

The Mishnah Revisited

	<p>המפקיד אצל חבירו בהמה או כלים, ונגנבו או שאבדו:</p> <p>שילם ולא רצה לישבע – שהרי אמרו שומר חינום נשבע ויוצא – נמצא הגנב משלם תשלומי כפל, טבח ומכר משלם תשלומי ארבעה וחמשה. למי משלם? למי שהפקדון אצלו.</p> <p>נשבע ולא רצה לשלם, נמצא הגנב משלם תשלומי כפל, טבח ומכר משלם תשלומי ארבעה וחמשה. למי משלם? לבעל הפקדון.</p> <p>If one deposits with his friend an animal or utensils, and they were stolen or lost, and the guardian paid and did not want to swear – for the Sages have said that an unpaid guardian may swear and thereby fulfill his obligation – when the thief will be found, he must pay the “double payment”; if he slaughtered or sold the animal, he must pay a “fourfold or fivefold payment.” To whom shall he pay? To the custodian.</p> <p>If, however, the custodian swears and does not want to pay, then when the thief will be found, he must pay the “double payment”; if he slaughtered or sold the animal, he must pay the “fourfold or fivefold payment.” To whom shall he pay? To the owner of the deposit.</p>
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1) The Four Guardians

	פשיעה Negligence	גניבה ואבידה Lost or Stolen	אונס Accident
שומר חינום The Unpaid Guardian	Liable	Exempt. Must provide proof.	Exempt. Must provide proof.
שומר שכר The Paid Guardian שוכר The Renter	Liable	Liable	Exempt. Must provide proof.
שואל The Borrower	Liable	Liable	Liable

2) “If one deposits with his friend an animal or utensils” (33b)

Why are two examples (animals and utensils) necessary in the Mishnah?

3) **“ and the guardian paid and did not want to swear” (34a)**

Did he pay, or did he pledge to pay? (R' Yochanan)

4) **“ and the guardian paid and did not want to swear” (34a)**

Did he pay voluntarily, or was he legally mandated to pay? (Rav Papa, Rav Zvid)

5) **“When the thief will be found, he must pay the ‘double payment’; if he slaughtered or sold the animal, he must pay the ‘fourfold or fivefold payment.’”** (Maimonides, R' Akiva, R' Yochanan ben Zakkai, R' Meir)

6) **“To whom shall he pay? To the custodian.” (34a)**

Why? And how did the owner convey something that doesn't yet exist? (Rava)

7) **When the custodian opts to pay, is he entirely exempt from swearing? (34b)**

Rav Huna's Oath

8) **Case Study:**

Shimon is traveling to Jerusalem. Reuven gives Shimon a large sum of money to deliver to Levi there. Shimon places the money into his front pant pocket. Upon arriving in Jerusalem, he realizes that the money is lost. (Shevet Halevi - R' Shmuel Vosner, Bnei Brak (born 1913))

“We will return to you, Hamafkid”