

Judgment in Case *B v B (Divorce: Northern Cyprus)*, UK

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Summary of the decision: The court does not recognise a divorce obtained in the “Turkish Republic of Northern Cyprus” on the ground that the UK has never recognised this entity as State.

Cited international law materials: -

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B v B (DIVORCE: NORTHERN CYPRUS)

Family Division

His Honour Judge Compston
(sitting as a deputy High Court judge)

16 February 2000

Divorce - Recognition of foreign divorce - Northern Cyprus - Whether divorce obtained in country not recognised by British Government could be recognised by English courts

The husband, a Cypriot, and the wife, English but from a Turkish Cypriot family, entered into an arranged marriage. The family lived in England at first, then moved to northern Cyprus. During a visit to the wife's relatives in England, the husband suddenly returned to Cyprus, leaving the wife and children in England. The wife was unable to follow him, as the husband had hidden the family's passports. As soon as the husband informed the wife, via a third party, where the passports were, she returned to Cyprus, but the husband refused to see her, having already petitioned in Cyprus for divorce on the basis of the wife's adultery. Two days later a divorce petition was delivered to the house in which the wife was staying. The wife could not read the document, which was in Turkish, but it was read to her by a relative. The following day the wife returned to England. On her return she applied to have the children made wards of court, and notice that her application had been granted was faxed to the husband. The husband did not inform the court in northern Cyprus of this development. Two weeks after the husband's petition had been filed, he was granted a decree of divorce, with custody of the children. The wife, who vehemently denied the allegation of adultery, made a number of unsuccessful challenges to the divorce issued in northern Cyprus. Eventually, almost 2 years after that divorce, the wife applied for a divorce in England. The wife's case was that the English court could not recognise a divorce issued by a court in northern Cyprus, as the Turkish Republic of Northern Cyprus was not recognised by the British government. The husband argued that the courts of northern Cyprus were legitimate courts, whose decisions were routinely recognised throughout Cyprus, and that the divorce should therefore be recognised in England.

Held - granting the wife's petition - because the Turkish Republic of Northern Cyprus was not recognised by Britain, a divorce obtained in the Republic could not be recognised. Although certain decisions of the courts of northern Cyprus, regulating the private rights or acts of everyday occurrence of the people in that territory may be recognised by the English courts, decisions relating to divorce would not be. In some circumstances recognition of a judicial decision in Northern Cyprus might depend on whether the parties to the decision were in agreement, but a divorce could not be obtained without the involvement of the State, whether or not the parties were in agreement, at which point lack of recognition of the State in question was decisive. Despite the criticisms which might be made of the procedure followed in this case by the Turkish Cypriot court, there had been no breach of natural justice, but as a matter of public policy the court did not recognise the divorce obtained in northern Cyprus.

Statutory provisions considered

Matrimonial and Family Proceedings Act 1984, s 12
Family Law Act 1986, s 51(3)

Cases referred to in judgment

Carl-Zeiss Stiftung v Rayner & Keeler Ltd and Others; Rayner & Keeler Ltd and Others v Courts and Others [1967] 1 AC 853, [1966] 3 WLR 125, [1966] 2 All ER 536, HL

Eroglu v Eroglu [1994] 2 FLR 287, FD

Hesperedes Hotels Ltd and Another v Aegean Turkish Holidays Ltd and Another [1978] QB 205, [1977] 3 WLR 656, [1978] 1 All ER 277, CA

Dorian Day for the petitioner

Simon Oliver for the respondent

HIS HONOUR JUDGE COMPSTON : This is an interesting case. I am most grateful to counsel, who with skill and charm have fought their respective corners. The simple point is whether this court should recognise a divorce obtained by the husband in north Cyprus in December 1996. The background is far more convoluted. First, I look at the facts surrounding Cyprus, then the family facts before I come to the law.

The Cyprus facts: in 1954 a Turkish Family Court was established. In 1960 the Republic of Cyprus was established guaranteed by Britain, Turkey and Greece. Under the constitution, a House of Representatives was established and there were two communal chambers Turkish and Greek - because even then there was tension between the Greeks and the Turks. In 1964, the United Nations had to send a force in to keep the peace between the Turkish and the Greek Cypriots. Roughly speaking, the Greeks were in the south and the Turks in the north, though before partition there was some overlap.

In 1974 Archbishop Makarios was overthrown, a Greek junta was established and Turkey invaded northern Cyprus. Effectively, since that date, the Turkish Cypriots have lived in the north, in an area which makes up 36% of Cyprus. I have been told by Judge Korkut that there is a population there of 108,000 people, of whom approximately 99% are Muslim. In 1983 an independent state - the Turkish Republic of Northern Cyprus - with its own constitution, was declared to have been established in the north.

The establishment of this Republic was condemned by the United Nations Security Council and by the Committee of Ministers of the Council of Europe, who took the view that only the Cypriot Government of the Republic of Cyprus was legitimate. Her Majesty's Government has at no time recognised the 'Turkish Republic of Northern Cyprus'.

The family facts: the husband and wife were married in 1984. This was an arranged marriage. The husband came from Cyprus and the wife, though of a Turkish Cypriot background, was born in this country and her own mother, who gave evidence before me, has been in this country since she was 12. The husband is a barrister and now a solicitor in Cyprus and the wife is now working in a bank in this country.

In January 1987 they bought a house, and in August 1989 their son Z was born, then in April 1992 their twin girls A and N were born. In April 1995 the family moved to north Cyprus. The husband stayed behind to tidy up odds and ends and followed in September 1995. There is no question, therefore, that in 1995 and 1996 the family were living in Cyprus and rooted and grounded there. The husband was working as a lawyer and the wife and

the children lived with him in Cyprus. The husband comes from a powerful legal family living in north Cyprus.

In 1996 what was the state of the marriage? In one sense, I have not been asked to go into it fully but, in another, it may be germane to various decisions I have to make. My findings are that it was not in very good health at this stage. The mother's mother told me (and I believed her evidence unhesitatingly) that her daughter was not particularly happy living in north Cyprus. She came across as an English girl, brought up in England; also, both in her written and certainly in her oral evidence, the wife implied that she was not particularly happy with the marriage. However, the wife did say that she was Muslim and that she was prepared to make the best of it. I have to say that her evidence came across in a way that I believed; these are the words:

'As a Muslim, I was brought up to obey my husband, no matter what.'

And, later on:

'I would not say it was "on the rocks".'

The reality is that this marriage was not particularly happy but she was prepared to stick it out. It is true that there were anxious calls to the grandmother and that in the summer of 1996 not only had the wife come over for a medical reason but she had also seen a solicitor. All in all, my view is that by the autumn of 1996, the wife was prepared to stick it out and, certainly, she would have said that if there were thoughts of divorce, they were mainly on the part of the husband.

I also have to decide - on very scanty evidence - whether or not the wife had committed adultery, because the husband obtained his divorce in the Cypriot court on those grounds and this adultery is vehemently denied by the wife. I have not heard all the evidence on the adultery issue but, having seen the parties, I markedly prefer the evidence given by the wife. I accept the evidence of the grandmother that rumours were abounding, as they always do in small communities. However, I am certainly not satisfied that the wife was committing adultery at that time. Therefore, as far as I am able, I exonerate her of having committed adultery.

Now we move on to easier ground. On 27 November 1996 the family came to this country on holiday. I am quite satisfied that the wife came to this country innocently. In other words, the husband suggested to her that they should come over to England, where she could buy some Christmas presents and see her family. As far as I know, all the close family members of the wife were in this country. The wife rather engagingly said that her husband had suggested a week's shopping; there was no mention of divorce proceedings; that she had an empty suitcase for Christmas presents. There was even talk of a plastic Christmas tree! I am satisfied, therefore, that the wife came over, thinking this was a family jaunt. I am equally sure that at that time the thought of divorce proceedings - not that she was especially happy - was far from her mind.

She came, with the children and the husband, but 2 or 3 days later - and that is admitted - the husband went back to north Cyprus. He went back in circumstances which do him very little credit at all. The grandmother said

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that there had been a phone call just before this visit, during which he had threatened to throw her daughter out. The grandmother had said, very wisely, that he should calm down and try to sort the problem out and he then said, under prudent pressure from her, that he would bring the family over. I am quite satisfied that this was entirely a ruse on the part of the husband to 'dump' her in this country. The grandmother, entirely rightly, as any sensible grandmother would, said that this was a problem between him and her daughter and that he must tell the daughter what was going on. I believe the grandmother when she said:

'My daughter was oblivious to what was going on. I didn't say anything as I believe that this was a problem between them.'

However, the husband, whether deliberately or due to lack of courage, did not tell the wife. He left without saying goodbye to the children - again, something that strikes me as highly reprehensible - and returned to Cyprus when the wife was asleep.

We then have this evidence from the grandmother:

'After he had gone, I called my daughter and said I had to speak to her. I told her what the husband had said (ie that the marriage was over). She became hysterical, saying that she couldn't live without him, that she couldn't understand why he was doing such a thing to her and the children.'

The wife collapsed and an ambulance had to be called. I believe this evidence.

So, the husband had gone back to Cyprus, in order - by my finding, having temporarily got rid of his wife and children - to set up the divorce in Cyprus. He had hidden the passports of the wife and the children and the tickets - though it is a little unclear about the tickets - and it took the wife a week or a week and a half to find those passports. The husband gave a bizarre explanation, which I do not believe, namely that he had done this because the wife had been suicidal and he did not want her to go and commit suicide. To me that seems to hold no water at all; if the wife wished to commit suicide, she could do so in England or in Cyprus. Furthermore, the wife never threatened to commit suicide or made any attempt to do so; this is a figment of the husband's imagination. What is a fact is that he had deliberately hidden the passports and only told the wife via a mutual friend, C, where they were after a week or 10 days, thereby enabling him to get all his tackle in order in Cyprus. From his behaviour, I have little doubt that the tackle was already laid out before the trip to England.

As soon as she found the passports, on 11 December 1996, the wife went to Cyprus. This was a difficult time. She immediately went to her father-in-law's house; she wanted to see her husband. The father-in-law, despite the late hour of the night, refused to take her in and the husband refused to meet her and she took refuge with her uncle and her

cousin. In fact, on 11 December 1996, the husband had already drawn up his petition for divorce based upon her alleged adultery in Famagusta. There was then a telephone call, round about 12 December 1996 - and the version differs radically. The wife says about the phone call that it was a short one and that it was the best

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she could do. She wanted to see him and in my view, had he played the man's part, he would have done so but he did not. He refused to see her and telephoned and said:

'I'm going to divorce you. I'm going to get custody of the children and every time you don't allow me to see the children I'll take them when I please. I'm going to get a custody order.'

The wife said that he did not say what she had done wrong and that she told him that she did not want this to happen; he had no cause for it but he was bouncing her into doing it and she had no option. That was her version. In other words, he merely told her what he was going to do and that she never ever agreed to it.

His version is different. He says that there was a phone call, set up by him, during which she said:

'Yes, if you want a divorce, you can have one.'

I have no hesitation in accepting and preferring the evidence of the wife over that telephone call, not only because I believe the wife whenever there is a difference between her evidence and that of the husband, but also because the whole tenor of the case suggests that she did not want a divorce at that time. She went on to say that it took her a long time to accept the divorce. She said:

'I did not want a divorce and for a long time I would not accept the divorce at all.'

I note that she did not petition for divorce until December 1998 so I disbelieve the husband on that telephone call and am quite satisfied that she is telling the truth.

On 13 December 1998 a divorce petition, in Turkish, was popped under the door of her cousin's house. (It should be said that the cousin and the uncle and the father-in-law in a small Turkish community are friendly.) The husband alleges that this is proper service. As to that, I am satisfied that the wife, though she speaks Turkish, does not read it. I am equally satisfied that the cousin, an English-speaking Turk, did read the papers - though perhaps not in every detail - and gave the gist of them to the wife along the lines that she was going to be divorced. In that sense, she was served with the petition; not in a very official or proper way, but she did have notice of it.

The next day, she left north Cyprus and has never gone back there and she returned to live in this country. Her mother, a widow who had quite a lot on her plate anyway, tried hard to find a lawyer in Cyprus but I accept the evidence that he was going to be very expensive and that he said - either then or at another time - that they had not the slightest chance. I am entitled to take judicial notice of the fact that the position of a wife - and

especially in a sense, a foreign wife - in a small Muslim community where chauvinism is quite strong, would not be good. That is undoubtedly the advice that both she and the grandmother, were given. No lawyer attended, therefore, and on 25 December 1998 in Famagusta, the husband was granted a decree of divorce on the grounds of the wife's adultery.

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Before then, however, two important dates are relevant. On 20 December 1996 the children were made wards of court in this country. On 23 December 1996 notice of this was faxed to the husband in Cyprus. I have seen the notification of the fax and the husband accepted that the fax number was his number in Cyprus.

His was a sorry performance when questioned about it because he said that he had not received the fax. I am quite satisfied that he was not telling the truth about that and that he did receive it and that he knew what it meant. In other words: that the wife had made the children wards of court in this country - after all, he is a barrister called in England. Without being familiar with the minutiae of family law, which he may not know, he would be aware that an important decision had been made by this court on 20 December 1996. My finding is that he knew of it and, as he admits, on 25 December 1996 the judge was not told.

Pausing for a moment, Judge Korkut said that if the court in Famagusta on 25 December 1996 had known of the wardship, they would certainly not have granted the husband custody of the children but would have proceeded to hear the divorce. I have to say that although he is an expert, I am a little surprised by the second part of his proposition. I would like to think that in this country, if we had heard that an important decision had been made by another court, we would have adjourned the hearing to see what was happening. The husband as a lawyer, once he had received the wardship, should have adjourned the hearing on 25 December 1996. Be that as it may, it took place and a decree of divorce was pronounced.

The remainder of the facts can be taken briefly. On 10 March 1997, the wife made two applications in the Famagusta court to set aside the divorce and to stop the husband marrying again. Those applications were adjourned and another application was made by the wife and later all of them were dismissed. I make two findings: (1) that she did have lawyers at the time, and (2) that she never personally went back to Cyprus to support these applications. I believe her when she said that she was told by the lawyer that she need not attend but equally I agree with Mr Oliver that if you are going to apply to set aside a divorce, you should be present. I have also to bear in mind that the wife had very little money, though the husband may have been sending some; she had the trauma of the 'divorce' and she had three very young children to look after. It is not surprising that she stayed with her mother in this country rather than going back to Cyprus. I also find that she did not challenge the jurisdiction of the Cypriot court. She did not agree with their decisions but she did not - as in this country she should have done - ab initio say that they had no jurisdiction to hear the case.

On 7 December 1998 she applied in this court for divorce on the grounds of her husband's unreasonable behaviour. Notwithstanding that, in April 1999 the husband remarried. He is entitled to do that in Cyprus and I venture to say that whatever decision I

make today will not affect the status of his second marriage because where he lives, in the eyes of his compatriots, he is divorced from the wife and now remarried.

Those are the basic facts. As for the parties, I have already given my view of the evidence. I was impressed by the wife, who came across as more English than Turkish and as being extremely sensible and straight and who had managed to cope with a difficult scenario with considerable sense and dignity for a very long time. She undoubtedly impressed me and when

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cross-examined - with great courtesy - by Mr Oliver, she certainly never slipped up in any way or gave any cause whatsoever to doubt her evidence. As for the grandmother, more Turkish than her daughter; she was brought up in Cyprus and left there when she was 12 - she came across as being a thoroughly nice, cosy grandmother. She merely told the tale as it had occurred, without seeming in any way malicious towards her son-in-law, and therefore quite believable.

The husband impressed me far less. He is a clever, rather sneering man - it was interesting to watch his facial expressions from time to time - and not honest. His behaviour in 1996 was not straight; though not necessarily dishonest in a criminal sense, it was neither fair nor kind and, on certain matters, he was quite clearly not telling the truth. To my mind, he was lying about his motives regarding the passport and lying about the facts. It is not a question, as so often in the civil and family courts, of preferring the evidence of one side or another. I have to say quite boldly that in those two matters he was lying and, of course, if he can lie on two such crucial points, it may well be that he can also do so on others. He was not impressive. He did not impress me at all in the evidence he gave and the rather clever, self-satisfied way in which he gave it.

Turning to the law, I was greatly assisted by two experts: Mark Stephens, called by the wife and Judge Korkut, called by the husband. I was more impressed by Mark Stephens for the reason that he spoke about what he knew. As for Judge Korkut, he was a very nice gentleman - prone not always to answer the question he was asked but I daresay that is a failing of many of us at times - but he admitted that he was not an expert on the recognition point but merely knew Turkish Cypriot domestic law.

Mark Stephens, on the other hand, is the head of an international law firm, Finers, Stephens, Innocent. He has a specialism and interest in matters of international law. He has practised widely - I will not read out all of his report - and he was a solid, sensible and very good witness. His advice was absolutely clear: that since the Republic of North Cyprus is not recognised, that is the end of the matter. That is, without recognition of the Republic, this court cannot recognise the divorce. I was impressed by that evidence and largely accepted it. For various reasons, I shall endorse what he said but the cogency of his opinion and the way he gave evidence was very impressive.

I have already painted a fair and pleasant picture of Judge Korkut. He is a retired Supreme Court Judge in the Turkish Republic of Northern Cyprus. He was both interesting and gave useful details about the early history of Cyprus and made the point, which is accepted, that in Cyprus you have the Greek courts making decisions in the south, which are honoured by courts in the north and the Turkish courts making decisions in the northern part which are honoured by courts in the south. I accept that entirely. His

point was that his were legitimate courts, legitimate successors pre-1974 and that this court should therefore recognise the decision made on 25 December 1996.

He gave one or two useful bits of information. He referred to the smallness of the place, the intimacy of it; he said that 14 days for a divorce was a little on the short side (though Mr Stephens was rather scandalised by it, the judge was not) but that more like 15 or 21 days would be normal; he categorically stated that he had no experience or expertise as to how this court would deal with the recognition point, which to an extent lowered his

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coinage as an expert witness. He also said something with which even the husband agreed, that if a woman in a Muslim community were divorced on the grounds of adultery, she would not be viewed favourably in the community. He said that he knew her husband's father and he confirmed that the husband's divorce was not dealt with by the family firm but by an independent firm. In a small community of only about 300 lawyers, it is likely that everyone does know what the others are doing. I do not hold against the husband or, by implication, his firm, anything improper in that. It may be that because they were local and on the spot the matter was dealt with in 14 or 15 days as opposed to 20, but it would be wholly wrong to find that anything improper was done by the husband in the legal sense; there is no allegation such as jumping queues or bribery.

Coming to the law, though this case has taken some time, the point is short. Both parties concede that under s 12 of the Matrimonial and Family Proceedings Act 1984, there is power for an application to be made for leave to apply for ancillary relief even if there is a foreign decree. The wife is, however, determined to get a declaration saying that the Cypriot divorce should not be recognised and she is entitled to have the matter decided by this court. She could have taken a different route but in this highly charged situation with three children involved and both their and her status involved, she is quite entitled to proceed as she has done.

I have to decide two points: one the matter of recognition and the other the natural justice point. I repeat most sincerely that counsel have been extremely helpful both with the law and the authorities in their submissions. The wife says that in common law the recognition point prevails. In other words, because the Republic is not recognised by this country, the divorce obtained in that Republic should likewise not be recognised. That is in common law. Mr Day goes further and says that looking at the Family Law Act 1986 you come to s 51(3)(c):

'in either case, recognition of the divorce, annulment or legal separation would be manifestly contrary to public policy.'

In short, therefore, Mr Day is saying that whether it is common law or under the Act, we are talking about public policy recognition and that is the end of the matter.

Both counsel concede that it is not quite the end, however, because of two dicta which I have been shown. The first is by Lord Wilberforce in *Carl-Zeiss Stiftung v Rayner & Keeler Ltd and Others*; *Rayner & Keeler Ltd and Others v Courts and Others* [1967] 1 AC 853, where it states (at 954):

'... where private rights, or acts of everyday occurrence, or perfunctory acts of administration are concerned ... the courts may, in the interests of justice and common sense, where no consideration of public policy to the contrary has to prevail, give recognition to the actual facts or realities found to exist in the territory in question.'

The matter has been canvassed again by Lord Denning - a few years later - in *Hesperedes Hotels Ltd and Another v Aegean Turkish Holidays Ltd and Another* [1978] QB 205, which concerned Cyprus. There, Lord Denning put the two points of view and finally said (at 218):

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'If it were necessary to make a choice between these conflicting doctrines, I would unhesitatingly hold that the courts of this country can recognise the laws or acts of a body which is in effective control of a territory even though it has not been recognised by Her Majesty's Government de jure or de facto: at any rate, in regard to the laws which regulate the day to day affairs of the people, such as their marriages, their divorces, their leases, their occupations, and so forth: and furthermore that the courts can receive evidence of the state of affairs so as to see whether the body is in effective control or not.'

In this case, there is no question that there is an effective control which has been there for about 26 years. Both counsel agree that it is a question of degree. In other words, if the Cypriot court made a decision involving treason, clearly recognition would not be granted. On the other hand, if they made a decision concerning a dog licence, that would obviously be recognised in this country. The problem is where I put marriages and divorce, bearing in mind the dicta of Lord Denning and, to a lesser extent, of Lord Wilberforce.

First, so far as Lord Denning is concerned, I remind myself that this is obiter. Lord Denning was not involved in a family case but in a civil case involving two hotels. That is the only legal phrasing on which the husband is able to rely. There has been no authority that counsel has discovered to help us on that particular point. Next, Mr Oliver observes that Lord Denning mentions marriages and divorces and, very often, they do affect status, as does a lease and an apprenticeship. There is no real difference according to Mr Oliver between a lease, an apprenticeship and a divorce. In addition, as he reminds me, a Turkish divorce is accepted by the Greeks and vice versa.

Mr Stephens made a useful point which agrees with my own, that there is a difference when the parties are in agreement - the husband and wife agree on the fact of a marriage or a divorce - and when they do not agree. It is easier to recognise where there is agreement and harder to do so when the parties disagree. The point about a divorce is that consent is not sufficient. If you fall out on a lease, you can go to litigation. When it comes to divorce, it cannot be handled without the blessing, the involvement of the State. Once you have had that involvement, you come up hard against the recognition point.

Not without some thought and some hesitation, I agree with Mr Day that the recognition point, which I find in favour of the wife, is ultimately fatal to the husband's case.

I will, in deference to the parties who have handled the case so well, move on to the question of natural justice because the wife said that in any event, natural justice had been breached. I have been helped greatly on this point by Mr Oliver. Here, if one looks at the Family Law Act 1986, s 51(3)(a) and analyse what happened in Cyprus, I cannot say that what occurred was in breach of natural justice.

I take into account the principle enumerated by Thorpe LJ in the case of *Eroglu v Eroglu* [1994] 2 FLR 287. Any court in this country should be chary of condemning another one for being in breach of natural justice unless such a breach is fundamental. Just because for instance in this country one might allow 6 weeks for certain decisions to be made and in another it

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might be 6 days, that does not of itself mean that the foreign country is in breach of natural justice. I have already found that the husband did not behave in good faith in this case, although he seems to have been correct under Turkish law.

With regard to natural justice, it was said that he brought the children to this country by a ruse, which seems right. He behaved dishonourably but that of itself does not go against natural justice. It is said that he used his own family firm, and I find that he did not; he may have used a friend of the family but so would most of us in the circumstances. It is then said that the time between the issue of proceedings and the final decree was short, as indeed it was to our taste but not to that of Cyprus, as the judge has said. There is doubt about the service of the petition; there again the husband did not behave honourably but it was served and there was someone in the house who could read Turkish. I remind myself that the wife, through the efforts of the grandmother, did receive some albeit rather blunt advice from a lawyer in Cyprus and that she did later make applications to set the proceedings aside. I do not therefore find that there was a breach of natural justice, but I do find the behaviour of the husband makes me even more determined that as a matter of public policy I should rule - as I do - that this court, on the recognition principle, does not recognise the divorce obtained on 25 December 1996 in Cyprus.

Declaration that decree of divorce pronounced by Famagusta court not recognised.

Decree nisi of divorce on ground of unreasonable behaviour.

Solicitors: The names of instructing solicitors have been omitted in the interest of preserving anonymity.

PHILIPPA JOHNSON

Barrister