

## The Law of Return: Must One Give Back Lost Property When Halacha Doesn't Require It but Secular Law Does?

Adapted from the writings of Dayan Yitzhak Grossman

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*The Washington Post* reports:

Robert Withington thought he hit the lottery when he found a bag of about \$5,000 in cash in the parking lot of a Connecticut bank. But police in Trumbull, Conn., say the 57-year-old man's good fortune in May came in the form of thousands of dollars of the town's tax money in a deposit bag marked with the bank's insignia. Months after what he thought was a lucky and lucrative morning, Withington has been charged with third-degree larceny...Withington contends he did not see anything on the bag of cash indicating that it had an owner. He told the Trumbull Times that this was a case of "finders keepers"...Trumbull Police Lt. Brian Weir told The Washington Post in a statement that the bag of cash "contained numerous documents that identified the owner of the contents as the Town of Trumbull," and that Withington acknowledged he had taken the money on May 30. "He kept the bag, believing that he had no obligation to return the bag to its rightful owner," Weir said. If convicted, Withington could face between 1 to 5 years in prison and a \$5,000 fine, according to state attorneys.[1]

The halachos governing the obligation to return lost property and the prohibition against keeping it do indeed revolve around the presence of features that can identify the property's owner (*simanim*); in this article, however, we consider the halachic obligation to return lost property in cases where classic halacha doesn't require it but local secular law does. (As usual, we consider a case where all parties—loser and finder—are Jewish.)

The obligation to obey the law and return lost property under the principle of *dina demalchusa dina* ("the law of the kingdom is the law"—i.e., the halacha recognizes governmental law as binding), even where this would not be required by classic halacha, e.g., where the owner can be presumed to have lost hope (*yeiush*), was first articulated by the Mordechai[2] and subsequently codified by the Rama.[3] A cognate obligation to return *stolen* property in a case where classic halacha would not require it but secular law does is stated by the Trumas Hadeshen,[4] and subsequently codified by the Rama as well.[5]

There is, however, a major dispute among the *Acharonim* about the applicability of the principle of *dina demalchusa dina* to disputes between Jews. The Rama rules that the principle applies to any law that is "for the benefit of the inhabitants of the country" (*letakanas bnei hamedinah*),[6] whereas the Shach is vehemently opposed to such a broad interpretation:

Where did he find this, that *dina demalchusa dina* applies to that which is for the benefit of the inhabitants of the country even against the law of the Torah?...Where should we draw the line? If so, let us

say with regard to all their laws that they are for the benefit of the inhabitants of the country!...[7]

Many *poskim* understand that the Rama indeed maintains that *dina demalchusa dina* is applicable to disputes between Jews, even where it contradicts Torah law;[8] according to this view, the Rama's rulings that one must return lost or stolen property when local law requires it but halacha doesn't require no further explanation.

But the Shach struggles to reconcile the various rulings of the Rama that seem to indicate that we do indeed apply the principle of *dina demalchusa dina* to disputes between Jews even in cases where non-Jewish law contradicts Torah law, with the Rama's stated view that this cannot be so.[9] With respect to the Rama's ruling that stolen property must be returned to its owner when the law, but not halacha, requires it, the Shach notes the Rama's wording that this is because "it is customary now to return any stolen item," which he explains to mean that this is customary even among Jews. He explains that although we do not follow "an inferior custom" (*minhag garua*) that contradicts Torah law, this practice is rooted in an actual Jewish enactment to this effect, and that "the generation" certainly has the power to make such enactments, particularly since this is in accord with the (non-Jewish) legal standard.[10]

(This doctrine of the Shach that *dina demalchusa dina* is applicable to disputes between Jews even when it contradicts Torah law, if compliance with the law in question has become customary, is invoked in another context by R' Yitzchak Shmelkes. He rules that a law that prohibits the reprinting of someone else's writings is binding upon Jews even if we assume that the law contradicts Torah law (which he subsequently notes may not actually be the case), because the custom is indeed to refrain from such illegal reprinting out of fear of the government.[11])

As noted above, the Shach is only willing to accept the custom to return stolen property even when not required to do so by Torah law, which he considers a *minhag garua*, based on the assumption that this custom is rooted in an actual enactment. But the Ketzos Hachoshen argues that such a custom is certainly not a *minhag garua*, but on the contrary, "a good and upright custom" (*minhag tov veyashar*), because in the cases in question, the halacha acknowledges that despite the absence of a judicially enforceable obligation to return the property, there is nevertheless an ethical (*lifnim mishuras hadin*) obligation to do so.[12]

A similar approach to the ruling of the Rama that a secular law requiring the return of lost property is binding even where this would not be required by the halacha is taken by the Chasam Sofer's grandson R' Shimon Sofer:

It appears that although if the law of the government is against the law of the Torah we do not rule *dina demalchusa dina*...nevertheless, if uprightness (*yosher*) obligates doing a certain thing under "You shall do what is fair and good,"[13] and by the power of *dina demalchusa* it is an established law, in such a case *dina demalchusa dina*.

Paralleling the argument of Rav Shmelkes cited above, he proceeds to

extend this principle to intellectual property rights:

And according to this, straight thinking (*haseichel hayashar*) teaches us that because the author of a Torah work toiled and exerted himself in Torah to the point that he achieved some innovation, and he troubled himself in this matter, it is appropriate that his children and heirs should receive any available benefit from this. And it would please the innovator as well for his heirs to benefit from this, and the proof that this is a great principle of fairness is the fact that their legal system (i.e., that of the non-Jews) codifies this as established law; if so, it is obvious that *dina demalchusa dina* is applicable here...[14]

With respect to the basic question raised by the Shach—why laws requiring the return of lost or stolen property to its owner are binding upon Jews, despite the general principle espoused by the Shach et al. that *dina demalchusa dina* is not applicable to disputes between Jews where secular law contradicts Torah law—R' Shimon Greenfeld (the Maharshag) offers an alternate answer: Property that according to Torah law *belongs* to Reuven cannot be taken away from him and given to Shimon based on non-Jewish law, but if Reuven wishes to *acquire* property that is currently ownerless according to Torah law, *dina demalchusa dina* may bar him from doing so.[15]

[1]Timothy Bella. He Found \$5,000 In A Parking Lot And Kept It. Now He Could Go To Prison. The Washington Post.  
<https://www.washingtonpost.com/nation/2023/08/30/connecticut-5000-cash-bag-larceny-withington/>

[2]Mordechai Bava Metzria beginning of Eilu Metzios *siman* 257.

[3]Shulchan Aruch C.M. 259:7.

[4]Trumas Hadeshen *cheilek* 1 *siman* 309, cited in Darchei Moshe C.M. end of *siman* 356.

[5]Shulchan Aruch *ibid.* *se'if* 7.

[6]Shulchan Aruch C.M. 369:8,11, and cf. 73:14 (see Shach below).

[7]Shach *ibid.* *siman* 73 s.k. 39.

[8]See this author's The Solution to the Problem or the Problem Itself? Halachic Perspectives on Rent Regulation. The Journal of Halacha and Contemporary Society, Number LXXXVI Sivan 5781/June 2021, pp. 78-84, and cf. Mishpat Hatzava'ah (Second Edition 5765) Vol. 1 pp. 369-74.

[9]Shach *ibid.*

[10]*Ibid.* *siman* 356 s.k. 10.

[11]Shu"t Bais Yitzchak Y.D. *cheilek* 2 *siman* 75 os 5 (and cf. *ibid.* C.M. *siman* 80).

[12]Ketzos Hachoshen *siman* 259 s.k. 3. Cf. Shu"t Maharsham *cheilek* 5 *siman* 45 end of the first paragraph and Mishpat Shalom 194:2 s.v. *Klal*; Mishpat Hatzava'ah *ibid.* pp. 403-04 s.v. *Veyeish lehosif*.

[13]Dvarim 18:6.

[14]Shu"t Hisorerus Teshuvah *cheilek* 1 *siman* 232.

[15]Shu"t Maharshag (Yerushalayim 5744) *siman* 126 p. 127.