



# Business weekly

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## STORYLINE

### forgiving partner

By Rabbi Meir Orlan

Halacha Writer for the Business Halacha Institute

Jerry Gross was a wholesale food distributor. His neighbor, Feivel Klein, ran a small grocery store. When Jerry would stop by to take his occasional order, the visit was more social than business.

"How are things going?" Jerry asked. "It's tough lately," Feivel lamented. "My daughter became engaged recently and I don't know how we'll make the wedding." Jerry checked the records; Feivel owed \$5,378 from a few months before.

"You have an overdue balance of \$5,378," Jerry said thoughtfully.

"I know," replied Feivel apologetically, pulling out the recent overdue bill.

"Let me see it," said Jerry. Jerry took an official stamp out of his attache case and stamped the bill, "Paid."

Feivel look at him, puzzled, and asked, "What's that all about?"

"A wedding gift," Jerry answered. "Forget about the bill; consider it paid."

"What about your partner, Ben?" asked Feivel. "Does he agree to this?"

"Ben and I rely on each other to operate the business," said Jerry. "For decisions less than \$25,000, we decide independently." Back in the office, Jerry informed Ben: "A client of ours, Feivel Klein, owed us \$5,378. I cancelled his bill."

"I don't recognize his name," said Ben. "Is he a steady client?"

"Not really," said Jerry. "He orders every now and then."

"Then why did you cancel it?" asked Ben. "He's my neighbor," said Jerry. "He's making a wedding soon and in financial need. I told him it was a wedding gift."

"That's nice of you," said Ben. "But I could also use the money. You had no right to

cancel that bill unilaterally."

"Sorry," said Jerry, "but we make small business decisions unilaterally all the time." "This isn't exactly a 'business' decision," argued Ben. "You just wanted to be nice to your neighbor."

"Well, I already cancelled the bill," said Jerry. "So there's not much to do now."

"Then it should be a gift from you alone," said Ben, "and you should pay me my half."

"We never squabble over each other's decisions," replied Jerry. "Do you remember the shipment of premium chocolate you ordered that we had to sell at half cost? That loss amounted to three times this bill!"

"That's not the same," said Ben. "That was a business decision that didn't work out."

"And what about when you donated a full page ad to your shul journal?" replied Jerry. "That was for your shul, not mine."

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## FROM OUR HOTLINE

Submitted by  
C. B.

### hit and run

A family I babysit for often asks me to take their car to drive the kids around. One child asked me today to drive her to a friend's house. I was happy to get out, so I agreed and took her in her mom's car. On the way home, someone hit me and drove off.

**Q: The parents told me not to worry about it; they will file an insurance claim to pay for repairs. I'm wondering whether I'm halachically obligated to pay them.**

**A:** Since you were happy to use the car for your own sake (see Nesivos 72:17), you are a shoel. A shoel is generally liable for whatever happens to the object, even if the damage results from circumstances beyond the borrower's control. An exception to this principle is *maisa machmas melacha* – lit. 'it dies as a result of work'. There is a disagreement amongst the Poskim regarding the definition of this principle. Shulchan Aruch (C. M. 340:3)

maintains that if a person borrowed an animal to take it on a specific path and bandits came and took it from him, he is exempt. The rationale is that the borrower is exempt from liability for anything that typically happens while using the borrowed object for the purpose for which it was borrowed. Rema follows a second opinion and holds that this exemption applies only when the object dies or breaks because of the function for which it was bor-

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"It's still not comparable."  
 "I don't know why not," said Jerry, "Let's talk to Rabbi Dayan."  
 Jerry called Rabbi Dayan and asked to make an appointment. "Come over with Ben tomorrow night," said Rabbi Dayan, "and bring your neighbor, as well."  
 Jerry, Ben and Feivel met with Rabbi Dayan. Jerry explained what had happened. "I don't see how my decision to cancel the bill is different from any other business decision that resulted in a loss," he concluded.  
 "It is different," explained Rabbi Dayan. "A partner is empowered to make decisions that are for the purposes of the business. This includes even decisions that result in loss and advertisements for the benefit of the business. However, he is not empowered to make decisions that are motivated purely by personal interests or that extend beyond the nature of the partnership (C.M. 176:10). If he does do this and the decision proves profitable, he must share the profit with the partner. If it causes a loss, he is responsible to compensate the

partner (ibid.)."  
 "So I have to compensate Ben for his half of the bill that I cancelled?" asked Jerry.  
 "If it were not possible for Ben to recover his half, you would have to (Rama 176:11)," said Rabbi Dayan. "However, in this case, Feivel still owes him the money and should pay."  
 "What do you mean?" asked Feivel. "The bill says 'Paid!'"  
 "That is true," answered Rabbi Dayan. "However, as I mentioned, one partner does not have the right or ability to cancel another partner's share in a loan when not motivated by business considerations. If he does, only his own share is cancelled, but not the partner's (C.M. 77:77 and Pischei Teshuva 77:4)."  
 "Thus," summarized Rabbi Dayan, "since Jerry cancelled the loan without just business cause, Ben's half is not cancelled, and Feivel must still pay him. If Ben is unable to collect because of the cancellation, Jerry must pay him for having caused this damage (Pischei Choshen, Shutfim 7(51))."

rowed, e.g. a plow horse dies while plowing. A car accident with a borrowed car meets the first definition of maisa machmas melacha, but not the second. Most poskim follow the second opinion (Shach 340:5) and it would be advisable to at least settle with the owner. Your case is slightly different since you did not secure permission before using the car. Although according to some opinions you were justified in taking it without clear permission (Shach 358:1, see Minchas Pitim 358:1), it is still questionable if you qualify for the exemption of maisa machmas melacha. Many Poskim note (Drisha C. M. 342; Mekor Chaim [Chava Yoer] O.C. 14) that the exemption is limited to cases where one asked to borrow the object. It does not apply where one is permitted to use an object but did not secure permission. Maisa mach-

mas melacha assumes that the owner knew what would be done with his object; this awareness is the basis of the borrower's exemption. In contrast, when someone is permitted to borrow an object without first obtaining permission, he assumes all the risk even if the object is maisa machmas melacha since he did not obtain the owner's permission ahead of time. However, others apply the exemption even if the permission of the owner was based on a legitimate assumption (Be'er Heitev O.C. 586:4, see Shaarei Teshuva ibid and Yam shel Shlomo Bava Kama 1:28). Consequently, since in addition to all the above mentioned reasons you took the car without first receiving permission, it is proper that you settle with the owner on a mutually agreed compromised payment for the damages.

**Please contact our confidential hotline with your questions & comments**

877.845.8455 [ask@businesshalacha.com](mailto:ask@businesshalacha.com)

# MONEY MATTERS

## business competition week #7

**Q: May I advertise my product's advantages over another's, stating his name?**

**A:** This is permitted if the information is true and that you are careful to avoid geneivas daas (misleading) and lashon hara. For example, it would be misleading to compare your product equipped with optional add-ons against your competitor's basic

product, when he provides the same add-on features. To compare the low price of your basic model against the high price of his fully-loaded model is equally misleading. However, if you are running a sale you may compare your sale price to his full price if you note "sale" and "regular" price. The customer can easily check if the competitor is also running a sale now (C.M. 228:11).

Writing derogatory statements about your competitor is lashon hara. If you outperformed your competitor in a customer survey, you can advertise that, but if the competitor was rated dismally, publicizing his result is lashon hara. Even if information is readily available, it is still prohibited if your intention is to disparage him or gain from his failure (Chofetz Chaim Lashon Hara 2:3).

# YARCHEI KALLAH IN MIAMI BEACH

**Kosher Competition:**

Encroaching on another's deal

Opening two similar restaurants or learning institutions in the same area

**Friday, December 31st and Sunday, January 2nd**

Shacharis 7:45 a.m., followed by program until 12:00 pm

*Breakfast will be served*

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