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BREACHING THE GATES: DIVISION OF PROPERTY IN DIVORCE

Does Bill Gates's wife get his billions?

Adapted from the writings of Dayan Yitzhak Grossman

On May 3, Bill and Melinda Gates announced that they had decided to divorce after 27 years of marriage.¹ Bill Gates has long been one of the richest men in the world, with one annual survey ranking him number one in 18 of the past 27 years,² so public reaction to the news has involved speculation about how his assets will be divided. The couple apparently signed a separation contract prior to filing for divorce, in which they reached some agreement on the division of their real and personal property and debts,³ although this contract has not been made public.

¹ Jay Greene. Bill and Melinda Gates, who run one of the world's largest philanthropies, plan to divorce after 27 years. The Washington Post. <https://www.washingtonpost.com/technology/2021/05/03/bill-gates-melinda-divorce/>.

² Wikipedia. The World's Billionaires. https://en.wikipedia.org/w/index.php?title=The_World%27s_Billionaires&oldid=1025679005.

³ Melinda French Gates's petition for divorce filed with the Superior Court of Washington, King County, May 3, 2021 1:54 p.m., case #21-3-02273-1 SEA, paragraphs #11-14.

In this series of articles, we survey the halachic rules governing the division of assets following a divorce. In this introductory entry, we contrast the classic halachic framework with both traditional and modern Western law.

TRADITIONAL LAW VS. CLASSIC HALACHA

Classic halacha views marital assets with a fundamentally different perspective from that of much of Western law, both traditional and modern.

In common law countries such as England and the United States, until the mid-to-late nineteenth century, the doctrine of coverture (arising from the legal fiction that a husband and wife are one person) stated that upon marriage, a woman's legal rights and obligations were subsumed by those of her husband,⁴ and

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⁴ Wikipedia. Coverture. <https://en.wikipedia.org/w/index.php?title=Covert>

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BAIS HAVAAD HALACHA CENTER
105 River Ave. #301, Lakewood NJ 08701
1.888.485.VAAD (8223)
www.baishavaad.org
info@baishavaad.org
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PARSHAS BALAK

HEARING THINGS

*Excerpted and adapted from a shiur by
Rav Yaakov Meir Levi*

One of the activities customarily avoided during the Three Weeks is listening to music. But Chazal prohibited listening to music in some cases year-round in mourning for the *churban*. According to the Shulchan Aruch (O.C. 560), one may neither sing nor listen to live musical instruments while drinking wine. The Rama limits the prohibition to listening to music constantly (*ragil*), like kings who wake up and go to bed to live music. The Bach is even more strict, prohibiting singing except in specific cases (like *zemiro*s and at a *simcha*). According to R' Moshe Feinstein, someone who is considered a *ba'al nefesh* should follow the Bach.

The Sheivet HaLevi writes that even according to the Rama, most people today have the status of a *ragil* and may not listen to live music. He forbids recorded music as well, maintaining that the listening device qualifies as an instrument. In contrast, others hold that this entire *gezeirah* of Chazal does not apply to recorded music. In addition, some contem-

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Letting Go

Q I lost power on Shabbos night, and my crock pot turned off. Would I have been allowed to bring my cholent to a neighbor who has a gas range with a *blech*, in order to have hot cholent by day?

A In essence, placing your cholent on your friend's *blech* constitutes *chazarah* (returning food to fire) on Shabbos, which, as we discussed in a recent Q&A, is permitted if five conditions are met:

1. The flame must be covered with a *blech*.

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Q&A from the
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ask@baishavaad.org

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any money made by a woman (either through a wage, from investment, by gift, or through inheritance) instantly became the property of her husband, with the exception of a dowry.⁵

In halacha, by contrast, there is no merger of the financial identities of the spouses; while the husband does have certain rights over his wife's property and income,⁶ these are limited, and perhaps more significantly, many of them are contingent upon the wife's acquiescence. A husband does have general usufruct rights to his wife's property (*nichsei melug*) for the duration of the marriage, but she retains title to the property, and the couple may stipulate, at the time of the marriage or subsequently, that the husband relinquishes these rights.⁷ A husband is entitled to his wife's earnings in lieu of his obligation to maintain her, but the normative halacha is that this arrangement is entirely at her discretion, and she is entitled to reject it and retain her earnings as long as she accepts responsibility for her own maintenance.⁸

MODERN LAW VS. TRADITIONAL HALACHA

While modern Western law does recognize the independent legal personhood of spouses, some jurisdictions (including nine U.S. states) have community property regimes. Under this system, property owned by one spouse before marriage, and gifts and inheritances received during marriage, are treated as that spouse's separate property in the event of divorce, but all other property acquired during the marriage is treated as community property and is subject to

division between the spouses in the event of divorce.⁹ In such jurisdictions, upon divorce, community property assets are generally shared equally between spouses, regardless of the source of the property.¹⁰

In separate-property jurisdictions, marital assets are generally divided under the framework of equitable distribution, which attempts to secure a fair distribution through the consideration of numerous factors. These include substantial contribution to the accumulation of the property, the market and emotional value of the assets, tax and other economic consequences of the distribution, the parties' needs, and any other factor relevant to an equitable outcome.¹¹

Classic halacha has no notion of either community property or equitable distribution. Aside from specific rules granting the spouses certain rights and liens over each other's property, all property is separate, and there is no division of assets upon divorce: the husband and wife retrieve their separate property,¹² and the husband pays the wife out of his assets the sum of the *kesubah* and any other stipulated settlement amounts.¹³

THE GATES DIVORCE

In light of the above, if the Gates divorce settlement were adjudicated according to classic halacha, then were it not for the separation contract, Bill Gates would presumably retain the vast bulk of his fortune.

In subsequent articles we shall *iy"H* consider various halachic arguments for adjudicating divorce settlements in the modern era in a manner more closely aligned with prevailing norms.

9 Wikipedia. Community property in the United States. https://en.wikipedia.org/w/index.php?title=Community_property_in_the_United_States&oldid=1012009235.

10 Community Property States vs. Separate Property - Definitions & Laws (Money Crashers).

11 Wikipedia. Division of property. https://en.wikipedia.org/w/index.php?title=Division_of_property&oldid=941895437.

12 See Shulchan Aruch E.H. *siman* 88.

13 See *ibid.* *siman* 100 and elsewhere.

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porary *poskim* (Lehoros Nasan and others) say that today's generation cannot abide being without music, so we may rely on the standard *heter* of the Rama. Additionally, some *poskim* note that the Me'iri (Gittin 7a) writes that songs praising Hashem are not included in the prohibition. Music is also permitted at a *seudas mitzvah*.

R' Moshe and others explain that the custom to avoid music during the Three Weeks includes even music that is permitted during the year (according to each opinion respectively). Therefore, even recorded music and music at a *simcha* would be forbidden during this period. A cappella music is also forbidden according to the Sheivet HaLevi (because the recording has the status of an instrument), though he says one can justify those who listen to it. R' Moshe would seem

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- The food must be fully cooked.
- The food must still be warm enough to be enjoyed as a warm food.
- The pot must not have been put down.
- The person must have removed it with the intention of returning it.



In your case, you are putting the food on a *blech*, so if you are sure that it is fully cooked and still warm, you have satisfied the first three conditions. But the final two don't appear to be fulfilled: The pot sitting without anyone holding it off a flame should be comparable to putting it down; and there was no intention of doing *chazarah* while the flame was extinguished, which seems equivalent to removal from the flame. Nonetheless, there are two separate bases to permit what you seek to do.

First, the Ran writes that the latter two conditions are only relevant when one removed the food from the flame before Shabbos and wishes to return it on Shabbos; when it is removed on Shabbos, they don't apply. Most other *Rishonim* disagree, but the Ran is mentioned by the Rama (O.C. 253:2), and the Chazon Ish (O.C. 37:12) rules that in a case of great need one may rely on this Ran. It would seem that saving the main dish of your Shabbos *seudah* would qualify.

Second, R' Akiva Eiger (Hagahos to S.A. 253:2) understands the final two conditions differently. There is no requirement, he maintains, to hold the pot with intent to return it. It's just that one may not do *chazarah* if he *actively* removed the pot or if he specifically intended *not* to return it. According to this view, the idea of the two conditions is that one mustn't have a *hesech hada'as* from returning the pot, and a passive act of removing the pot isn't *hesech hada'as*. Your case would be similar. (See, however, Avi Ezri Shabbos 3:10 for a dissenting view.)

to allow recorded a cappella music, though contemporary *poskim* say that beatboxing is problematic.

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