

170835 - He married a woman before the end of her 'iddah following the death of her husband

the question

A man married a woman who was still in 'iddah following the death of her husband, before the 'iddah ended. This happened thirty years ago without any knowledge of Islam, and now she has children from her second husband. What should she do?.

Detailed answer

Firstly:

What is required of a woman after her husband dies is to observe an 'iddah of four months and ten days from the date of his death, if she is not pregnant, because Allah, may He be exalted, says (interpretation of the meaning):

“And those of you who die and leave wives behind them, they (the wives) shall wait (as regards their marriage) for four months and ten days”

[al-Baqarah 2:234]

If she is pregnant, then her 'iddah lasts until she gives birth, because Allah may He be exalted, says (interpretation of the meaning):

“And for those who are pregnant (whether they are divorced or their husbands are dead), their Iddah (prescribed period) is until they deliver (their burdens),”

[at-Talaaq 65:4].

If she gets married during the 'iddah, then her marriage is invalid according to scholarly consensus, and they must be separated.

Ibn Qudaamah (may Allah have mercy on him) said:

It is not permissible for the woman who is in ‘iddah to get married during her ‘iddah, according to scholarly consensus, no matter what kind of ‘iddah it is, because Allah, may He be exalted, says (interpretation of the meaning):

“And you should not settle anything finally about the marriage until the waiting term expires”
[al-Baqarah 2:235].

If she does get married, then the marriage is invalid.

End quote from al-Mughni, 8/100

It is obligatory to separate her and her second husband, then for her to complete her ‘iddah from scratch. Then when she has completed the ‘iddah for the first marriage, it is permissible for the second husband to make a new marriage contract with her.

Ibn Qudaamah (may Allah have mercy on him) said:

Once this is established, then he had to leave her and if he does not do that, then they must be separated. If he leaves her or they are separated, then she has to complete the ‘iddah for the first marriage, because that duty takes precedence and that ‘iddah is obligatory because the marriage to the first husband is proven and is valid. Once the ‘iddah for the first marriage is completed, then she has to observe an ‘iddah for the second marriage, and the two ‘iddahs cannot be combined because they are for marriages to two different men. This is the view of ash-Shaafa ‘i. ... Then he stated that this opinion was narrated from ‘Umar ibn al-Khattaab and ‘Ali ibn Abi Taalib (may Allah be pleased with them both), then he said: These two opinions are known from two prominent caliphs and it is not known that any of the Sahaabah disagreed with them. Moreover they are rights that belong to two different people, and they cannot be combined.

End quote from al-Mughni, 8/101

Then after the ‘iddah for the first marriage is complete, the second husband may do a marriage contract with her as soon as the ‘iddah for the first marriage has ended.

Ibn Qudaamah (may Allah have mercy on him) said: ash-Shaafa'i said in al-Jadeed: He may marry her after completion of the 'iddah following the first marriage and there is no reason why he should not marry her during her 'iddah from him (the second husband) because the 'iddah was only prescribed so as to protect lineages, and the lineage belongs to him in this case. This is good and it makes sense.

End quote from al-Mughni, 8/100

Shaykh Ibn 'Uthaymeen (may Allah have mercy on him) said:

In principle, the more correct view is that she becomes permissible for him with a marriage contract after the end of the first 'iddah, especially if he has repented to Allah, may He be exalted, because the 'iddah is for him (i.e., following the end of a marriage to him).

End quote from ash-Sharh al-Mumti', 13/383

Secondly:

Even though this marriage is invalid, his children are to be attributed to him because it was like a marriage, and that was due to being unaware of the Islamic ruling.

Ibn Qudaamah (may Allah have mercy on him) said:

If a woman who is observing 'iddah gets married and they were aware of the 'iddah and the prohibition on marrying during this period, and he had intercourse with her, then they are zaanis; the hadd punishment for zina should be carried out on them, she is not entitled to any mahr and any child born should not be attributed to him. But if they were unaware of the 'iddah or of the prohibition, then the child is to be attributed to him, the hadd punishment is waived and the mahr must be paid.

End quote from al-Mughni, 8/103

And Allah knows best.