

New divorce laws raise financial stakes of marriage

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couples — the 45- to 50-year-old group — is dramatic. Now that they can get the money, they don't want to stay in the relationship."

A side effect of the two cases, Lloyd Platt added, is that it has created a disincentive to work during marriage, for fear of jeopardizing a big award in the event of a divorce.

"The wife who gets her nails done, has a nanny, plays tennis and spends her husband's money as fast as he can make it will get a better settlement than the woman who works her guts out," Lloyd Platt said.

Liz Vernon, a family lawyer with Clintons, a London firm, said that even in the McFarlane case the issue of "compensation" — the amount required for financial redress to a party who is disadvantaged by a marital breakup — was "nebulous" and "unclear."

"I am saddened that the House of Lords did not issue more guidelines and think about us here on the ground," Vernon said. "We are the ones who have to deal with the people going through these costly divorces." Most big-money divorces take 18 months and cost at least £1 million in fees, according to Bramdiva, a financial advisory firm for wealthy women.

A further repercussion of the rulings is that England and Wales are now indisputably the best places in the world for the spouses of wealthy partners to petition for divorce — the Harrods, as it were, for those shopping for divorce jurisdictions.

The trend started in 2000 with the White decision, in which the Law Lords ruled that the starting point for equitable distribution of assets should be 50-50, rather than the "reasonable needs" standard commonly applied at the time.

The Brussels II regulation of 2001 added fuel to the fire by harmonizing the rules on divorce jurisdiction across European Union member states except Denmark. "It stated that wherever divorce proceedings are first issued is where the divorce will take place," said Charlotte Bradley, a partner in Kingsley Napley, a London law firm.

That ruling, and the fact that many well-to-do people fulfill the criteria for jurisdiction in at least three countries — where they were born, where they live and where they own property — have led to what Bradley and other lawyers call the "Eurostar divorce."

"If I am acting for a French wife married to a banker, I will tell her to file immediately in England," where the couple lives, Bradley said. If Bradley's client is the husband, "I have a list of French lawyers I send him to immediately telling him to file quickly in France, which is a much kinder country to wealthier husbands," she said.

Drake described a pending case in which both the husband and wife filed for divorce on opposite sides of the Channel on the same morning. "The difference in the jurisdiction is worth millions to the husband," he said.

The phenomenon is so entrenched that some people plan their futures around it. "I know men who are moving their families to France anticipating ending the marriage in a few years," Levison, the lawyer for McFarlane, said. "They now simply look at it as good tax planning."

Even in jurisdictions where large settlements are not the norm, establishing where to file can consume time and money.

"Fighting over where to fight is expensive," said Linda Heathfield, a family lawyer with Boase, Cohen & Collins in Hong Kong. The former British colony follows the pre-

White standard of "reasonable requirements," but some Hong Kong lawyers, Heathfield said, were looking to test the new standards — and that makes her worry about the potential outcome.

"I think often the women in very wealthy, long-term marriages should be awarded more than just their 'reasonable needs' when the husband gets to leave with a fortune," she said, "but I don't want to see men crippled with lifetime maintenance, either."

Jurisdiction also comes into play when there are substantial assets that one or both parties may be hiding. Most developed countries have laws requiring divorcing parties to

'The social impact of these laws has truly made people cautious about marriage.'

make full disclosure of their joint and separate assets, under penalty of perjury. But local quirks are common. Panama, for example, is "very tricky as they will not cooperate with repatriating assets," said Amanda McCrystal, head of wealth management at Bramdiva.

Sadly, jurisdiction can also be the tail that wags the dog, said Marilyn Stowe, a family lawyer with Grahame Stowe Bateson in London. "Often the wife is so worried about litigating a divorce in a foreign country, where she does not know the language or have family around to help her manage the stress, that she files first just to protect herself," Stowe said. "But what is worrying is that just filing can often bring a marriage to an end that

might have otherwise been saved."

And now, the incentive to save a marriage often rests with the wealthier party. Vernon said she had a high-earning client who was staying in his marriage in the hope that the laws would change. "He simply can't afford to leave right now," she said.

Like their counterparts in the United States in the aftermath of the Wendt case in 1995 — in which Lorna Wendt claimed half the earnings of her ex-husband, Gary, an executive at GE Capital — lawyers in England are now advising clients to make prenuptial agreements, even if they are not enforceable in all courts, as they show clear intent at the time of the marriage. "Limited protection is better than no protection," Vernon said.

Paul McCartney might have benefited from that advice. The former Beatle, whose net worth is widely estimated at \$1.5 billion, reportedly has reached an out-of-court settlement giving his second wife, Heather Mills, \$64 million — the equivalent of more than \$1,800 for each hour of their four-year marriage. McCartney and Mills had no prenuptial agreement.

The need for protection is especially acute among the increasing number of British who are cohabiting because "the men refuse to get married because of divorce laws," Lloyd Platt said. When these unmarried couples split up, there is no entitlement to any of the assets, even if there are children involved. The number of British cohabiting is estimated to double by 2031, to almost four million.

"We are going to see the rise of the 'Super Mistress' — the woman you have a fling with, spend money on, and do nice things with, but you give her zero commitment," Beresford, of The Sunday Times, said. "It is bad news for marriage."