



5 Family Law Myths

[Divorce](#) and [family](#) law in the UK is a complex area and there are many misconceptions that we often come across with our clients. We debunk five of the most common family law myths and explain what you can expect from the family court.

1. We are common law married!

In the family court, there is no such thing as a common law marriage and cohabitantes do not have the same rights and responsibilities as married couples.

2. Prenuptial agreements are an American thing and not enforceable in England.

Following the case of *Radmacher v Granatino* 2010 and the Law Commission Consultation paper provided the requirements for prenuptial agreements are met and the agreement is considered fair, it will carry great weight in the family court and will usually be upheld.

3. The mother of a child is always the main parent and has the overriding right to make all important decisions for a child.

The mother of a child has automatic parental responsibility whereas the father acquires it by being married to the mother of his child or being named on the child's birth certificate. If both parents have parental responsibility they should both be jointly involved in any important decisions in relation to the child including any change of surname, where the child lives, attends school and the child's religion amongst other things. Parents should work together in the best interests of a child. If an agreement cannot be reached, either party may make an application to the Court.

4. I did the divorce myself and my spouse now has no claims to my assets.

The divorce addresses the legal status of marriage only and does not address any financial claims the parties have against each other. Husbands and wives have claims against each other on divorce for capital, income and pension. Both parties are deemed to have contributed equally regardless of their respective roles and do not need to have financially contributed towards property or other assets in order to have a claim against it. These claims can remain open for many years if a clean break consent order is not approved by the court, meaning a

spouse could wait to make a claim at a later date. However, there is the potential of the re-marriage trap.

5. My spouse is the one who caused the marriage breakdown – this will be taken into account on our financial settlement.

The new divorce procedure means that it is no longer necessary or possible to give reasons for the relationship breakdown. So the family court often will not know the reasons for the marriage breakdown. The division of assets in a divorce will generally not be affected by one party's moral conduct.

If you would like to know more please contact one of our family lawyers on 01202 786153 or email online.enquiries@LA-law.com.