



KEY FACTS

English prenuptial agreements and French marriage contracts

Which agreement does your client need?

If your client is a French national living in or moving to England, it is likely that they will need an English prenuptial agreement to protect assets in the event of divorce and not a simple French marriage contract. The client will need to balance the costs of a prenuptial agreement (these agreements often run to many pages and are highly detailed agreements unlike the typical French marriage contract) against the level of assets they want to protect. We work in collaboration with a French lawyer/notary to draft contracts for clients in this situation so that the agreement gives as much protection as possible, in both England and France. We give careful consideration to clauses in the agreement which choose the jurisdiction for divorce and the law to be applied (which can be relevant if the agreement is later being enforced abroad).

Will a French contrat de mariage be upheld in England?

It depends on the circumstances; the answer is not definitive. The existence of a marriage contract will be considered as part of the circumstances of the case and the weight given to any marriage contract will depend on the facts.

An English judge will always apply English law and not French law. English judges will give weight to a foreign marriage contract if it was "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" (Radmacher v Granatino [2010] UKSC 42).



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WHEN IT MATTERS MOST

The parties will need to enter into the agreement of their own free will and will need to show that both have fully understood the implications of the agreement. Duress or undue pressure will reduce the weight that is given to the contract and could even negate it completely. Crucially, if the application of the French marriage contract would leave either spouse in what the court considers to be a predicament of real need, it will not be upheld.

What are the main differences between the two types of agreement?

An English prenuptial agreement

- Involves a contract entered into by future spouses to determine their rights and obligations in the event of divorce
- A comprehensive contract which can provision for both capital claims and maintenance (income) claims on divorce
- The parties need to each have separate legal advice
- The English court will retain a discretion not to uphold the prenuptial agreement if it is unfair to hold the parties to it at the time of divorce
- In England, there are no matrimonial regimes and therefore no default regime on divorce

Should clients sign both a French and English agreement?

Clients should avoid signing two prenuptial contracts as there is a high risk of contradictory provisions in the documents. If the parties decide to have a French contrat de mariage, do take advice from an English lawyer if there is a chance that the couple will move to England. The English and French lawyers will be able to work hand in hand to tailor a contract "sur-mesure" that will have the highest chance of being followed on both sides of the Channel.

A French marriage contract

- Involves making a choice of matrimonial regime, which then operates from the day the parties get married
- Covers death and insolvency as well as divorce
- Made and entered into in front of a notary who can act for both parties
- Depending on the circumstances, the English court may take account of the marriage contract but it is unlikely to strictly hold the parties to its consequences
- In France, a default matrimonial regime will apply if there is no marriage contract (la communauté réduite aux acquêts)