

# THE NEW DIVORCE RULES

*With more weight to be given  
to prenups, divorce is changing.*

*reports Tabitha Lasley*

Illustration by Patrick George

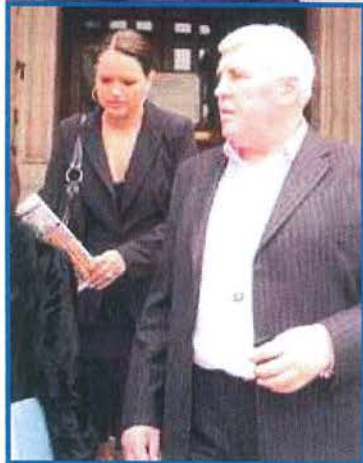
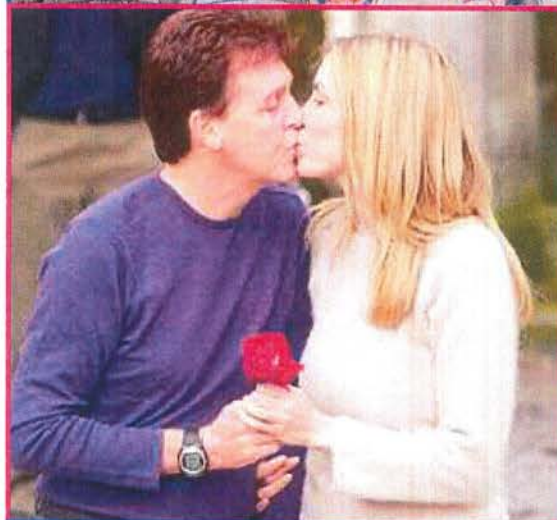




**I**t was massive. A real sea change. For people. For practitioners. It basically meant England now recognised prenuptial agreements.” Davina Katz, the *soignée* head of family law at Schillings, is talking divorce. She has the rapid-fire diction of those who bill in six-minute blocks, and the decisive delivery of someone who lays out hard truths for a job. She rattles through the details of a case that led to the Law Commission’s recommendation earlier this year that prenuptial agreements should be made legally binding.

In 2010, Katrin Radmacher and Nicolas Granatino got divorced. She was a permatanned German heiress, worth around £100m. He was a French banker-turned-academic, who’d signed a prenup promising to leave her fortune intact, and had a change of heart when they split up. He claimed that he had not known what he was signing, had no idea of the extent of his bride’s wealth, and had been hoodwinked by the fact she lived in an unexceptional Chelsea flat, where they were compelled to share a bathroom. Granatino asked for £9.2m, and was originally awarded £5.5m, which his wife appealed against. His lawyers argued that despite his banking background (and the millions he stood to inherit from his industrialist father) Granatino faced: “bankruptcy, financial ruin, and destitution”. The Supreme Court disagreed, upheld the prenup, and reduced his payout to £70,000 a year until his youngest child turned 22.

**I**nterviewed outside court, Radmacher’s lawyer Ayesha Vardag (also known as the ‘diva of divorce’) called the judgement “carefully reasoned and thoroughly modern.” She looked jubilant, as well she might; the landmark decision had swept away centuries of legal precedent, and challenged one of the central tenets of Church of England marriage into the bargain (anyone remember that bit about endowing your spouse with all your ‘worldly goods’?). The verdict was divisive: for every pragmatist applauding the end of mandated gold digging, there was a romantic lamenting the death of love. But it will bring the UK’s jurisdiction into line with the US, and much of Europe, where signing a prenuptial agreement is standard practice for moneyed couples. “If you’d asked me if a prenup was worth having ten years ago, I’d have said they’re not worth the paper they’re written on,” says Simon McKirgan, director at Vardag’s eponymous London firm. “But post-



**Clockwise from top left:**

Heather Mills famously tipped water over her ex-husband’s lawyer; Katrin Radmacher; Bernie and Slavica Ecclestone; Phil Collins and third wife Orianne Cevey; Karen Parlour; Mills and McCartney in happier times

Radmacher, the starting point is that an agreement will be upheld, unless a judge considers it manifestly unfair.” McKirgan says prenups are becoming increasingly popular, even among those of relatively modest means. “It’s not just the wealthy that are contacting us about prenups. It’s people who are bringing a property into the marriage, or are concerned about an

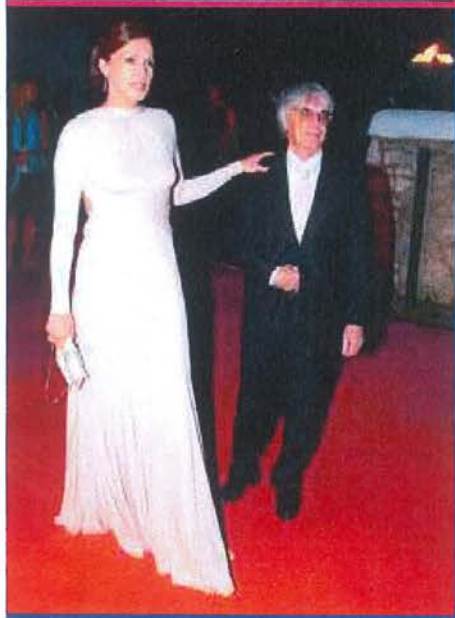
inheritance. The concept has caught on.”

If this represents, as Katz predicts, a ‘sea change’ then nowhere will feel the repercussions more keenly than London. The city is currently the divorce capital of the world, thanks to a string of high-profile settlements (£24.3m for Heather Mills; £25m for Phil Collins’ third wife Orianne Cevey; a rumoured £750m for Slavica Ecclestone, Bernie Ecclestone’s ex) paid out by British courts.

Our justice system has a reputation for being fast, fair and treating wives – or rather, economically weaker partners – very well indeed. We have a famously paternalistic judiciary, which Katz says treats women who have children “almost like they’re disabled.” This attitude was heralded by cases like *White v White* in 2000, the divorce of two farmers that saw the breadwinner’s and homemaker’s contributions afforded equal weight for

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the first time. Four years on, Karen Parlour was awarded a third of ex-husband Ray Parlour's future earnings, on the grounds that she'd persuaded him to curb his drinking, thus improving his career prospects. Small wonder that former Miss Malaysia, Pauline Chai, wife of retail billionaire Khoo Kay Peng, is currently pushing to get their £500m divorce heard in London. Wealthy couples may live between four or five countries, but when the time comes to divide assets, the well-advised wife will put roots down here.

**Y**ou have to demonstrate that your centre of interest is here," says Katz, when I ask her how a non-dom spouse gets her case heard in London. "That your children go to school here. That you own a home here. That you have a nanny here. That you employ people here. That you spend a large proportion of your time here.

If you aren't domiciled in England, you need to have been habitually resident for 12 months." I say I'm surprised people are so tactical. I'd always thought of divorce as a fraught last resort, rather than the final stage in some grand five-year stratagem. She fixes me with a grave look from beneath her fringe.

"Be under no illusions whatsoever: people plan their divorces. Nobody wakes up in the morning and says 'I fancy a flat white, and I'm going to get divorced today'. People do a lot of due diligence. Most of my clients will spend a year with me getting all their ducks in a row first."

**I**n UK, 42 per cent of marriages will end in divorce. I ask Katz what clients tell her when she asks them why they want to leave. She cites absence, neglect, generalised indifference: "People just get busy; sometimes you drop the ball, sometimes you're not as nice as you could be." Once, it was infidelity that split couples up. Now, Katz says our protestant work ethic has engendered a more laissez-faire attitude towards affairs.

"The British are the worst with adultery. The French have their *cinq a sept* whereas in England, the convention is to appear very proper. But they're all at it. The women have affairs with their sons' PE teachers, their tennis coaches, their husbands' best friends or all three in some cases. It is a cliché, but they're bored. Their husbands are in the City doing 12 or 14 hour days, their kids are at school, and there's only so much coffee you can drink."

So what's a negligent tycoon keen to hang onto his (or her) millions to do? Best

## **RADMACHER V GRANATINO (2010)**

Katrin Radmacher (one of Europe's richest women, worth **£100m**) insisted her husband sign a prenup. He later claimed she'd misled him about her wealth, and he would be financially 'ruined' if it was upheld. He demanded **£9.2m** but the UK Supreme Court ruled he knew what he was signing, upheld the prenup, and gave him just **£70,000** PA for the next 14 years.

## **PARLOUR V PARLOUR (2004)**

Karen Parlour won **1/3** of her husband Ray's future earnings (plus a lump sum of **£2m**) on the grounds that she helped build his career and set him on a path to earn more.

## **WHITE V WHITE (2000)**

Pamela White was initially awarded **£800,000** out of joint assets totalling **£4.6m**. She appealed and was awarded **£1.5m**. After *White v. White*, judges started to accord equal weight to both partners' contributions.

practice is avoid getting married altogether: contrary to popular belief, cohabiting couples have no claim on each other's money. You could get your paramour to sign an ironclad contract before you walk down the aisle, though as McKirgan points out, judges can still use their discretion if they consider that agreement unreasonable. Heiress Victoria Luckwell discovered this when a judge awarded her estranged husband Frankie Limata £1.2m to buy a home. She later called UK divorce laws "a gold-digger's charter".

There is a third way. Married couples can sign a midnuptial or postnuptial agreement. These contracts are, in essence, prenuptial agreements struck after the fact. Midnuptial agreements can be used to advance money, most often to placate a partner if the relationship is foundering. Postnuptial agreements can be deployed if one person's financial situation suddenly changes (say, if a husband sells his business and finds himself £15m richer). I ask Katz if this one isn't quite a hard sell. For the first time in our conversation, she pauses.

"Every time I've done one of these, I've sat the husband down and said 'You need to be very comfortable with the fact your wife may be hostile towards this'. You can go home and say 'Darling, how about it' but you'll have no leverage because you're already married. And of course, she'll be so suspicious, you might actually end up getting divorced."