

1) The Law of Rav Huna

The Mishnah implies that by compensating the owner, a guardian avoids having to take certain oaths.

Rav Huna teaches that, nonetheless, the court administers an oath to this guardian "that the deposit is not in his possession."

2) The Challenge to the Law of Rav Huna

The 4 Cases of the Mishnah – "Lending on collateral"

Scenario

A lender lends money on collateral. The lender loses the collateral...

Ruling

	Scenario	Ruling
Case 1 "Beginning of the beginning"	Lender: I lent you one sela, whilst your collateral was only worth one shekel. Hence, you still owe me one shekel. Borrower: No, my collateral was worth one sela too. I don't owe you anything.	Exempt from an oath
Case 2 "End of the beginning"	Lender: I lent you one sela, whilst your collateral was only worth one shekel. Hence, you still owe me 1 shekel. Borrower: No, my collateral was worth three dinars. I only owe you one dinar.	Obligated to swear and pay
Case 3 "Beginning of the end"	Borrower: You lent me one sela, and my collateral was worth two sela. Hence, you owe me one sela. Lender: No, your collateral was only worth one sela. I owe you nothing.	Exempt from an oath
Case 4 "End of the end"	Borrower: You lent me one sela, and my collateral was worth two sela. Hence, you owe me one sela. Lender: No, your collateral was only worth five dinars. I only owe you one dinar.	Obligated to swear and pay

Clarifying the Mishnah's Conclusion:

“Who swears? The one in possession of the deposit immediately prior to its loss [i.e., the lender].”

In Case 4, it is obvious that the lender makes the oath – he is the one partially admitting to the borrower's claim.

In Case 1, there is no obligation for an oath – the borrower totally denies the lender's claim.

In Case 2, essentially the borrower should be making the oath; he is the “modeh bemiktzas.” Nonetheless, the Mishnah is teaching us that the oath is transferred to the lender, lest the lender produce the deposit after the borrower's oath and refute the borrower.

3) Interpreting the Mishnah's Concern:

“Who swears? The one in possession of the deposit immediately prior to its loss [i.e., the lender]. For if the borrower shall swear, the lender might subsequently produce the deposit.”

Rashi: We are afraid that the borrower will be refuted and deemed a liar.

Rabbeinu Chananel: Why are we protecting the rights of a potential liar? On the contrary – if we obligate the borrower to swear, the oath will ensure that he will tell the truth!

Rather, the Rabbis' concern was that the oath of the borrower would become a “vain oath.”

Resolution for Rashi: Rashba – We don't suspect the borrower of intentionally telling a lie. Rather, he might mistakenly assume the wrong value for the deposit.

4) Resolutions for R' Huna

- **Hypothetical Resolution: Maimonides**, The Laws of Borrowing and of Entrusted Objects 6:1

“The following rules apply when an unpaid watchman says, ‘I desire to pay and not to take an oath’: **If the entrusted article is of a uniform type** and it is possible to purchase such articles in the marketplace ... **he may pay** the value of the article **and is excused from taking an oath.**”

“**If, however, the entrusted article was ... not easily available for purchase in the marketplace**, we suspect that the watchman coveted it for himself. **We therefore require him to take an oath** as instituted by our Sages ... **that the entrusted object is no longer in his possession.** Afterwards, he must make restitution.”

“The same law applies to other watchmen ... The rationale is that we suspect that the watchman coveted it for himself.”

- **Challenge (Ritva):** The Mishnah makes no specification about an item which is easily attainable in the marketplace. The absence of this distinction implies that the Mishnah's ruling applies equally regarding all types of items.