

Financial Autonomy in Marriage: Legal Trends in Prenuptial Agreements

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This article by **Jamie Montebello** was previously submitted as part of CVL1024 and is being published with the author's permission. It examines financial autonomy in marriage, focusing on the role of prenuptial agreements in balancing individual rights and shared financial responsibilities. It explores how these agreements protect personal assets and provide a framework for fair financial management during marriage and divorce. By comparing different legal systems and analysing key case studies, the article highlights the importance of prenuptial agreements in promoting financial independence and safeguarding individual autonomy within the marital context.

TAGS: Marriage Law, Civil Law, Family Law, Financial Autonomy

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1. Introduction

When exploring the legal frameworks that govern marriage, financial autonomy emerges as a recurring topic and stands as a pillar in philosophical discourse. As the law tries to adapt to contemporary developments in society and relationships, the legal mechanisms that protect individual autonomy, particularly in marriage, have undergone careful scrutiny, gaining importance by the day. Accordingly, the main research question that this paper seeks to answer is how legal instruments, such as prenuptial agreements, balance the tension between individual autonomy and collective interests in marriage. With this question in mind, this paper will offer insight into how certain legal frameworks can ensure that financial independence is achieved within marriage.

2. Autonomy and Financial Independence in Marriage

In the context of marriage, financial autonomy is defined as the capacity of each spouse to pay for their own expenses and make independent financial decisions. However, before anything else, it is crucial for one to understand the philosophical notion of autonomy and individual rights. One can do so by consulting the works of philosophers who focus on the moral dimensions of individual freedom. Ronald Dworkin is one of these philosophers, and in his seminal work 'Taking Rights Seriously', he tackles the connection between individual rights and legal interpretation, from which one can consider the philosophy involved in implementing financial agreements within marriage.¹

Central to this viewpoint is the understanding that marriage can also be considered as a form of social welfare, where both spouses are required to support each other and their children financially. By doing this, they reduce their reliance on state resources. This idea highlights the role of financial autonomy in marriage, promoting financial independence between spouses.² Keeping such notions in mind, the idea of financial autonomy gains philosophical depth. One begins to understand that financial autonomy is important not only for "big money makers" but for everyone. A wife who spends her life contributing to the marriage through employment and household management also deserves equal rights. Although such contributions may not be financial, they are crucial to the well-being of the marriage, and thus the spouse should expect a fair share of the family's

¹ Thomas D Perry, 'Taking Rights Seriously by Ronald Dworkin' (1977) 88 (1) Ethics 80.

² Brenda Hale, 'Equality and autonomy in family law' (2011) 33 Journal of Social Welfare and Family Law 3.

assets.³

The main idea is that financial independence in marriage is a crucial part of one's autonomy. It reflects a balanced distribution of responsibilities, and recognises each individual's contribution to the family. Essentially, one can say that financial independence in marriage, which entails a separation of assets between the couple, enhances one's sense of autonomy.

3. Legal Framework and Purpose of Prenuptial Agreements

Prenuptial agreements, or better known as 'prenups', are crucial legal instruments when it comes to managing finances in marriage. These legal agreements take the form of contracts, which both parties agree to before their marriage, regarding the management and division of financial assets should the marriage end in any way.⁴ The legal framework that makes up prenuptial agreements is designed to offer the couple financial autonomy and security, as they enter into marriage with a mutual understanding of their financial wealth.

The most important and fundamental purpose of drawing up a prenuptial agreement before marriage is to grant individuals the right to autonomously define their financial relationship within the marriage. This kind of financial autonomy is crucial, as it allows couples to protect their financial wealth and responsibilities both during and after the marriage. In addition, it serves as a form of empowerment for individuals, giving them some hope in case any financial difficulties arise during a divorce.⁵

The traditional legal process of a prenuptial agreement involves a direct line of communication and negotiation between lawyers. This process has proven to be quite a stressful experience for soon-to-be married couples. Therefore, a new legal approach was introduced, mostly known as the collaborative approach, which is a more cooperative and less stressful method for the couple. When using the collaborative method, the couple and their attorneys plan meetings together to discuss and address concerns. With proper legal guidance from the attorneys, this new process allows for the creation of a more thorough prenuptial agreement, further respecting the financial autonomy of each individual.⁶

Prenuptial agreements are not only important when it comes to finances, but they also play a part in estate planning laws. Without a prenuptial agreement in place, couples may have to go through state property

³ *ibid* 11.

⁴ Philip Herzberg, 'Prenuptial Agreements and How They Affect Estate Planning' (2023) 36(4) *Journal of Financial Planning* 48.

⁵ Jacqueline Scott, Shirley Dex, Anke C Plagnol Northampton, 'Gendered Lives: Gender Inequalities in Production and Reproduction' (2014) 43 (2) *Contemporary Sociology* 287.

⁶ Donna B Weaver, 'The Collaborative Law Process for Prenuptial Agreements' (2004) 4 *DRLJ* 337, 339-340.

settlement laws, potentially resulting in one partner inheriting a significant portion of an estate upon marriage. Moreover, the individual may find it difficult to leave certain assets to their children from previous marriages if they do not have an established prenuptial agreement. Therefore, legal counsel should review the respective state laws relating to estate planning, in order to create the best possible prenuptial agreement that ensures the protection of each individual's assets in the marriage.⁷

There are multiple legal options an attorney can suggest to clients to fully protect their assets. One option is a type of prenuptial agreement called 'a prenup-with-life-insurance arrangement'. This prenuptial agreement, apart from protecting one's assets, ensures that the couple's children receive their full entitled inheritance. However, it is important to note that a prenuptial agreement cannot intervene in issues such as child support and custody, as those matters are to be left in the hands of the court.⁸ Overall, the main reason for creating a well-established prenuptial agreement is to provide individuals with their right to financial autonomy in cases where their marriage might take a wrong turn.

4. Enforceability and Legal Challenges

In order for prenuptial agreements to protect an individual's autonomy, they must be enforceable. Their enforceability depends on several important factors, all of which aim to ensure fairness for all parties involved. One important aspect is that of voluntariness, whereby each individual enters willingly and with full consent. Additionally, there should be full disclosure of all financial assets, as this allows for the creation of a fair prenuptial agreement wherein the division of assets is clear. To ensure all these factors are met, each individual should seek separate legal advice to fully understand the terms of the agreement.

Despite these factors aimed at making prenuptial agreements more enforceable, there are still common legal challenges one might encounter. When taking into account certain methods of creating prenuptial agreements, flaws may emerge. For example, in the collaborative method, the importance of consulting negotiators who specialise in collaborative law is overlooked. Negotiating and collaborative skills are essential for creating a fair prenuptial agreement, and these skills may sometimes be lacking in the overall process.⁹

Other challenges that may arise are mostly related to consent and fairness. Consent is a common legal challenge where an individual claims they were either pressured into signing or did not fully understand the terms to which they were agreeing. This can also go hand in hand with other legal challenges

⁷ Herzberg (n 4) 50.

⁸ *ibid.*

⁹ Weaver (n 6) 344-45.

such as fraud, where one individual in the couple provides the other with misleading information, and duress, where coercion leads to signing. Further issues may emerge if there is a lack of understanding of all the terms in the prenuptial agreement.¹⁰

In challenges concerning prenuptial agreements, courts are not always lenient. However, they may invalidate a prenuptial agreement if there are circumstances that render the agreement unjust. For instance, if evidence of coercion or manipulation is found, courts do not hesitate to declare a prenuptial agreement invalid.¹¹ A prenuptial agreement is most often invalidated if an imbalance of power between the partners is found.

Such legal challenges draw attention to the balance between protecting individual autonomy and ensuring fairness. Although prenuptial agreements are intended to provide a sense of financial autonomy, they must also be fair to both individuals in the couple. Therefore, the enforceability of prenuptial agreements is crucial for protecting the rights of each individual and promoting financial autonomy within marriage.

5. Comparative Analysis

Legal frameworks in different countries tackle financial autonomy in marriage in light of diverse cultural and religious influences. By researching financial autonomy across different legal systems, such as Irish and Islamic law, one can better understand how these jurisdictions balance individual autonomy with financial obligations within marriage.

In Jewish law, also known as Halakha, most principles regarding financial autonomy in marriage and prenuptial agreements are derived from the Torah, Talmud, and Rabbinical writings. Under Jewish law, the ending of a marriage requires the issuance of a formal Jewish bill of divorce (known as a 'Get'). However, this practice has sometimes led to instances of marital captivity, revealing a lack of autonomy.¹² In terms of marital contracts, Jewish law places importance on the Ketubah, an ancient prenuptial agreement that outlines the husband's obligations to his wife. The Ketubah serves as both a legal and religious document, emphasising financial autonomy primarily for the wife.¹³

In contrast, Irish law treats prenuptial agreements as a more contemporary legal development. As time goes by, prenuptial agreements are becoming increasingly recognised by the Irish legal system as

¹⁰ Ken Jewell, 'What Are the Grounds for Challenging a Prenuptial Agreement?' (*Ken Jewell Law*, 5 July 2023) <<https://kenjewell-law.com/blog/what-are-the-grounds-for-challenging-a-prenuptial-agreement/>> accessed 12 March 2024.

¹¹ *ibid.*

¹² Michael J Broyde, 'The effectiveness of (Rabbinic) prenuptial agreements in preventing marital captivity' (2020) 18 *ICON* 944.

¹³ J David Bleich, 'Survey of Recent Halakhic Periodical Literature: THE KETUBAH' (1997) 31 *Tradition* 50.

enforceable agreements, provided they are fair. Until very recently, prenuptial agreements in Ireland were viewed as a way of encouraging marriages to end. However, there has been a shift, reflecting new perspectives on marriage as a partnership of both individual financial autonomy and shared interests.¹⁴ Such shifts in marital views across jurisdictions allow couples to feel more financially autonomous.

The Scottish legal system, while following a mixture of both civil and common law traditions, also places importance on prenuptial agreements. However, Scottish law achieves this by drawing a strong emphasis on the fair distribution of marital property. Unlike the *Ketubah*, which establishes fixed obligations, and Irish prenuptial agreements, which present negotiated terms, the Scottish legal system refers to financial autonomy in marriage as the fair sharing of assets and finances accumulated during the marriage.¹⁵

The comparison of these three different jurisdictions offers a diverse spectrum of approaches to financial autonomy within marriage. Each legal system incorporates cultural and religious traditions that influence the way in which the marital financial relationship is handled. Each jurisdiction has its own way of dealing with the relationship between individual autonomy and shared interests in marriage. However, one common factor seems to be the emphasis on having financial independence in marriage, which helps provide individuals with individual autonomy.

6. Case Studies

Case studies offer insight into how the law interprets financial autonomy within married couples. One such example is the *Luckwell v. Limata case*,¹⁶ which took place in the United Kingdom in 2014. In this case, the court upheld a prenuptial agreement that was unjust, as it favoured one party more than the other. This draws emphasis to the principle that adults are able to make their own agreements about what happens to their assets upon divorce, provided the agreement is entered into freely.¹⁷ The case highlighted the growing recognition of prenuptial agreements and the increased importance of financial autonomy in marriage, allowing individuals to make their own decisions regarding their assets.

Another example of a case that occurred in the UK is *Radmacher v. Granatino* in 2010.¹⁸ In this case, German heiress Katrin Radmacher and her French husband, Nicolas Granatino, had signed a prenuptial agreement in Germany before their marriage. The prenuptial agreement stated that

¹⁴ Lucy-Ann Buckley, 'Autonomy and prenuptial agreements in Ireland: a relational analysis' (2018) 38(1) Legal Studies.

¹⁵ Catherine Fairbairn, 'Pre-nuptial agreements' (Research Briefing, House of Commons Library, 16 October 2023) <<https://commonslibrary.parliament.uk/research-briefings/sn03752/>> accessed 12 March 2024.

¹⁶ *Luckwell v. Limata* [2014] EWHC 536 (Fam).

¹⁷ Judith Bray, 'The Effect of "Fairness" on Prenuptial Agreements' (2014) 26 Denning Law Journal 261.

¹⁸ *Radmacher v. Granatino* [2010] UKSC 42.

neither Radmacher nor Granatino would benefit from each other's property in the event of a divorce. However, when they eventually divorced, Granatino challenged the prenuptial agreement, seeking a share of his ex-wife's fortune.¹⁹ The Supreme court decided that, while not binding, a prenuptial agreement should have a decisive weight to it, especially when it comes to settling assets in a divorce.²⁰

These cases were crucial in shaping the future of financial autonomy in marriage, as they underlined the importance of couples having personal autonomy before entering their marriage and being able to organise their own finances. Moreover, they continue to demonstrate that having financial independence in marriage increases one's autonomy.

7. Conclusion

In conclusion, the exploration of the legal aspects of prenuptial agreements sheds light on the importance of financial autonomy in marriage. By understanding the legal framework of a prenuptial agreement, one can truly grasp the balance between autonomy and collective interests within couples. Through cases like *Luckwell v. Limata* and *Radmacher v. Granatino*, one can observe how the courts address issues related to financial autonomy in marriage, highlighting the importance it holds in today's world. As the legal system continues to adapt, financial independence in marriages also gains significance, becoming a pillar of matrimonial jurisprudence.

¹⁹ *ibid* 262.

²⁰ Fairbairn (n 15) 6-8.



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