



Weekend

MENTS

use 27(a) , except ...

dress and ordered the cake - now all you need is a pre-nuptial
ck navigates the minefield of demands, dares and legal disputes.



eed to a pre-nup with Prince Frederik;
Michael Douglas, below, and K-Fed,
aul McCartney didn't bother.



the division of assets if stringent requirements were met. They weren't, so it set the pre-nup aside and sent the case for a retrial.

The case is now the talk of family lawyers, including Ian Kennedy, a Melbourne solicitor who chairs the Law Council of Australia's family law section.

He believes the precedent encourages people to avoid pre-nups they voluntarily signed, even relying on their own mistakes to do so. It may force duded spouses to sue lawyers if their agreements don't stand up, litigation which is slow and expensive.

Kennedy wants the law amended to make substance rule, and allowing only real failure to meet the safeguards to defeat the agreement. He thinks pre-nups are a good thing, for those who choose them. "I think that the policy is a proper one, to treat people as adults," he says.

There are problems. Some warn they tend to prejudice women, while Belinda Fehlberg, a professor at the University of Melbourne's law school and co-author of the standard family

law textbook, warns pre-nups can be dangerous for many couples.

"Life changes in unexpected ways," she says. "What you agreed several years before might not fit with the position at the end of the marriage, especially when there are children."

Although the courts have not decided how much pressure is enough to invalidate agreements thrust on a spouse on the church steps, she warns: "The bar is set fairly high."

The lawyers speak of clients seeing them a few days before their wedding, seeking advice on pre-nups they've just had dumped on them (independent legal advice is one of the compulsory safeguards; another is full disclosure of assets).

Les Stubbs sees brides in tears, worried their wedding will be called off if they don't sign. "The advice is don't sign it; you're under pressure," he says.

"Most of the people that I hear back from go ahead, and still get married." Others get cold feet about the agreement, marriage or their betrothed, but Zeta-Jones, for one, loves them.

"I think pre-nups are brilliant, because it's all sorted out," she told *Vanity Fair* in 2001.

"Why should Michael be in a position where half of his fortune, which he's worked bloody hard for, lands in someone else's lap?"

occasionally crop up, although courts could hardly force anyone to have sex, let alone five times a week. "I think people are getting more used to and the social stigma is disappearing," he says.

Without official statistics, his impression is difficult to verify, but Amanda Parkin, a family lawyer from Parramatta firm Coleman & Reid, agrees they're becoming more widespread.

She identifies two classes of people who usually seek them. For older couples entering later marriages, she links they work quite well. But she's not so sure of their utility for the younger couples, where it is often the healthy parents of one betrothed amoung for a pre-nup.

She's seen weddings claimed to be contingent on signing. Some sign,

and some don't. Some weddings go ahead; some don't.

(In 2005, gossip pages went into a frenzy over the cancelled society wedding of the former editor of *Oyster* magazine, Madelienne Anderson, daughter of wealthy property developer, Warren Anderson. She called off the wedding to Paul Attard in the midst of a dispute about a pre-nup.)

A recent judgment may stymie the apparent rise in popularity. The full court of the Family Court earlier this year set aside an agreement on the most technical of technicalities, deciding only exact adherence to the statutory safeguards would allow a pre-nuptial to stand.

The case was as follows. After a brief, violent marriage, the couple split with \$348,000 in assets. Their

agreement - proposed by the husband - said any assets would be divided equally. On separation, the husband sought to vary the agreement, as the wife's car crash compensation was less than he hoped.

He wanted an 80-20 split, and argued the Family Law Act's pre-nup safeguards were not met, as the words in a lawyer's declaration were not precisely those mandated.

The Family Court rejected his claim, finding substantial compliance was good enough. "Courts should not make the legal practitioners and parties cross all of the T's and dot all of the I's to enter into and give effect to financial agreements," it found. "The form should not defeat the substance."

On appeal, the full court found that it must. It said Parliament only allowed spouses to evict the courts from