

# LET'S MAKE A DEAL

DOES A PRENUPTIAL AGREEMENT SOW THE SEEDS OF DIVORCE OR PROVIDE A CRASH COURSE IN CONFLICT RESOLUTION? TWO ATTORNEYS DUKE IT OUT. BY CARLIN FLORA

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**HEN VERONICA\***, now 52, was at her father's deathbed, he implored her to get a prenuptial agreement to protect her inheritance. She complied with his last wish, but in turn alienated her future husband. "Even though I didn't have a fortune, he perceived it as a lack of trust," she says. Veronica doesn't think the prenup made their subsequent divorce negotiations any easier. "I don't recommend them; it put up a divide in our relationship. It assumes things will go wrong."

But Jason\*, a 46-year-old financier now dissolving an eight-year marriage, thinks he is being cheated out of hard-earned money, and regrets not having a prenup. "People marry later, and years of labor may come to fruition during a marriage—labor that has nothing to do with the spouse," he says. "And yet, the law says the spouse gets half." He wishes his financial matters had been settled in good faith at the outset. "Prenups are negotiated when people are thinking of each other as human beings. In a divorce, everybody is out for themselves."

## PRENUP PARTICULARS

- Average cost is \$2,500 to \$7,000, barring the complications of a large fortune.
- Like wills, prenups can be endlessly modified.
- Sunset clauses render a prenup null and void after a predetermined number of years.
- The law regards pets as possessions, so custody agreements about pet care are legally binding. Child custody arrangements are not.
- Lifestyle provisions may be included but are not legally binding. A New Mexico couple, for example, stipulated that they have "healthy" sex five times a week, pay cash unless otherwise agreed and turn off the lights at 11:30 p.m.

Prenups have grown in popularity in the past 20 years—in concert with no-fault divorce laws, which allow divorce without evidence of adultery or abandonment. But the betrothed and their lawyers remain passionately divided on whether prenups prevent heartbreak.

Consider **Arlene Dubin**, who keeps her prenuptial agreement in a Tiffany bowl, along with her dried wedding bouquet. A family law attorney and partner at Sonnenschein Nath and Rosenthal in New York City, Dubin is on a mission to rehabilitate the prenup. She believes it is not only a vaccine against a contentious divorce but a blueprint for negotiating money issues before they wreak havoc in marriage.

**Sam Margulies** deems the prenup antithetical to romantic commitment. An attorney and divorce mediator who practices in New Jersey and North Carolina, Margulies argues that current divorce laws mandate a fair and equitable distribution of assets, making the prenup the stuff of power plays—and tangible proof that a couple is not ready to tie the knot. *PT* spoke to both lawyers about the portentous document.

## Is the prenup harmful to marriages?

**Dubin: No.** Disclosure of money issues strengthens the emotional bond. And when people are forced to think about the ramifications of divorce up-front, they are more likely to consider their behavior and actions when in the marriage.

**Margulies: No, but...** If you need a prenup, you probably shouldn't get married. The need for the prenup is the symptom that the relationship will founder. The prenup itself is not going to cause the divorce; it's an indicator of future problems. "They" never want a prenup. One person is trying to render himself invulnerable. And how do you have intimacy with no vulnerability?

## Does the wealthier party hold the cards?

**Dubin: No.** It's impossible to go into a marriage and keep everything. For a prenup to be valid, each party must have a lawyer. The lawyer for the less wealthy partner will attempt to level the field. More and more, the prenup is initiated by the less wealthy party or is negotiated to the advantage of

the less wealthy. For example, the man agrees that his spouse will be compensated for nonmonetary contributions to the marriage, such as raising the children.

**Margulies:** Yes. Struggles over money are really power struggles. The prenup is simply going to memorialize the power distribution that exists. You don't need to work it out in a lawyer's office—you need to work it out in a shrink's office. Without a prenup, the stronger party has got to engage in more compromise in the course of the marriage. But with a prenup, he can just say, "Honey, if you don't like it—leave."

### What happens when families get involved?

**Dubin:** In second marriages, it's legitimate to say: "My children are worried about [their inheritance] if we get married and don't have an agreement." When there is a prenup, the children accept the spouse much more readily.

**Margulies:** I don't think you should get married if you're not going to put your spouse first. That's what girlfriends are for. If you don't want your wife to get at least a third (the common default stipulation), if you're not willing to share and take risks, why are you getting married?

### What about the concept of true love?

**Dubin:** Romantic love is one thing; marriage is another. It is a spiritual and emotional bond, for sure. But it is also an economic partnership. Whether you have a prenuptial agreement or not, once you get married, you've agreed to the laws. If you think your marriage does not have economic consequences, then you're not living in the real world.

**Margulies:** Romantic love suggests loving with abandon, risking all and a complete sharing of two lives. It does not contemplate holding back, limiting commitment, separating interests and refusing to risk or share. Yet these are precisely the objectives of the prenuptial agreement.

### Do prenups break engagements?

**Dubin:** I've had occasional cases where people working through the prenup decided not to marry—the prenup in those cases didn't prevent marriage, it prevented divorce.

**Margulies:** I've seen the process of negotiating prenups break up a lot of people—particularly when two adversarial lawyers are involved. Lawyers are unable to help foster a relationship. They're very good at destroying them.

### If a marriage fails, does a prenup make divorce less painful?

**Dubin:** Yes. If you have financial arrangements set, there's still going to be emotional issues, but they'll be circumscribed. It's better for the kids; they'll be exposed to less conflict.

**Margulies:** No. People will challenge the prenup, or they'll say, 'Okay, you got me on the prenup. I'm going to sabotage you everywhere else.' **PT**

# WHAT'S MINE IS NOT YOURS

## PRENUPS OF THE RICH AND FAMOUS



**JOHN KERRY**, shown here with wife **TERESA HEINZ**, who is worth more than \$500 million, is the first presidential candidate to sign a prenuptial. Heinz's motto: "You have to have one."

**DONALD TRUMP** says that if he were president he'd "have to get a prenup, to save the country." He's now engaged to **MELANIA KNAUSS** (right).

Because **AMY IRVING** and **STEVEN SPIELBERG** signed a prenup without attorneys, it was thrown out in court. She got half of his earnings during their four-year marriage—\$100 million.



Actress **HALLE BERRY** (left) is fighting to uphold her agreement, as ex **ERIC BENET** battles for spousal support.



In her prenup with corporate titan **JACK WELCH**, former attorney **JANE BEASLEY WELCH** added a sunset clause that nullified the agreement after 10 years of marriage. When they divorced after 13 years in 2003, she was thus entitled to more than \$150 million.

**BRITNEY SPEARS** (right) drew up a prenuptial at her mother's request before she wed dancer **KEVIN FEDERLINE** this September.

—Neil Parmar

### READ MORE ABOUT IT

*Prenups for Lovers: A Romantic Guide to Prenuptial Agreements.* Arlene G. Dubin. (Villard, 2001)

*A Man's Guide to a Civilized Divorce.* Sam Margulies. (Rodale, 2004)

