

The second question of Fatwa no. 18283

Q 2: A woman had no sexual intercourse with her husband for three months and was, thus, considered unlawful for him, and then he had sexual intercourse with her. Two weeks later, he declared her as unlawful for him. The woman remained in her house for five months and then he divorced her without registration or witnesses; only in the presence of some relatives. She, thus, went out of the house without his permission. After that, he declared that he did not register the divorce and that he could take her back in marriage whenever he wanted since he was more entitled to guardianship than her father. Is it permissible for him to take her back in marriage? What are the conditions to do this?

A: First, if a period of time passes within which a husband does not have sexual intercourse with his wife, this does not render her unlawful for him as long as he has not divorced her. However, if he intends to observe Ila' (husband's oath not to have intercourse with his wife for four months or more), this involves different rulings that should be attributed to Shari`ah courts.

Second, if a husband divorces his wife once after consummating the marriage and then takes her back in marriage during the `Iddah (woman's prescribed waiting period after divorce or widowhood), the woman is considered his wife again, and he still has two pronouncements of divorce left before she is declared as his irrevocably divorced ex-wife. If he wants to take her back in marriage, it is enough for him to pronounce that he has taken his wife back in marriage in the presence of two male witnesses. If he does not take her back in marriage during the period of `Iddah, she will only be lawful for him with a new contract and a new Mahr (mandatory gift to a bride from her groom) along with her consent. Allah (Exalted be He) states cases of divorcees in Surahs Al-Baqarah and Al-Talaq.

Third, the Shar`y (Islamically lawful) rulings of divorce become effectuated by pronouncing it, even though it is not written or registered with the competent authority. If a legally accountable person pronounces the word of divorce, it occurs. However, further relevant details can be sought at the Shari`ah courts in cases of dispute.

May Allah grant us success. May peace and blessings be upon our Prophet Muhammad, his family, and Companions.

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