

# Insights into Halacha

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## The Mishlo'ach Manot Conundrum: The Complicated Case of the Glass Cases

I recently received an interesting sheilah from my old chaver, Chester 'Zeke' Meyerfeld, one that surprisingly actually impacts many of us. It seems his creative daughter, always with an eye to the aesthetic, started a Pre-Purim business of baking and delivering artistically decorated and designed, delicious Mishlo'ach Manot. In order to deliver these home-baked goodies, proper glass containers are needed in abundance. The issue is that the only semi-local store that can fit the bill for selling such copious amounts of jars and jugs is IKEA, which, as Swedish-sourced, does not have a Jewish owner.

This would mean that all of these dishes, certainly as they are being used for food consumption, would require Tevila, being dipped in the Mikva. The only questions here are - by whom and at what point? Would she be required to pre-dip all of these keilim in the Mikva before packaging her 'Sweet Shoppe' baked goods in them? Or is the obligation truly on the receiver? If the latter is correct,

would it even help if she decided to do Tevilat Keilim?

It actually turns out that there is no one correct solution to this interesting dilemma. But first some background is in order.

It is important to note that this sheilah is exclusively about upon whom the obligation of Tevila is incumbent. As many Poskim emphasize, this sheilah does not affect the permissibility of the actual food that is placed in the kli, even one iota.

### Kashering and Tevilat Keilim

The Biblical source for requiring the kosherization of used pots from a non-Jew is in Parshat Matot after the War with Midyan, when Klal Yisrael was commanded to kasher their spoils of war that were used for food preparation. "This is the rule that Hashem commanded Moshe: As far as the gold, silver, copper, iron, tin and lead are concerned, whatever was used over fire must be made to go through fire and purged, V'TAHEIR - and they will become pure (kosher). Yet, it must also be purified in Mikva water. In addition, that which was not used in fire must pass through water."

The Gemara in Avoda Zara explains that the extra word V'TAHEIR teaches us that there is additional type of "kashering" needed for new (unused) utensils obtained from a

non-Jew that does not involve purging with fire or boiling water, but rather only dipping in a Mikva. Although there is some debate among the Rishonim whether this obligation is d'Oraita or d'Rabbanan, all agree that Tevila is necessary, not only for metal utensils, but according to the Gemara's conclusion, for glass utensils as well (d'Rabbanan), since they can be melted and reshaped into new utensils.

### **Only Klei Seuda Need Tevila**

However, there are certain qualifications that the Gemara establishes for this Tevila, including that only KLEI SEUDA – utensils used in food preparation, serving, and dining require Tevila, as well as only when there is an actual change of ownership from the non-Jew to the Jew. Meaning, new cutlery that was loaned or borrowed from a non-Jewish neighbor or even purchased pinking shears do not need Tevillah.

Tosafot and the Rosh cite Rashbam, who qualifies the qualification: If one borrows a food utensil from a Jewish friend who had purchased it from a non-Jew, the first Yid is the one who needs to Tovel the utensil. He explains that although the second Yid borrowed it, nonetheless, once the first Yid purchased it for a food-related purpose, he already had a chiyuv to Tovel it.

However, the Hagahot Ha'Ashiri points out that this is only true if the first Yid intended it 'L'Tzorech Seuda' – for food-related purposes, otherwise, if he used it for cutting parchment (presumably the utensil under discussion was a knife), it does not need Tevila. The Tur and Shulchan Aruch codify this as the halacha. The Rama points out that if he purchased said knife to cut parchment and therefore it was exempt from Tevila, but later decided to use it for his food prep, at that point it must be immediately Toveled – prior to using it L'Tzorech Seuda.

The Beis Yosef, and ruled accordingly by later Poskim, including the Taz and Pri Chodosh, paskens that the same Tevila exemption applies to Kli S'chora – utensils purchased from a non-Jew in order to sell, i.e. merchandise – that the original Jewish buyer/seller does not need to Tovel it. The reason is since the utensil is only in his possession temporarily, and he does not intend to use it, but rather exclusively to sell it to another, it only becomes obligated in Tevila upon its purchase L'Tzorech Seuda. Hence, in such a case, the final purchaser – meaning the one who intends to use it for food prep, is mandated to perform the Tevila.

## **Borrowing From a Yid**

Complicating matters, there is some debate among the Poskim in the following scenario. What would the halacha be if we add a lender to the case? The Shach and Taz cite the Isur v'Heter, who although agreeing that when one purchases a knife for parchment cutting it does not require Tevila, nonetheless differentiates when referring to a case with a lending middleman. In such a case, where the first Jew purchased it from a non-Jew for parchment purposes and then the second borrowed it L'Tzorech Seuda, the Isur v'Heter maintains that since the first one could have decided to use it L'Tzorech Seuda, it creates somewhat of an obligation for Tevila, and the second one (the borrower) should do Tevila - as he is the one who is now actively using it L'Tzorech Seuda.

However, as this notion is not so clear-cut, both the Shach and Taz maintain that this Tevila should be performed without a bracha. The Taz advises that when lending this kli out, he should inform the borrower that he now needs to Tovel it.

On the other hand, the Pri Chodosh argues against this approach entirely, pointing out that while the utensil was in the lender's possession it was exempt from Tevila due to its being used for parchment purposes, and

later on, although being used by the borrower L'Tzorech Seuda, as it was merely borrowed, and not actually his, it is still exempt from Tevila.

Later Poskim disagree as to practical halacha in this case. The Pri To'ar, Aruch HaShulchan, and Zivchei Tzedek side with the Pri Chodosh, maintaining that no Tevila is necessary in the case of a borrower L'Tzorech Seuda, whereas the Kitzur Shulchan Aruch, Chochmat Adam, Pischei Teshuva, and Ben Ish Chai hold that we should be machmir and Tovel it without a bracha. However, they are more lenient concerning glassware (than regarding metal utensils), as everyone holds they are only mandated in Tevila d'Rabbanan. Hence, they conclude that in case of need, or where one is concerned it may break, etc. we can rely upon the more lenient opinion.

With all of this in mind, we can attempt to address our original sheilah.

## **Chassan Tisch**

Perhaps the closest and most widely-quoted precedent to our case is a teshuva from Rav Chaim Segalovitch, Moreh Tzedek in Vilna in the late 1800s, in his Shu"t Mekor Chayim. He addresses the sheilah of one who buys and intends to gift a Chatan a sterling silver Kiddush cup (becher) at a Sheva Brachot, and

places it proudly on the table in front of the Chatan – whether it can be used without Tevila as the Kos shel Bracha for the Sheva Brachot. The Mekor Chayim rules that it may indeed be used without Tevila.

His reasoning is that the one who originally purchased it from the non-Jew did so with the sole intention of gifting it to the Chatan as a “Drasha Geshank”, and hence, was never obligated to Tovel it. As he gave it as a present at the Sheva Brachot and placed it out for all to admire, it still has not yet become the property of the Chatan. As such, he maintains that not only is it similar to the case of one who borrowed it from another Jew, but halachically actually better.

He explains that the Isur v’Heter mandated Tevila in the case of the borrower because the earlier buyer, although he technically used the knife for parchment purposes, nonetheless could have changed his mind at any time, and actually used it to cut his meat if he so wished. Hence, the Isur v’Heter was machmir that Tevila needed to be done. Yet, in the case of the Chosson becher, as it was purchased exclusively to give as a specific gift, there is no possibility that the buyer may come to first use it, the Mekor Chayim maintains that even the Isur v’Heter would agree that Tevila is not mandated at that

time, but rather only once the Chatan takes it home from the Sheva Brachot.

## **Selling and Gifting**

Based on the precedent of the Mekor Chayim’s ruling, several contemporary Poskim, including Rav Shlomo Zalman Auerbach, the Minchas Yitzchak, and Rav Shmuel HaLevi Wosner, rule that one who sells or gifts (new) items, should not Tovel them before selling or gifting them. Rav Shlomo Zalman and the Minchas Yitzchak add that even if one would decide to do so, the Tevila would not work, as at the time it was exempt from Tevila, and hence the recipient would need to Tovel it again anyway. This is also how Rav Tzvi Cohen, in his classic sefer Tevilat Keilim, concludes l'maaseh.

Rav Yosef Shalom Elyashiv is widely quoted as holding this way as well, with a slight qualification regarding glassware. In his opinion, in that specific case, if the purchaser/gifter decided to pre-Tovel it, then the recipient would not need to re-Tovel it, as Tevilat Keilim for glassware is d'Rabbanan. However, his son-in-law, Rav Chaim Kanievsky, citing the Chazon Ish, maintains that there should be no difference between types of utensils, and if the gifter Toveled it, it would need to be re-Toveled by the recipient (just without a bracha).

Other Poskim who rule this way, that the recipient is the one who would need to Tovel it, include Rav Avigdor Nebenzahl, Rav Pesach Eliyahu Falk, Rav Yisroel Belsky, Rav Ezriel Auerbach, Rav Sroya Delilitzky, and the Rivevos Efrayim.

## **Canned Goods and Pickle Jars, etc.**

There is another potential precedent for this ruling. Around seventy years ago, Rav Baruch Lazerovsky, Rav in Philadelphia, wrote a brief teshuva in Kovetz HaMaor regarding jars of food that people purchase, heat-up and eat the food straight out of the container. He maintained that since they are being purchased to eat, these cans and jars should be considered L'Tzorech Seuda, and hence mandate Tevila. Why then, he asked, does no one Tovel these containers? He concluded that he is writing this in a public forum in order to trigger public debate on the topic from the Rabbanim of the time, a goal in which he succeeded. Rabbanim weighed in on the topic in several major Torah Journals of the time, including Kovetz HaMaor and Kovetz HaPardes.

In fact, the very next issue of Kovetz HaMaor featured a teshuva on the subject from Rav Yechiel Yaakov Weinberg, the renowned Seridei Eish. In it, he makes several prudent

points, including asking rhetorically at what point are these food canisters to be Toveled. Meaning, they were purchased sealed with food inside. Then, after the food is finished, they are thrown out. If so, when are they to be Toveled, if it is indeed mandated?

Citing precedent from several authorities from previous generations discussing similar cases, such as the Pri Hasadeh and the Maharshak, the Seridei Eish additionally points out that people purchase these food products exclusively in order to partake of the food inside, not to actively enjoy the containers. As such, there is no actual problem with eating the food inside these containers, as the containers are not intended L'Tzorech Seuda, but rather L'Tzorech S'chora.

Although in his original teshuva he writes that this rationale is merely a Limud Zechus (justification), as many at the time were purchasing and eating food in this manner, yet when he later printed this teshuva in his responsa, the Seridei Eish added an addendum, citing support for his shita from a brief teshuva of the Maharil Diskin, who rules that it is permitted to drink from a bottle purchased from a non-Jew, as such is not called 'shimush'- personal use L'Tzorech Seuda (but rather L'Tzorech S'chora). He concludes that Rav

Mordechai Gifter, Rosh Yeshivas Telz, agreed with him, as did Rav Yaakov Breisch, the Chelkas Yaakov of Zürich, Switzerland.

In his teshuva, the Chelkas Yaakov wrote that these food dishes are considered Klei Otzar - storage containers, and not Klei Seuda, as they are only used to hold the food. Hence, it is only if the purchaser wishes to use them again, after finishing their initial packaged contents, when these containers would become obligated in Tevila. The Tzitz Eliezer and Rav Moshe Sternbuch rule accordingly, offering similar assessments.

Other Poskim who pasken similarly (although they differ on specific nuances) include Rav Moshe Feinstein, the Shearim Metzuyanim b'Halacha, Rav Shlomo Zalman Auerbach, and Rav Ben Tzion Abba-Shaul. Rav Moshe and Rav Braun maintain that regarding such food containers, since the buyer is truly interested in the food, its packaging is deemed insignificant. Rav Auerbach and Rav Abba-Shaul hold that since the purchaser only intends to use the dish as long as the original food packaged with it remains extant, and then it is thrown out once the food is eaten, proves that it was not meant as a Kli Seuda. All of them agree that in such a case Tevila is not necessary, unless one

intends to re-use them.

The Steipler Gaon ruled in the same vein as well, basing his psak on the Maharil Diskin, explaining that even when eating or drinking from said containers in small amounts at a time is fine, as the edible contents are still from the non-Jew's original filling it, and hence not the recipient Jew's own 'Shimush' to mandate Tevillah.[26]

*Another salient point that many Poskim make regarding this scenario is that the non-Jewish factory sealed the food inside the packaging and since it is not useable in its current format, it is not considered an actual kli. Hence, when the Jew first opens it and makes it useable, it is as if the the Yid 'created' the kli, and hence it does not require Tevila. Several authorities cite precedent to this from the Chazon Ish in Hilchos Shabbos (O.C. 51:11), as to his reasoning why one cannot open certain sealed packages on Shabbos, as doing so would be akin to 'creating a kli'. Others argue that Hilchos Shabbat and Tevilat Keilim are non-analogous. Either way, although deserving mention, as this point is not relevant to our discussion regarding glass dishes for Mishlo'ach Manot, it is not cited in the main body of the article, but rather delegated to a footnote.*

Following this understanding and applying it to our case would come out similar to the first precedent of the Mekor Chayim. As long as these food containers contain their initial food contents, they as a whole, are still considered merchandise – Klei Otzar and L'Tzorech S'chora, and hence, Tevila is not required, unless the buyer wishes to re-use the container for his own personal use after finishing its original contents.

## Use It First

Although the above seems to be the majority opinion, nonetheless, there are other opinions among the Poskim. For example, Rav Moshe Sternbuch raises the issue that as many are unaware of these nuances, when receiving a gift, one may mistakenly think that the gifter was supposed to Tovel it, and hence, the recipient will not actually do so, and instead continue using it without Tevila. As such, the gifter may unwittingly transgress Lifnei Iver, causing a fellow Jew to stumble in his Mitzva observance. Therefore, Rav Sternbuch maintains that it is preferable that before one gifts or sells a utensil to another Jew, he should first Tovel it and use it a bit as his own (meaning he first personally acquires it), and only then gift or sell it.

## Gifter May Toivel

An alternate viewpoint is that in

these cases the Jewish gifter or seller may indeed Tovel the kli. Rav Menashe Klein highlights that Tevila is mandated due to and at the time when a utensil exits the ownership of non-Jew. As such, even if the first Yid may have been exempt from performing this Tevila, that fact should not keep the Tevila from working. He points out that technically speaking, even if a kli accidentally fell into a Mikva, it is still considered Toveled.

*This psak of a kli falling into a Mikva by itself being considered Toveled is first cited by the Bach, citing Teshuvot Moreinu Harav Menachem from Rav Menachem Me'il Tzedek, a late Rishon. Although it seems that this sefer is no longer extant, a collection of his psakim has recently been published titled Nimukei Rabbeinu Menachem M'Mirzburk. Although the Bach argues on this psak, maintaining that Tevila needs kavana, and the Taz implies that it may only work B'dieved, nonetheless, the Shach, Pri Chodosh, Ba'er Heitiv, Bi'ur HaGr"a, Chochmat Adam, Chatam Sofer, and Zivchei Tzedek all rule that this is indeed the halacha.*

Rav Ben Tzion Abba-Shaul rules similarly, that once the kli left the non-Jew's possession, it may be Toveled, even if it is intended to be sold.

Rav Asher Weiss maintains a

comparable stance, explaining that essentially these dishes are actually considered Klei Seuda (as their purpose is to eventually be used L'Tzorech Seuda), but the seller/gifter is technically exempt from Toveling them as his intention in possessing them is merely for selling or gifting them. Ergo, if he decides to Tovel them, it should certainly work. Rav Nissim Karelitz, Rav Ovadiya Yosef, Rav Nosson Gestetner, the Avnei Yashpei, the Mishnat Yosef, and Rav Avigdor Nebenzahl are quoted as holding similarly.

*Long footnote here; anyone interested in the extensive footnotes of this article should check the website.*

This is also the opinion of Mv'R Rav Yaakov Blau, who differentiates between stores in a predominantly Jewish area versus a non-Jewish one. He explains that in a place where the merchandise is almost guaranteed to be sold to a Jew L'Tzorech Seuda, as it has already left the possession of non-Jews, it may already be considered a Kli Seuda. Therefore, the seller may Tovel it for them. He adds that the same would apply to a gifter. Since his intention is for it to be used by the recipient as a Kli Seuda, he may already be Tovel it.

According to the understanding of these Poskim, the seller/gifter would be allowed to Tovel keilim before selling or gifting them, as either way,

the bottom line is that the 'cheftza' of the kli (the utensil itself) was indeed Toveled after leaving the non-Jew's possession.

However, as Rav Karelitz and Rav Weiss point out, if following this logic, the seller will not be able to make a bracha on this Tevila, as he is currently not the one actually obligated to do it. Indeed, as stressed to this author in person by Rav Weiss (as well as borne out from Rav Nebenzahl's teshuvot), this 'Pre-Tovel' is merely a solution, not necessarily a preferred option (unless dealing with someone whom you know will not Tovel it either way), *Rav Karelitz adds that when dealing with a non-religious person, whom you know will not Tovel the utensil, this becomes the preferred option* - as these Poskim still maintain that the Ikar Chiyuv Tevila is still incumbent on the recipient, and not the seller or gifter.

## **Gifter's Obligation**

However, there are other opinions among contemporary Poskim as well. For example, Rav Shmuel Kamenetsky, Rosh Yeshivat Philadelphia, differentiates between a seller and a gifter. He maintains that when a seller purchases merchandise from a non-Jew in order to sell it to another, he has no personal stake to whom he sells it, and it therefore is classified as a Kli S'chora. On the other hand, when one purchases a utensil

specifically to gift it to another, it is already considered his own personal property. Although he decided to give it away as a present, it already was his first. Therefore, Rav Shmuel maintains, the gifter would be obligated to first Tovel the kli – with a bracha, before presenting it to his friend.

Several other contemporary Poskim, including Rav Menashe Klein, Rav Dovid Feinstein, and Rav Shlomo Miller, are cited as ruling accordingly when the gifter places food inside the kli to gift along with it.

*However, regarding the bracha on Tevila, Rav Shlomo Miller differentiates whether the food item actually needs the kli (e.g. applesauce), when a bracha would certainly be mandated in his opinion, as opposed to where it merely serves to store it (e.g. candies or cake), when he holds it should be Toveled without a bracha.*

They explain that the fact that one placed food inside proves that it was already considered his own personal property, as well as L'Tzorech Seuda – all before giving it as a present. Hence, in this case, they mandate the gifter Tovel the utensil prior to gifting it. Several of these Poskim state so specifically regarding Mishlo'ach Manot.

## **Pondering Practicality**

With so many varied shitot in the

Poskim, with some holding that the seller/gifter must do Tevila first, and others maintaining that the giver may do Tevila first, and others asserting that even if they did, it would accomplish nothing and the recipient would need to Tovel the containers again, what should our 'Sweet Shoppe' supplier of Mishlo'ach Manot do? The potential solution of pre-using the containers (and then performing Tevila) would probably not go over too well with the buyers.

Although this author has seen some raise the idea that if one lined the container and only placed the food item in a wrapping, in order that it should not directly touch the container, then it would exempt it from the Tevila issue entirely, Rav Shlomo Zalman Auerbach (among others) strongly asserts to the contrary. He rules that this would not work in our case, as that exception exclusively applies when the utensil does not come into direct contact with food when fulfilling its primary use, not when serving as a simple lining that is anyway supported by the kli itself. Hence, this idea may not be a proper solution on its own merit. If so, what is the preferred option?

Although there is no one-size-fits-all solution to our conundrum, - *Indeed, when posed this question, Rav Chaim Kanievsky replied simply that it is not worth it to send Mishlo'ach Manot in*

*non-Toveled containers, potentially due to the complications inherent in the question. On the other hand, as we know he held akin to his father (the Steipler Gaon) and father-in-law (Rav Elyashiv) that Tevila is incumbent upon the recipient, Rav Chaim may have been referring to the issue of the recipient not realizing that the container still requires Tevila, and possibly unwittingly re-using it. Hence, he likely may have meant that it is not worth doing so, certainly without properly notifying the recipient -* nonetheless, as mentioned previously, when faced with a complex issue regarding who would be required to do Tevila, the Taz wrote a psak that has echoed through the generations, that the giver should make sure to notify the receiver that the kli has not yet been Toveled and that Tevila still needs to be performed.

With this precedent in mind, and as it seems that in our case the majority opinion is that Tevila should be (if not mandated to be) performed by the recipient, this author recommends following Rav Nissim Karelitz and Rav Pesach Eliyahu Falk's sage advise that the Mishlo'ach Manot seller/gifter notify the recipients (with a small note or otherwise) that as per the psak of many contemporary Gedolim the container is not yet-Toveled, and if the recipient would like to use it again, Tevila

would then be required. As noted previously, this would not affect the food's status either way.

Utilizing this method would mitigate potential mix-ups and misunderstandings, as well as foster the friendship highlighted by the Mitzva of Mishlo'ach Manot.

*For any questions, comments or for the full Mareh Mekomot & sources, please email the author: [yspitz@ohr.edu](mailto:yspitz@ohr.edu)*

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**Disclaimer: This is not a comprehensive guide, rather a brief summary to raise awareness of the issues. In any real case one should ask a competent Halachic authority.**

Rabbi Yehuda Spitz's English halacha sefer, "Food: A Halachic Analysis" (Mosaica/Feldheim) containing over 500 pages featuring over 30 comprehensive chapters discussing the myriad halachic issues pertaining to food, is now available online and in bookstores everywhere."

**Ed. note: The footnotes are extensive and that I only included a few of them. Interested parties should find Rabbi Spitz's article online.**