

197283 - He divorced his wife and they want to get back together in accordance with sharee'ah

the question

Please could you tell me whether my divorce is valid or not. I have been going through problems for the last 3 years with my wife about children access, we separated about 5 times and now after 3 years both want to come together. I initially said divorce once when she left my house with my kids and then after 6 months came together and the local imam said we have to perform Nikah again. We lived only for 1 day and I told her come back home and leave the courts matters. She did not come back and we had our financially matters in the English court I wanted to settle this so she cant ever claim against my property or Money my lawyer said you have to give a English Divorce to have a consent order so she will never able to claim so I did. My lawyer filed the English divorce and now I have it on paper but I did this to save my property. I know I only divorced twice but I am totally confused I have 3 lovely children and me and my wife have regretted and want to come together. Please could you advise me further? We want to live again like husband and wife halaal way.

Detailed answer

Firstly:

What we understood from your question is that you separated from your wife five times without talaq (divorce), and that you only issued a talaq once, then you took your wife back after the end of the 'iddah with a new marriage contract and mahr; then after that you asked your wife to stop court proceedings but she refused, so the lawyer advised you to divorce her according to English law so as to protect your financial rights, and you filed for divorce in the court.

Secondly:

With regard to this divorce that you filed for in court, if you uttered the words of divorce (talaaq), then divorce has taken place. But if it was only official proceedings to sign the legal divorce, and you only wrote the word divorce without uttering it, or you instructed your lawyer to take care of this official paperwork only, then it depends on your intention. If your intention in doing that was actually to divorce your wife or you instructed the lawyer to actually make it happen, then divorce has taken place. In that case you have divorced your wife twice, so it is permissible for you to take her back so long as she is still in the 'iddah period. If the 'iddah has ended, then it is permissible for you to marry her with a new marriage contract and mahr, but it is essential to note that if another divorce takes place after that, then your wife will become irrevocably divorced from you, and it will not be permissible for you to marry her again until after she has been married to another man in a genuine marriage, not a tahleel marriage (one intended to make it permissible for her to go back to the first husband) and that marriage has been consummated, then he (the second husband) divorces her or dies.

Thirdly:

But if you wrote the word of divorce in this request that you filed with the court but did not intend to divorce your wife by writing it, and you did not instruct the lawyer to actually make divorce happen on your behalf, then divorce has not taken place, as we have explained in detail, quoting the words of the scholars, in fatwa no.

[72291](#). In that case, your wife has only been divorced once, which was the first instance.

Fourthly:

The ruling does not differ with regard to what is mentioned above, whether the judge decided the divorce or not, because divorce issued

by a non-Muslim judge does not count as such, as we explained in fatwa no. [127179](#)

Fifthly:

It should be noted that it is not permissible to refer for judgment to courts that rule according to man-made laws, because that comes under the heading of taghoot (falsehood). Allah, may He be glorified, has commanded His slaves to avoid falsehood and not to believe in it, as He says (interpretation of the meaning):

“O you who believe! Obey Allah and obey the Messenger (Muhammad SAW), and those of you (Muslims) who are in authority. (And) if you differ in anything amongst yourselves, refer it to Allah and His Messenger (SAW), if you believe in Allah and in the Last Day. That is better and more suitable for final determination.

Have you seen those (hypocrites) who claim that they believe in that which has been sent down to you, and that which was sent down before you, and they wish to go for judgement (in their disputes) to the Taghoot (false judges, etc.) while they have been ordered to reject them. But Shaitan (Satan) wishes to lead them far astray”

[an-Nisa' 4:59, 60].

We have discussed this important matter previously in detail, in fatwa no. 93208. You have to pay attention to this matter and study it well and teach your wife about it, so that you will not end up referring to those false judges, because that is a major sin and a serious matter that may put one beyond the pale of Islam.

An exception may be made from that if there is no option other than referring for judgment to man-made laws in order to recover one's

dues that are proven according to sharee'ah, or to document it, or to ward off harm in a country that is not ruled according to sharee'ah and where there are no shar'i courts, on condition that reference be made to some of the scholars to define the shar'i ruling that must be applied in the case at hand, and the demand be limited to what the scholars have defined as his dues and striving to attain that.

This was stated in the final statement of the Second Conference of Shar'i Fuqaha' in America, which was held in Copenhagen, Denmark, with the Muslim World League, 4-7 Jumaada al-Oola 1425/22-25 November 2004 CE. See the text of the statement in fatwa no.

[127179](#)

Sixthly:

If you want to keep your wife and she has become irrevocably divorced because the 'iddah that followed the second divorce, if it did indeed take place, has ended, then what you must do is marry her with a new marriage contract and mahr. If no divorce took place, then the matter is clear and she is still your wife.

If there is any advice we can give you regarding this matter, we advise you to have a good attitude towards your wife, to treat her kindly and to be patient with any bad attitude from her, and we advise you to deal with her in an honourable and reasonable manner. Allah, may He be exalted, says (interpretation of the meaning):

“And live with them honourably”

[an-Nisa' 4:19]

“And they (women) have rights (over their husbands as regards living expenses, etc.) similar (to those of their husbands) over them (as regards obedience and respect, etc.) to what is reasonable”

[al-Baqarah 2:228].

According to the Sunnah, it was narrated that Abu Hurayrah (may Allah be pleased with him) said: The Prophet (blessings and peace of Allah be upon him) said: “I urge you to be kind to women.”

Narrated by al-Bukhaari (3153); Muslim (1468).

Note:

With regard to the five separations mentioned, if any of them involved any mention of divorce, whether by clearly using the word or by use of metaphors, whether it was to take immediate effect or was attached to some condition, then that is a whole different matter and it is essential to explain what really happened.

And Allah knows best.