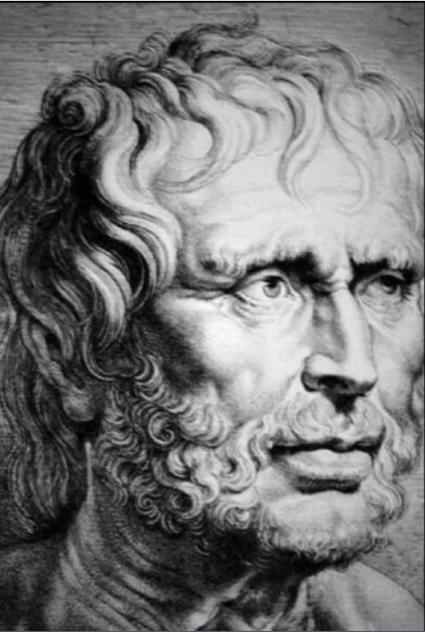


## **The Radmacher Test:**

*For a court to give effect to a nuptial agreement it must satisfy three criteria:*

- 1. it must be 'freely entered into by each party'; and*
- 2. each party must have had 'a full appreciation of its implications'; and*
- 3. it must not be unfair to hold the parties to the agreement.*





“It’s not that we have a short time to live but that we waste a lot of it.”

– Seneca

# Lack of time?

Does this equate to undue pressure?



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# No!

- *K v K (Ancillary Relief: Prenuptial Agreement)* [2003] 1 FLR 120, the wife was held to an agreement she signed three days before the wedding
- *Versteegh v Versteegh* [2018] EWCA Civ 1050, [2018] 2 FLR 1417, the pre-nuptial agreement was upheld, and it was signed just one day before the wedding



## ***BI v EN***

- the marriage was about 21 years long;
- three children;
- both parties were French;
- prior to the marriage, the parties moved to Hong Kong and entered into the agreement before a French consular;
- the parties then moved to London and the husband co-founded an investment vehicle that has enjoyed substantial success;
- the assets had all accrued during the marriage and were worth between £87m–£115m (depending on value and tax); and
- W sought 50% of the assets and H offered a needs-based award amounting to about £22.6m.

BRUNO RACINE

# La Séparation des biens

roman

Grasset

***Versteegh v Versteegh* [2019] EWCA Civ 1050**

In *Versteegh* the court summarised what *Radmacher* had said in the light of the cases since then.

There are eight points.



1. Whether a PMA is contractually binding or not is irrelevant.
2. There is no need for black and white rules about the process leading up to it
3. Factors which would vitiate a contract will negate any effect that the PMA might otherwise have had.
4. If the terms of the PMA are unfair from the start, this will reduce (not eliminate) the weight to be given to it
5. In principle, if parties have made a PMA there is no reason why they should not be entitled to enforce it
6. The court should give effect to a PMA 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
7. Typically, it would not be fair to hold the parties to their agreement if it would prejudice the reasonable requirements of any children of the family or if holding them to the agreement would leave one spouse in a 'predicament of real need'
8. But, in relation to the sharing principle, the court is likely to make an order reflecting the terms of the PMA.

# The Eight Points

## ***Brack v Brack* [2019] 1 WLR 3438**

*“... Even where there is an effective prenuptial agreement, the court remains under an obligation to take into account all the factors found in s25 (2) MCA 1973, together with a proper consideration of all the circumstances, the first consideration being the welfare of any children. Such an approach may, albeit unusually, lead the court in its search for a fair outcome, to make an order which, contrary to the terms of an agreement, provides a settlement for the wife in excess of her needs...”*

THANK YOU FOR  
LISTENING



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