

Leave No Stone Unreturned: Should the Star of Africa Go Home?

Adapted from the writings of Dayan Yitzhak Grossman

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Reuters reports:

Some South Africans are calling for Britain to return the world's largest diamond, known as the Star of Africa, which is set in the royal scepter that King Charles III will hold at his coronation on Saturday. The diamond, which weighs 530 carats, was discovered in South Africa in 1905 and presented to the British monarchy by the colonial government in the country, which was then under British rule. Now, amid a global conversation about returning artwork and artifacts that were pillaged during colonial times, some South Africans are calling for the diamond to be brought back.

"The diamond needs to come to South Africa. It needs to be a sign of our pride, our heritage and our culture," said Mothusi Kamanga, a lawyer and activist in Johannesburg who has promoted an online petition, which has gathered about 8,000 signatures, for the diamond to be returned.

"I think generally the African people are starting to realize that to decolonize is not just to let people have certain freedoms, but it's also to take back what has been expropriated from us." [1]

Returning stolen property is one of the *taryag* mitzvos:

Whoever steals is obligated to return the stolen object itself, as it is written: "And he shall return the stolen item that he stole." If this article was lost or underwent a change, the thief must pay its value. [2]

Though Reuters refers to "artifacts that were pillaged during colonial times," as a matter of halacha, the diamond in question would likely be the legitimate property of the United Kingdom. As we have previously discussed, [3] sovereign governments, including those who seize power by conquest, have the legal right to appropriate the property of their subjects, provided that, per the Rambam's formulation, such appropriation is "in accordance with the laws that they enacted." [4] Accordingly, assuming the colonial government of South Africa acted in accordance with its own laws, it had the right to the diamond, and thus the right to gift it to the British monarchy.

If the colonial government did not act in accordance with its own laws, however, there might indeed be a valid claim for the repatriation of the diamond, as the Rambam rules:

If, however, a king confiscates a courtyard or a field from one of the subjects of his country in a manner that is not in accordance with the laws that he enacted, he is considered a thief, and the owners may expropriate the property from the person who purchased it from the king. [5]

Although more than a century has passed since the transfer of the diamond to the United Kingdom, halacha has no statute of limitations on a claim of

theft. Even if the original owner has given up hope (*yeiush*) of recovering his property, if the stolen item is still intact, it must be returned to its owner.

If the item underwent a physical transformation (*shinui ma'aseh*) in the hands of the thief, he has the right to keep it and pay the owner its value.[6] In our case, Reuters reports that

Officially known as Cullinan I, the diamond in the scepter was cut from the Cullinan diamond, a 3,100-carat stone that was mined near Pretoria.

If we were to view the diamond as stolen, then the obligation to return the diamond itself rather than its value would depend on whether the cutting occurred subsequent to the theft, in which case it would qualify as a *shinui*, or prior to the theft, in which case it would not. (The setting of the diamond into the scepter would probably not qualify as a *shinui*, because a reversible transformation, like the nailing together of pieces of wood, is not considered a *shinui*.)

Even in the absence of a physical transformation that would qualify as a *shinui ma'aseh*, there is a rabbinic enactment exempting a thief from returning the stolen object itself in certain cases:

Even if a person stole a beam and used it in building a house, Torah law requires that he tear down the entire building and return the beam to its owner, for the beam remains unchanged. Nevertheless, to encourage robbers to repent, our Chachamim ordained that the robber pay the worth of the beam and did not require him to destroy his building. The same applies in all similar situations.[7]

The Erech Shai extends this to any case where the thief would incur a loss by returning the actual stolen item.[8] Accordingly, if dismantling the scepter would entail financial loss, it might suffice to return the value of the diamond rather than the diamond itself.

In addition to a physical transformation, a transfer of ownership (*shinui reshus*) coupled with *yeiush* also eliminates the requirement to return the actual object, but a pious and scrupulous individual should still do so.[9] Some require that the *shinui reshus* occur after the *yeiush*; others do not. In a situation of *yeiush* and *shinui reshus*, while the purchaser of the stolen property is not obligated to return the item itself, there are various opinions as to whether he is obligated to compensate the victim for its value.[10] Accordingly, if the colonial government of South Africa and the British monarchy are viewed as separate entities, the transfer of the diamond between the two would constitute a *shinui reshus*, so the British monarchy might not be obligated to return the stone itself, and perhaps not even its value, depending on the above considerations. As noted, however, a scrupulous person should return stolen property even in a situation of *yeiush* and *shinui reshus*, and various authorities maintain (in other contexts) that a public entity is obligated to adhere to such standards of meticulous conduct.[11]

(As usual, in this article we are discussing the halachos primarily as they would apply to Jews.)

- [1]Reuters. South Africans call for UK to return diamonds set in crown jewels.
<https://www.reuters.com/world/africa/south-africans-call-uk-return-diamonds-set-crown-jewels-2023-05-04/>
- [2]Rambam Hilchos *Gzeilah Va'veidah* 1:5; Sefer Hamitzvos *asei* 194; Sefer Hachinuch mitzvah 130; Smag *asei* 73.
- [3]All Hail Seizure: May Government Expropriate Property? Bais HaVaad Halacha Journal. Aug. 12, 2021.
- [4]Rambam Hilchos *Gzeilah Va'veidah* 5:13.
- [5]Rambam Hilchos *Gzeilah Va'veidah* *ibid*.
- [6]Shulchan Aruch C.M. 360:5. Cf. Pis'chei Choshen Hilchos *Gneivah Ve'ona'ah perek 2 se'if 2* and n. 4.
- [7]Rambam Hilchos *Gzeilah Va'veidah* 1:5. Cf. Shulchan Aruch *ibid. se'if 1*; Pis'chei Choshen *ibid. se'if 9*.
- [8]Erech Shai *ibid*. Cf. Pis'chei Choshen *ibid. n. 32*.
- [9]Shulchan Aruch *ibid. 369:5*. Cf. Ketzos Hachoshen *siman 259 s.k. 3*; R' Zalman Nechemia Goldberg, *Ha'atakas Kaletes Lelo Reshus Habe'alim*, Techumin 6, os 14:1.
- [10]Shulchan Aruch *ibid. 353:3, 356:3, and 361:4*. Cf. Pis'chei Choshen *ibid. se'ipim 14-15 and perek 3 se'ipim 18-20*.
- [11]See Shu"t Machazei Avraham *cheilek 2 C.M. siman 1*; Shu"t Pe'as Sadecha *siman 155 (pp. 323 and 328-29)*.