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Jane Bryant Quinn is a nationally known commentator on personal finance, with books and columns read and trusted by millions.

Dumb decision: Kate and Will don't have a prenup

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Did Prince William get a prenuptial agreement before reserving Westminster Abbey for his marriage to Kate? The Fleet Street rumor mill says "no." In England, it still just isn't done. Financial planners on this side of the pond, however, say, "Dumb decision, Will. Remember what happened to mom and dad."

Prenups set down how the income and assets will be divided if the marriage comes apart. In the U.S., they're in. In England, however, courts didn't enforce them until quite recently. British Judges divided disputed marital property as they thought fair. The only reason to write a prenup was to spark discussion, manage expectations, or maybe encourage a judge to give you a tiny break.

The British tabloids report that Prince Charles didn't ask Diana to sign a prenup. His financial advisor, Geoffrey Bignall, has been quoted as saying that the princess "took him to the cleaners," but you have to consider the source. Diana got a reported £17 million (about \$6 million in 1996, the year of their divorce). That doesn't sound like a clean-out, considering his family wealth and her position. The tabloids say that Charles didn't ask Camilla to sign a prenup, either.

Last October, however, Britain's Supreme Court unexpectedly changed the rules. The millionaire ex-husband of German heiress worth more than \$163 million brought a lawsuit in London, trying to overturn their German prenup. He wanted more than the contract allowed. The court said, sorry, you get the deal you signed up for, and advised other British courts to honor prenups, too. Britain's [Law Commission](#), which advises on new legislation, will prepare a report to Parliament on whether to pass a law outlining how these contracts ought to work.

Unlike in England, prenups are enforceable in the U.S. In fact, they're almost impossible to break, even if you were bullied into signing. The judge will say, "you knew when you agreed to the deal that you were marrying a bully, so suck it up." You can potentially undo the contract only if your spouse hid assets or liabilities from you, so you didn't realize your financial risks or how much you were giving up.

Not everyone needs prenups. "For most couples, they're just not an issue," says financial planner Jim Heitman of [Compass Financial Planning](#). That's because don't have many separately-owned assets to protect. "When I vowed, 'with all my worldly goods I thee endow,' I was putting up some clothes, a used Mazda, and a rubber iguana," he says. In divorce, the assets – and debts – acquired during the marriage would, in most cases, be divided 50-50 or something close to it.

The advice changes when one or both of the partners have significant amounts of money or property, children from prior marriages, or a wholly-owned business. Without a prenup, your ex could get half the marital assets, including shares in the business. With one, you can divide the money any way you want. For example, it might say that your new spouse gets a modest settlement if the marriage is short and a larger one if it lasts 15 years. (An inheritance or savings that you brought to the marriage typically won't be divided, provided that you kept the money in your separate name.)

You also can decide who will repay future debt, says planner [Ted Feight](#). You're both responsible for any debt you sign for jointly, no matter what it says in the prenup or divorce agreement. For example, if your spouse agreed to cover the mortgage and didn't pay, the lender will come after you. But you can agree, in advance, that debt run up by each of you individually, on a separate credit card, is yours alone. (But note that, in the nine community property states, a creditor

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might come after the other spouse if the debt was run up for something that benefited you both, says planner Lauren Klein of [Klein Financial Advisors](#).)

The prenup should protect your retirement accounts. By law, one spouse has an absolute right to the other's 401(k) and other non-IRA retirement benefits. That right can be waived, if you want some or all of the money to go to your kids, but not before marriage. In the prenup, your spouse would agree to sign the waivers right after the wedding. Don't let this drag on. If the marriage turns bad, your spouse might refused to cooperate. If you drop dead, your new spouse will get all the money, not your kids.

Importantly, the prenup covers not only divorce but what happens to your assets if you die. Normally, the surviving spouse gets one-third to one-half of the marital assets that pass by will, depending on the state. You'll need a prenup, if you want more of your money and property to go to your kids by a previous marriage or to keep a family business in family hands.

Don't try to write the contract yourselves. Too much is at stake. You both use a single lawyer if you're on the same page. If not, get separate lawyers. When you start to talk about this, you might be surprised to learn that your intended has very different views from yours. Also, your state has rules. If the contract leaves your spouse broke, you might be required to pay more alimony or take over all the debt.

Decisions about what to do if the richer of the spouses dies can be even more delicate than thinking about divorce. For example, how do you maintain your new spouse's standard of living without cutting out any kids by a former marriage?

Lawyers, who have seen it all before, have plenty of ideas. You might leave your kids some money outright and put the rest of their inheritance in trust, with the trust income going to your spouse for life. Your kids might inherit the house, while you give your spouse the right to stay there for life. You might leave a younger spouse a life insurance policy, to help maintain his or her standard of living while the rest of your money goes to the kids.

A prenup cannot get rid of the obligation for financial support – something that older couples should consider before they tie the knot. If one of you enters a nursing home and doesn't have enough personal assets to pay the bill, the other might have to shoulder some of the expense before Medicaid kicks in. A couple in their 70s might decide to live together without getting married rather than undertake this risk.

Whatever you expect from the prenup, start the negotiations early, says planner Beth Gamel of [Pillar Financial Advisors](#). It almost always takes long to resolve issues than you thought. Prenups proposed after the wedding invitations have been stamped and mailed are unfair on their face. Neither of you should feel pressured or rushed.

Michelle Fait of [Satori Financial](#) says that, as a high school girl, she stayed up until the wee hours to watch Charles' and Diana's wedding, and will probably do the same on Kate and William on April 29. "This upcoming wedding is starting out a different footing, which I find much more engaging," she says. Still, they're winging it, financially – especially Kate. Fait say she has her fingers crossed.

Read More:

[Prenups Are Hard To Write: Trust Me, I Know](#)

[The pre-nuptial money talk](#)

[10 Steps to Avoid Losing Your Shirt in Divorce](#)

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