Suppose you were a millionaire and would marry a woman from a more humble background, would you consider asking your partner to sign a prenuptial agreement with you?

**Dr Sharon Thompson**, Lecturer in law at Keele University, made a presentation on the topic “Prenuptial problems: stories from New York and the implications of binding prenuptial agreements in the UK and Hong Kong” in a lunch seminar held on 18th September, 2014. Dr Thompson specialises in family law and her research currently focuses on prenuptial agreements. She is publishing a book titled *Prenuptial Agreements and the Presumption of Free Choice: Issues of Power in Theory and Practice* with Hart Publishing.

The aim of Dr Thompson’s presentation was to introduce the current position of prenuptial agreements, with a focus on her research on prenuptial agreements in New York and finally turned to the implication for prenuptial agreements in the UK and Hong Kong.
Firstly, Dr Thompson pointed out that it is against public policy for a prenuptial agreement to be able to govern the financial consequences of divorce because statute says that this is up to the discretion of the judge under section 25 of the Matrimonial Causes Act 1973.

It was the judgment of the Supreme Court in *Radmacher v Granatino* [2010] that established that pre-nuptial agreements were now to be given effect to so long as they were entered into by both parties freely and with full appreciation of their consequences, unless in the circumstances prevailing it would not be fair to hold the parties to their agreement.

Respect for individual autonomy is an important reason to give effect to nuptial agreements – the court should respect the decisions made by individuals as to the future regulation of their financial affairs.

At this point, Dr Thompson looked at the legislative background in New York. Domestic Relations Law 236 B states that “[a]n agreement by the parties, made before or during the marriage, shall be valid and enforceable in a matrimonial action if such agreement is in writing, subscribed by the parties, and acknowledged or proven in the matter to entitle a deed to be recorded.” In other words, agreements must be fair and reasonable when made and not unconscionable when enforced.

Dr Thompson made references from the interviews she conducted in New York. There are three kinds of clientele who entered a prenuptial agreement: people with family money, people who have established a great deal of wealth, and people who enter the second or third marriage. As for the reason for entering an agreement, as said by one New York attorney, “clients often expressed a desire to not have to go through what can be in New York at least long, difficult process of determining for the process of equitable distribution.”

However, it is noteworthy that the desire for an agreement is often one-sided. Often times, it is the more affluent party that is going for the agreement and preserve what he or she has coming into it and then dictating also what may happen in the event that the marriage does not work out. Dr Thompon is concerned about the link between the allocation of wealth between parties to an agreement, and the balance of power within these relationships. The unequal power gives rise to the fact that no one who is on the short end wants to sign a prenup. Individual attorneys’ responses to the problem include demanding full financial disclosure, independent and competent legal advice, or sunset clauses.

Dr Thompson’s analysis is especially important to jurisdictions like the UK, where the legal status of prenuptial agreements is currently under review, and Hong Kong, which is sensitive to developments in matrimonial law in the UK.