

Should I seek a pre-nup?

**I'm getting married for the second time. Should I protect my children's inheritance with a pre-nup?**

**Charles Hale QC, barrister at 4PB**, says, in a word, yes. Pre-nuptial agreements or "[pre-nups](#)" are increasingly commonplace, especially on a second marriage, and can be a sensible way to protect children's inheritance if done properly. Even in marriages with smaller assets they can be an important way of deciding what should happen financially if the marriage ends.



Charles Hale, barrister at 4PB

I am often asked to advise on whether or not prenuptial agreements are enforceable. The answer is, probably.

The UK Supreme Court confirmed in 2010 in [Radmacher vs Granatino](#) that a prenuptial agreement freely entered into by each party should be upheld, unless it would not be fair to hold the parties to their agreement.

This depends largely on the circumstances in which it was drafted and signed, and provided the agreed division of assets meets the future needs of both spouses. If a spouse wants to challenge it, the burden will be upon them to say why it's not fair.

Both parties should take independent legal advice before signing. This should be done well in advance of the wedding. Signing a pre-nup on the morning — yes, it does happen — is not to be advised, as a court will want to be confident that both parties entered the agreement willingly.

The agreement can cover either the entire asset base or a specific asset, for example an inherited family art collection, but the parties should make sure to hold their assets consistently with the terms of the pre-nup. Usually that means in their own names for separate property that will not be later divided, or in joint names for assets that are likely to be divided.

That said, if you are intending to have children with your new spouse, you should consider including conditional clauses to provide for their needs when they arrive, or a formal review of the pre-nup triggered by the birth of each new child. The terms can be altered by agreement.

On a second marriage, your new spouse may acquire legal rights of inheritance in relation to assets held in your name, and so where a prenuptial agreement forms one side of the coin, a carefully drafted will should be on the other. It may not be romantic, but these agreements can vastly reduce costly proceedings down the line.

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