**Pre-nuptial agreements (pre-nups) and a bankrupt spouse**

**Facts if the case - S v H [2020] EWFC B16**

The husband was aged 69, the wife was aged 56. It was the second marriage for both parties. Both had children to previous relationships. The wife was much wealthier than the husband having assets of £3m and a net income of £100,000 pa.

5 days before the wedding in 2010 a pre-nuptial agreement was signed with neither party taking legal advice before signing the document. It was always understood the parties would remain living in the UK where the wife had her business and her children were educated. The husband’s sole responsibility was to take care of the wife children.

The wife issues divorced proceedings in September 2016 after 6.5 years of marriage.

In 2017 the wines issued financial proceedings where she relied on the pre-nuptial agreement.

The final hearing of her application took place in January 2020.

**The court’s findings**

There was no value in the pre-nuptial agreement. There was no formal process of disclosure, no legal advice given to either party and was signed a mere five days before the wedding.

**The court’s order**

Based on the husbands needs that the wife should pay the husband £675,000 to pay off his debts as the wife had provided no financial support to the husband during the marriage therefore causing his debt to accrue. The wife would provide the husband with a property on trust to live mortgage free which would revert back to her on the death of the husband. Plus the husband would receive 60% of the wife’s pension

**Opinion**

This is clear evidence proper legal advice is essential when it comes to legal documents such as pre-nuptial agreements. Failure to obtain proper advice can leave the agreement totally ineffective

It is also a reminder that even if one party is bankrupt they are still entitled to financial support in a divorce if needed.