# 118557 - If divorce occurs before consummation and after being alone together, is it revocable or irrevocable?

**the question**

I did the marriage contract with a girl, and I was alone with her more than once, for lengthy periods, during which we were intimate without having intercourse. Then I divorced her. Do I have the right to take her back without a new marriage contract and mahr, or not?

**Detailed answer**

Praise be to Allah.

If divorce (talaaq) occurs before consummating the marriage and being alone together, then it is an irrevocable divorce, in which the husband cannot take the wife back, so after such a divorce her husband does not have the right to go back to his wife except with a new marriage contract and a new mahr, in which all the conditions of the marriage contract must be met, such as the consent of the wife and her guardian, and the presence of two witnesses.

But if the divorce occurred after being alone with her, and before consummation of the marriage, then this is a matter concerning which the fuqaha' differed. The majority are of the view that it is an irrevocable divorce, like the first type of divorce mentioned above.

The view of the Hanbalis is that it is a revocable divorce, so the husband has the right to take his wife back during the 'iddah.

It says in al-Mawsoo'ah al-Fiqhiyyah (22/107), regarding the conditions of taking the wife back:

… The second condition (that allows a man to take back his wife after divorcing her) is that the divorce has taken place after consummation of the marriage. If he divorces her before consummation and he wants to take her back, he does not have the right to do that. This is

according to scholarly consensus, because Allah, may He be exalted, says (interpretation of the meaning): “O You who have believed, when you marry believing women and then divorce them before you have touched them, then there is not for you any waiting period to count concerning them. So provide for them and give them a gracious release” [al-Ahzaab 33:49]. But the Hanbalis regard truly being alone together as coming under the same ruling as consummation with regard to the validity of taking the wife back, because the rulings that result from being alone together are like the rulings that result from consummation of the marriage. As for the Hanafis, Maalikis and Shaafa‘is, they are of the view that consummation must have taken place for it to be valid for the husband to be allowed to take his wife back (following divorce), and having been alone together is not sufficient. End quote.

Shaykh Ibn ‘Uthaymeen (may Allah have mercy on him) said in ash-Sharh al-Mumti‘, regarding the conditions of taking back the wife: The marriage should have been consummated with the wife; i.e., her husband should have had intercourse with her – because Allah, may He be exalted, says (interpretation of the meaning): “O You who have believed, when you marry believing women and then divorce them before you have touched them, then there is not for you any waiting period to count concerning them” [al-Ahzaab 33:49]. If there is no waiting period (‘iddah) to count concerning the wife, then there can be no taking her back, because from the time the husband says to the wife with whom the marriage was not consummated, “You are divorced,” then she is divorced and permanently separated from him, and there is no waiting period that he has to count concerning her.

Or he – meaning the husband – should have been alone with her. What we mean is that for the husband to be able to take his wife back (after divorcing her), he should have consummated the marriage with her or been alone with her, because the Sahaabah (may Allah be pleased with them) ruled that being alone with the wife is like consummation of the marriage, so if a man divorces his wife before consummating the marriage or being alone with her, he has no right to take her back, because there is no ‘iddah or waiting period to be counted. So she becomes separated from him as soon as the word of divorce is uttered.

Ash-Sharh al-Mumti‘ (13/182).

Undoubtedly the more prudent option is to adopt the view of the majority, and to do a new marriage contract, and you may agree upon a small mahr.

And Allah knows best.