

## Accidentally Buying Stolen Goods

### Rabbi Chaim Weg

**Case:** Someone bought a few pallets of merchandise, which he then placed in his warehouse for a few days. The police subsequently arrived and informed him that the goods were stolen, and the original owner was identified (who is Jewish).

**Question:** What must the buyer do with the goods now? Must he give them back for free? May he claim the amount of money he paid for them from the seller or from the original owner or not?

**Answer:** According to the strict halacha, the answer depends upon whether the *gazlan* (thief) sold the stolen items before or after the owner expressed *ye'ush* (despair of getting it back). If they were sold prior to *ye'ush*, the stolen goods still belong to the original owner. In this case, even if the *gazlan* transferred them to someone else or sold them, the strict halacha is that they must be returned to him without compensation.

If the owner expressed *ye'ush* and then the goods were sold, the buyer would acquire them due to the combination of *ye'ush* and *shinui reshus* (change of ownership), which is halachically effective in transferring ownership to the buyer. The original owner would then need to claim the value of the items back from the *gazlan* through Bais Din.

Although this is the strict halacha, Chazal instituted an enactment called *takanas hashuk* (lit. ordinance of the marketplace) in cases where the stolen items were sold before *ye'ush* occurred, which was designed to protect commerce. Chazal were concerned that if stolen goods would have to be returned for free to the original owner, people would be afraid to purchase freely, since every purchase entails a risk that the object is stolen and will have to be given back. Since this may ruin free commerce, the *takanas hashuk* states that if the purchaser was not aware at the time of purchase that the goods were stolen, he may demand that the owner compensate him for the amount he paid before returning the item.

If the buyer knows that the seller is a thief, then according to the Shulchan Aruch, the *takanas hashuk* does not apply, though according to the Rema, it applies in this case as well, provided the buyer was not aware that the specific goods purchased were stolen.

If the *gazlan* sold the goods after the owner expressed *ye'ush*, then even according to the guidelines of *takanas hashuk*, the buyer may keep the goods, and the owner must claim compensation from the *gazlan* in Bais Din.

The Rema notes that if secular law requires the stolen goods to be returned to the owner in all cases (even if *ye'ush* occurred before the sale), then the halacha also requires this based on the principle of *dina d'malchusa dina* (the law of the land is the halacha). According to the Ketzos HaChoshen, this ruling is merely one that is *lifnim mishuras hadin* (beyond the letter of the law), and one would need only return it in such cases if one can afford to do so. Others hold that this practice of returning the stolen items is

considered a proper practice (*minhag tov v'yashar*).

It would seem from the Shulchan Aruch (though it is not explicit) that in cases where the halacha based upon *dina d'malchusa dina* dictates that one must return the stolen goods to the owner, one would need to do so without receiving any compensation. However, the Shulchan Aruch HaRav says clearly that even if it is customary to return the object based upon *dina d'malchusa dina* after *ye'ush* and *shinui reshus* have taken place, the buyer is only required to return it after he receives the amount of money he paid for it.

Based upon all of these considerations, the bottom line concerning the question is that the purchaser would indeed need to return the stolen goods to the owner (based upon secular law), but halachically would still be entitled to first receive compensation for the amount that he paid from the original owner (though he would not be allowed to make a profit from the sale).