

## **182816 - Will a conditional divorce be nullified if a woman is completely divorced then her husband marries her again with a new marriage contract?**

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### **the question**

My wife wanted to travel to a foreign country, and we had an argument concerning that, and I said: She is divorced if she travels to that country. Then we had another argument, and I divorced her for the first time (first talaaq). Then after the end of the 'iddah, and one year later, we got married again, and now she wants to travel to that country. Does the conditional divorce from before the first talaaq remain in effect or not?

### **Detailed answer**

If the husband makes divorce of his wife conditional upon something, then he divorces her for some other reason, then he takes her back, does that conditional divorce remain in effect as initially stipulated, so that if the condition is fulfilled divorce takes place, or is the conditional divorce cancelled out by what happened subsequently of divorce, complete separation and remarriage?

There is a difference of opinion among the fuqaha' concerning this issue, according to the following details:

Firstly:

If he takes her back before the end of her 'iddah, then the fuqaha' are unanimously agreed that the condition stipulated still stands, so if the condition is fulfilled then a new divorce takes place. That is because the woman who is still in 'iddah following a revocable divorce (first or second talaaq) comes under the same ruling as a wife with regard to many issues, such as inheritance, maintenance and the like, so the ruling on the conditional divorce still remains in effect.

Secondly:

But if her 'iddah has ended and she is completely divorced, then he does a new marriage contract with her, such as if he said to her for example: If you travel outside the country then you are divorced, but she did not travel, then he divorced her for some other reason, and her 'iddah ended, then he remarried her with a new marriage contract, will she be divorced if she travels after that, or does the divorce and complete separation that occurred cancel out the conditional divorce? There are two scholarly views concerning the matter:

The first view:

According to the first view, the previously stipulated condition and the oath are rendered invalid as soon as the divorce becomes complete, and if the condition is met after the new marriage contract, no divorce occurs, regardless of whether that condition was met during the period of divorce and separation – i.e., before the new marriage contract and after the end of the 'iddah – or not. In all cases, the wife may go back to her husband with a new marriage contract, and all conditions stipulated in the past are cancelled. This is the view of the Shaafa'is, and it is the view favoured by Shaykh Ibn 'Uthaymeen (may Allah have mercy on him), who attributed it to the view favoured by Ibn Taymiyah, but we have not come across it.

Al-'Allamah al-Muhalla ash-Shaafa'i (may Allah have mercy on him) said:

If he made divorce conditional upon her entering a certain place, for example, then complete separation occurred as a result of divorce... Then he remarried her, then she entered that place, no divorce takes place, because the oath (or condition) is cancelled as soon as he consummates the marriage with her. Likewise, no divorce occurs if she does that before the end of the 'iddah, according to the more correct view, because the marriage to which this conditional divorce was connected is no longer valid.

End quote from Sharh al-Minhaaj ma'a Haashiyat Qalyoobi wa 'Umayrah (3/336)

See also: Mughni al-Muhtaaj (4/476) and Haashiyat al-Bujayrami 'ala al-Khateeb (4/10)

The second view:

According to the second view, the previous condition is not cancelled out; rather if it is fulfilled again after the new marriage contract, divorce occurs as a result. This is the view of the Hanafis, Maaliki and Hanbalis.

It says in Radd al-Muhtaar 'ala ad-Durr al-Mukhtaar (3/348), which is a Hanafi book:

If the husband makes a threefold divorce or less conditional upon her entering a particular house, then that condition is met and she is divorced three times, then he remarries her after she becomes permissible for him [by marrying another man in a genuine marriage which is then ended by divorce or death of the husband], this conditional divorce is no longer effective and no divorce results from her entering that house. If the condition is met and she is divorced, but less than three times, then the condition is not cancelled out, so the conditional divorce is still completely in effect. That is because it is still permissible for him to re-marry her as divorce occurred less than three times, because the conditional divorce is cancelled out when she is no longer permissible for him to re-marry (i.e., after three talaqs), but it is still permissible for him to re-marry her after one or two talaqs, so the condition is still applicable. Therefore if the condition - which is her entering a particular house - is met, then divorce takes place. End quote.

Shaykh ad-Dardeer al-Maaliki (may Allah have mercy on him) said:

If he remarried her after she became completely divorced, and she did what he told her not to do after he married her, then his oath is broken (i.e., the conditional divorce takes effect), regardless of whether she did that during the separation period or before that (during her 'iddah), and regardless of whether it happened before or after she married another person, because marrying someone else does not cancel out the previous condition. End quote.

Shaykh as-Saawi (may Allah have mercy on him) commented on that by saying:

This is contrary to the view of ash-Shaafa'i, because his view is that if a man says to his wife: If I or you do such and such, then you are thrice divorced, then he divorces her (for some other reason), this condition is no longer valid. Then if he does the thing mentioned in his condition after that, no consequences result from that. This is a very lenient view which it is permissible to follow.

End quote from Haashiyat as-Saawi 'ala ash-Sharh as-Sagheer (2/557)

Al-Bahooti al-Hanbali (may Allah have mercy on him) said:

If he stipulates a condition for divorce, such as if she enters a particular house, then the 'iddah ends and they become completely divorced, then during the separation she enters that house, then he remarries her, i.e., he remarries her after she did that, then she did it again after remarriage, in that case she is divorced. The same applies if he issued a conditional divorce, then they were separated, then they remarried, then the condition was met. In that case she becomes divorced because the condition was met.

End quote from ar-Rawd al-Murbi' ma'a Haashiyat Ibn Qaasim (6/479-480).

See also: al-Insaaf (8/423)

Perhaps the first view is more sound and acceptable, for the following reasons:

1. It is closer to common sense, because it is far-fetched to assume that marriage may become null and void through divorce and complete separation, with the ending of the 'iddah, but the conditional divorce still remains valid.
2. It is easier on people and closer to making it easy to solve a problem at a time of extreme hardship, and it is more likely to keep people away from toying with the concept of divorce in a way that is contrary to Islamic teachings, so as to find a way around the validity of the conditional divorce, as was pointed out by Ibn al-Qayyim in I'laam al-Muwaqqi'een (3/218)

Shaykh Ibn 'Uthaymeen (may Allah have mercy on him) said:

If he says: If you speak to Zayd then you are divorced, then he divorces her and they become completely divorced (after the 'iddah), then he remarries her before she speaks to Zayd, then she speaks to Zayd after getting remarried, then according to our madhhab and others, she becomes divorced, because his conditional divorce is still effective.

But according to Shaykh al-Islam Ibn Taymiyah, with regard to this matter she is not divorced, because it seems that his conditional divorce was connected to the first marriage in which this conditional divorce took place. But in fact if you reflect on the matter, you will realise that this view is more likely to be correct than others, because what appears to be the case is that it never crossed the husband's mind that this conditional divorce would continue into the new marriage. That is unless he stipulated a condition that she should never ever do something.

End quote from ash-Sharh al-Mumti' (12/495-496).

Shaykh al-Islam (may Allah have mercy on him) quoted different views concerning this matter without stating which he thought was more correct. See: Majmoo' al-Fataawa (33/245-246). This was also narrated by al-Mirdaawi in al-Insaaf (8/424), but he did not say that it was the view favoured by Shaykh Taqiy ad-Deen (Ibn Taymiyah).

But if the couple have divorced for a third time and become completely separated, then she married another man and he consummated the marriage in a genuine sense, then he divorced her and she went back to her first husband, then she goes back to him with three divorces in store (a completely fresh start) and all previous divorces are cancelled, including all conditional divorces. This is according to the consensus of the fuqaha'.

Ibn al-Mundhir (may Allah have mercy on him) said:

All the scholars from whom we acquired knowledge are unanimously agreed that if a man says to his wife: You are thrice divorced if you enter a particular house, then he divorces her three times, then she marries someone else, then she remarries the one who issued that conditional divorce, then she enters that particular house, then no divorce takes place as a result.

End quote from al-Mughni by Ibn Qudaamah (7/361)

Nevertheless, we should still take into account the view that we favoured previously on our website, that with regard to the conditional divorce, attention should be paid to the intention of the one who issued that divorce. If he intended it as a threat and warning, and does not want to leave his wife if the condition is met, then this divorce does not take place and is not subject to the details discussed above.

But if he actually intended to divorce her if the condition was fulfilled, and he wants to leave his wife if that condition is fulfilled, then all the discussion above is applicable.

And Allah knows best.