105998 - If a person makes divorce conditional upon something, then he does that thing by mistake or because he is forced to

the question

I intended that if I did a certain thing, my wife would be divorced with the actual intention of divorce. If I do this thing under compulsion, does divorce take place? If I do this thing repeatedly, does divorce take place each time?.

Detailed answer

Praise be to Allah.

If the matter is limited to the mere intention of divorce, and it was not spoken out loud, then no divorce takes place.

Ibn Qudaamah (may Allaah have mercy on him) said (7/373): Divorce does not take place unless the word of divorce is uttered, except in two cases: the first of which is that of a person who is not able to speak, such as a mute, if he divorces by means of gestures, in which case his wife is divorced. This is the view of Maalik, al-Shaafa'i and ashaab al-ra'y, and we do not know of anyone who disagreed with them. The second case is if he wrote the word of divorce. If he intended it as such, then his wife is divorced. This is the view of al-Sha'bi, al-Nakha'i, al-Zuhri, al-Hakam, Abu Haneefah, Maalik and al-Shaafa'i. End quote.

But if you uttered the word of divorce and made it conditional upon doing a specific thing with the intention of divorce, then divorce takes place when that thing is done, unless you did it as the result of forgetfulness or because you were forced to do it, in which case divorce does not take place.

Ibn Hajar al-Haytami said in al-Fataawa al-Fiqhiyyah al-Kubra (4/178): If a person swears an oath to divorce or do something else if he does a certain thing, then he does it by mistake, forgetting that condition, or he remembers it but is forced to do that thing, or he chooses to do it due to

ignorance of the condition but not the ruling, then he has not broken his oath, because of the report mentioned above (“Allaah has forgiven my ummah for mistakes, forgetfulness and what they are forced to do”). In other words, He will not call them to account for any of these three things, so long as there is no evidence to the contrary such as compensation for damaged property. Doing the action in these cases is like not doing it. End quote.

If what you mean by compulsion is that you were forced to do that action, then divorce has not taken place, but if you are not forced to do it, then divorce has taken place.

If divorce did not take place because of forgetfulness or compulsion, then the conditional divorce remains as is, and if you do that thing later on, then divorce will have taken place.

But does divorce take place every time you do it? That depends on the wording that you uttered. If you said, “If I do such and such my wife is divorced,” then divorce has taken place only once. But if you said: “Every time I do such and such, my wife is divorced,” then divorce is repeated when the action is repeated.

But if you did not say anything and it was only a matter of intention, then no divorce has taken place at all, as stated above.

And Allaah knows best.