112782 - He divorced his wife three times before consummation of the marriage

the question

He divorced his wife three times before consummation of the marriage; how can she become permissible for him again?.

Detailed answer

Praise be to Allah.

If a man divorces his wife three times before consummation of the marriage, if it was said in one go, such as saying “You are thrice divorced”, then there is a difference of opinion among the scholars.

The majority are of the view that it counts as three divorces and she is irrevocably divorced from him, so she is not permissible for him until she has been married to another husband.

Some scholars are of the view that it counts as one divorce, but she becomes irrevocably divorced (in a minor sense) because she was divorced before consummation of the marriage, but she may become permissible for him with a new marriage contract. This is the view of ‘Ata’, Tawoos, Sa‘eed ibn Jubayr, Abu’l-Sha‘tha’ and ‘Amr ibn Dinaar, and it is the view favoured by Ibn Taymiyah and a number of contemporary scholars, including Shaykh Ibn Baaz and Shaykh Ibn ‘Uthaymeen (may Allah have mercy on them).

See: al-Mughni, 7/282; Fataawa al-Shaykh Ibn Baaz, 19/146; al-Sharh al-Mumti‘, 13/40

If the divorce was uttered in separate words, such as saying, “You are divorced, you are divorced, you are divorced,” and that took place before consummation, whether it was said in one go or not, then it counts as one divorce in which she is irrevocably divorced in a minor sense, according to the majority of fuqaha’, and she may become permissible for her husband with a new marriage

contract.

Ibn Qudaamah (may Allah have mercy on him) said in al-Mughni (7/367): With regard to a wife with whom he has not consummated the marriage, she can only be divorced once, whether he intended it to be more than one divorce or not, and whether he said that separately or in one go. This is the view of Abu Bakr ibn ‘Abd al-Rahmaan ibn al-Haarith, ‘Ikrimah, al-Nakha‘i, Hammaad ibn Abi Sulaymaan, al-Hakam, al-Thawri, al-Shaafa‘i, ashaab al-ra’y, Abu ‘Ubayd and Ibn al-Mundhir. Al-Hakam narrated it from ‘Ali, Zayd ibn Thaabit and Ibn Mas‘ood.

The reason for that, as Ibn Qudaamah says, is that: The woman with whom marriage has not been consummated is irrevocably divorced with one divorce, because she does not have to observe ‘iddah, so if he issues another divorce, it does not count in her case, because she is not a wife, and only a wife can be divorced. End quote.

Thus the difference between issuing three divorces at once and uttering them separately becomes clear, although the more correct view is that the three-fold divorce only counts as one in all cases.

And Allah knows best.