21860 - She stipulated the condition that if he married a second wife, that second wife would be divorced

the question

A man got married and they stipulated the condition in the marriage contract that every woman he married would be divorced, then he got married (to another wife). What is the ruling according to the four schools?

Detailed answer

Praise be to Allah.

Shaykh al-Islam Ibn Taymiyah was asked this question and he replied as follows:

This condition is not binding according to the madhhab of Imaam al-Shaafa'i, and it is binding on him according to the madhhab of Abu Haneefah, so that when he gets married the divorce takes place, and when he takes a concubine she becomes free. This is also the view of Maalik. With regard to the madhhab of Ahmad, no divorce or manumission takes place, but if he gets married or takes a concubine, the matter is in the woman's hands: if she wishes, she may stay with him, or if she wishes, she may leave him, because the Prophet (peace and blessings of Allaah be upon him) said: "The conditions which are most deserving of fulfillment are those by means of which intimacy becomes permissible to you." And because a man got married subject to the condition that he would not take another wife; he referred the matter to 'Umar, and he said, "Rights and duties are to be defined in the light of conditions."

So there are three views concerning this matter:

That divorce and manumission take place.

That they do not take place, and that the woman does not have the right to leave him.

The most just of the three views, which is that divorce and manumission do not take place, but

that the woman has the right to insist on the condition: if she wishes she may stay with him or if she wishes she may leave him. This is the most moderate opinion.