## 264146 - Maintenance after Divorce in Islam

### the question

A man divorced his wife irrevocably, and he has a daughter and two sons from her. She will have custody of them, and he will arrange accommodation for them, by Allah’s leave, and pay maintenance for the children.

This is after coming to an amicable agreement without referring the matter to the courts, and the amount agreed upon is double what the courts would order, based on what some lawyers told us.

He has two questions: is he obliged to pay for the repair of any damage to appliances and the like in the accommodation he is providing, or should the cost of repairs and maintenance for these appliances be part of the agreed-upon maintenance?

He also wants to know his financial duties towards his ex-wife, and whether he is obliged to provide accommodation for her?

Is there something called “ `Iddah maintenance” , as they have asked him for something called “ `Iddah maintenance (Nafaqat Al-`Iddah)”, which is different from Nafaqat Al-Mut`ah and Al-Mu’akhkhar (delayed portion of the mahr)? We apologise for asking such a lengthy question, but the matter is important, so that there will be no wrongdoing done to anyone. May Allah reward you with good.

### Summary of answer

1. The irrevocably divorced woman is not entitled to maintenance or accommodation, unless she is pregnant.
2. Mut`ah is only to be given to a woman who is divorced before consummation of the marriage.
3. If a husband has issued a first or second divorce to his wife, and has not taken her back before the `Iddah ended, then she is entitled to maintenance during the `Iddah.

4. If the ex-wife is the one who has custody of his children, she may request payment for taking care of them.
5. The husband must spend on his children, which includes accommodation, food, drink, clothing, school costs, medical care and all that they need.

**Detailed answer**

Praise be to Allah.

## Rights of irrevocably divorced woman

The irrevocably divorced woman is not entitled to maintenance or accommodation, unless she is pregnant. The evidence for that is the report narrated by Muslim (1480) from Ash-Sha`bi, who said: I entered upon Fatimah bint Qays and asked her about the ruling of the Messenger of Allah (blessings and peace of Allah be upon him) concerning her. She said: My husband divorced me irrevocably, and I referred my dispute with him about maintenance and accommodation to the Messenger of Allah (blessings and peace of Allah be upon him). He did not grant me any accommodation or maintenance, and he told me to observe my `Iddah in the house of Ibn Umm Maktum.

According to a report narrated by Muslim also, she said: I mentioned that to the Messenger of Allah (blessings and peace of Allah be upon him) and he said: “You are not entitled to any maintenance or accommodation.” According to a report narrated by Abu Dawud: “… unless you are pregnant.”

## Which divorced women are entitled to Mut`ah?

Mut`ah [here it refers to a gift given to a divorced wife in a particular instance] is only to be given to a woman who is divorced before consummation of the marriage, whose dowry had not been decided upon at the time of the marriage contract, because Allah, may He be exalted, says (interpretation of the meaning):

{There is no blame upon you if you divorce women you have not touched nor specified for them an obligation. But give them [a gift of] compensation - the wealthy according to his capability and the poor according to his capability - a provision according to what is acceptable, a duty upon the doers of good.} [Al-Baqarah 2:236]

If divorce occurred after consummation of the marriage, then she is not entitled to this gift [Mut`ah] according to the majority of jurists, but it is recommended for him to give her a gift, according to his means and what he is able to afford.

## Rights of women after first or second divorce

If a husband has issued a first or second divorce to his wife, and has not taken her back before the `Iddah ended – which means that she is completely divorced – then she is entitled to maintenance during the `Iddah. But if it was a final, irrevocable divorce – such as a third pronouncement of divorce, then she is not entitled to any maintenance or accommodation, as is mentioned above in the Hadith of Fatimah bint Qays.

## Maintenance of women who have custody of the children

If the divorced woman is the one who has custody of the children, then the jurists differed concerning her accommodation: is the father (of the children of whom she has custody) obliged to provide it, or is it to be provided by her and the one who spends on her, or is it a shared responsibility, to be paid for by the man and his ex-wife, according to the decision of the judge, or is it the case that if she has accommodation, that should be sufficient for her, and if she does not have accommodation, then the father of the children must provide it for her? (See also: *Hashiyat Ibn `Abidin,* 3/562; *Sharh Al-Khurashi,* 4/218 and *Al-Mawsu`ah Al-Fiqhiyyah,* 17/313)

If the father is obliged to provide accommodation for his children – as we shall see below – then the ex-wife may stipulate that she be able to join them in their accommodation, so long as she has custody, and she is not obliged to live with her family or in any accommodation that is rented for her.

They (the divorced couple) may come to an agreement that she can stay in her children's house, or in a home of her own.

## Paying the ex-wife who has custody of children to take care of them

If the ex-wife is the one who has custody of his children, she may request payment for taking care of them , even if there is another woman who is willing to offer such care for free. This is the view of the Hanbalis.

It says in *Muntaha Al-Iradat*: "The mother should be given priority, even if she charges the same as another woman, as in the case of breastfeeding." (End quote from *Sharh Muntaha Al-Iradat*, 3/249)

The view of the Malikis is that no fee can be charged for taking care of the children.

The Hanafis and Shafi`is discuss the matter in more detail. (*Al-Mawsu`at Al-Fiqhiyyah*, 17/311)

Sixthly:

## Maintenance of children after divorce

The husband must spend on his children , which includes accommodation , food, drink, clothing, school costs, medical care and all that they need.

That should be worked out on a reasonable basis, paying attention to the husband's financial situation, because Allah, may He be Exalted, says (interpretation of the meaning): {Let a man of wealth spend from his wealth, and he whose provision is restricted - let him spend from what Allah has given him. Allah does not charge a soul except [according to] what He has given it. Allah will bring about, after hardship, ease} [At-Talaq 65:7]

This varies from one country and person to another.

With regard to whatever is needed and costs for maintenance and repair of appliances that they will use, if the children’s maintenance is sufficient to cover that, along with whatever they need of food, drink and so on, then the cost of maintenance for the appliances should come from that.

If the children’s maintenance is not enough to cover that, and they need these appliances, then the maintenance of the appliances should come from the father’s wealth, because it comes under the heading of the children’s maintenance.

And Allah knows best.