

Chapter 13: Guidance on answering the self-test questions

Mario is a very wealthy businessman who owns several vineyards in Italy, although he spends most of his time living and working in the UK running his wine business. He meets Cordelia, who owns a large farm in Wiltshire, which she inherited from her father. The couple wishes to marry but do not want to risk the other party being awarded their farm or vineyards in ancillary relief proceedings. Neither party has children. Cordelia's brother, Hugo, insists that Cordelia should not get married and put the farm at risk. Mario also faces pressure from his family to protect the Italian vineyards.

Question 1: Explain the advantages and disadvantages of PMAs.

Advantages of PMAs include:

- allows the parties autonomy to decide their own settlement
- encourages openness between the parties
- can save money in the event of a relationship breakdown
- can protect family assets.

Disadvantages include:

- The parties' circumstances can change and a regular review may be required;
- They are perceived by many as unromantic;
- They can undermine marriage;
- Legal advice must be sought before the marriage and this will be costly.

Question 2: What steps can be taken to assist the PMA being recognized by the courts?

The parties have confirmed that they have each received independent legal (and, if possible, accountancy) advice prior to entering into the agreement. Ideally the parties should confirm in the PMA that they intend to enter into a legally binding contract. It is also best practice for the solicitor advising the client in relation to a PMA to include a certificate of competency into the agreement, in acknowledgement that they have the relevant expertise to advise on this area of the law. If such a declaration is not made in the PMA then less weight will be given to it should it be considered at a final ancillary relief hearing. There should be a minimum time for reflection, e.g. 21 days. The parties have fully and frankly disclosed to each other their means and relevant circumstances, which should be set out as an attachment to the PMA. Clarification should be provided in relation to who would have control of assets acquired by either party prior to the marriage and furthermore how jointly acquired property should be divided. The parties did not enter into the agreement less than 21 days away from the date of the marriage. If the marriage does take place shortly after the parties have signed the agreement then it is less likely to be enforced (however see *K v K* above). A recital that without the PMA there would have been no marriage; Provision for children should be considered with a possible review of any agreement during the marriage (a post-nuptial agreement?) with generous provision for children. The case in the Supreme Court of *Radmacher v Granatino* [2011] indicates that the court are prepared to accept such agreements.

Question 3: Mario and Cordelia sign a PMA after their wedding and honeymoon. The PMA states that each party should retain their own pre-marital assets and that there be no maintenance for either party, with property accumulated during the marriage to be shared equally. Cordelia discovers that she is pregnant with twins. Advise Cordelia on the validity of the PMA once the couple have children.

Following decided case-law, the PMA may be considered by the court during financial proceedings following *Radmacher v Granatino* [2011]. Cordelia is advised to seek legal advice.