

Breaching the Gates: Division of Property in Divorce

Does Bill Gates's wife get his billions?

Adapted from the writings of Dayan Yitzhak Grossman

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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.

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 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.

[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.

[4] Wikipedia. Coverture. <https://en.wikipedia.org/w/index.php?title=Coverture&oldid=1026993091>.

[5] Wikipedia. Married Women's Property Act 1870. https://en.wikipedia.org/w/index.php?title=Married_Women%27s_Property_Act_1870&oldid=1026990753.

[6] See Yad Hachazakah *hilchos ishush perek* 12 halachos 1-3, Shulchan Aruch E.H. *siman* 69 *se'ifim* 1-3.

[7] See Shulchan Aruch E.H. *siman* 92.

[8] *Hilchos ishush* 12:4, Shulchan Aruch *se'if* 4.

[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.