Enforcing Prenuptial Agreements in English Courts

A comparative article on international prenuptial agreements – focused on the failure of English courts to enforce prenuptial agreements – will be published in the forthcoming issue of *International Family Law*. In the article entitled "**Enforceable Pre-nuptial Agreements: the World View**" international family lawyer Jeremy D. Morley calls the English approach:

> *an anachronistic peculiarity of English law and an unfortunate example of a stubborn refusal to adapt the law to new conditions.*

Morley argues that the recent judgments of the House of Lords in *Miller v Miller; McFarlane v McFarlane* [2006] UKHL 24, [2006] 1 FLR 1186 point to the urgent need for the courts to set aside the preposterous contention that it is 'substantially uncontestable' that substantial harm to the public would arise if prenuptial agreements were enforceable.

He states that the current law results from the ruling in 1929 in *Hyman v Hyman* [1929] AC 601 that binding prenuptial agreements contravened public policy. However, society has changed dramatically since 1929. When Hyman was decided, people had little expectation of getting divorced and divorce was generally regarded as sinful. People with assets did not require contractual protection should a divorce occur because the law did not provide for capital transfer upon divorce. The status of marriage itself provided all of the necessary terms of the relationship between spouses. Morley goes on to argue that as,

> *international affairs proliferate, England's "anomalous view of prenuptial agreements will increasingly and inappropriately create problems for international litigants.*

See Issue 4 of 2006 *International Family Law* for the full article.