

# The Candy Dish Dilemma

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## 1. The Problem

In recent years, it has become customary in our community for guests to bring gifts to their hosts as a sign of gratitude for the hospitality shown to them. There now exists an entire industry to meet the consumer's demand for such "Shabbos gifts". Sometimes these gifts are a simple plate of candy, where the primary gift is the candy and the plastic or wicker plate is discarded once emptied. For those who are interested in presenting a more generous gift, however, an increasing number of stores now offer beautiful glass or metal candy dishes that are pre-filled with candies. In these cases, the dishes are not intended to be discarded like their simpler counterparts described above. Instead, they are meant to be saved and reused like any other dish in one's home. Generally speaking, the stores purchase the dishes from gentle manufacturers.

The Gemara (*Avodah Zarah* 75b) clearly states that one who acquires "food utensils" from a gentile must immerse them before they can be used. While the Rishonim debate whether this obligation is biblical or rabbinic in nature (see Rashi, ad loc.; Rambam, *Hil. Ma'achalos Assuros* 17:5), all agree that such an obligation exists. Additionally, there is a further dispute amongst the Tannaim whether glass utensils require *tevilah* (immersion) on a biblical or rabbinic level. Ultimately, the *Shulchan Aruch* assumes that glass utensils only require *tevilah* rabbinically. Accordingly, it would seem that the above described candy dishes made from glass would at the very least require *tevilah* rabbinically. In practice, however, most people who receive a candy dish first eat all of the candy from the dish in the normal manner and only later (if at all) immerse the utensil before using it a second time. The problem is that the candies are initially eaten directly from the unimmersed dish, a seeming blatant violation of the halacha. This problem is not discussed by the leading *poskim* because the concept of selling pre-filled dishes that are intended for future use is a relatively new phenomenon.<sup>[1]</sup> There is an abundance of literature on the similar, but different question, of using utensils that are sold as packaging for food and are meant to be discarded after their initial use (see *HaMaor*, ... Continue reading

In this essay, we will outline the proposed solutions and demonstrate that the halachic challenge posed by this practice may prove too formidable to overcome, unless the *tevilah* is done by the store prior to the original sale.

## 1. The Potential Heterim

Having identified the problem above, it is important to present the potential leniencies and evaluate whether their application to a candy dish is compelling.

## 1. The One Time Use Heter

There is a very common misconception that a utensil may be used a single time before requiring immersion. The Rema (YD 120:8) clearly rules to the contrary. The leading *poskim* have debated the status of disposable utensils (e.g. aluminum pans) but have never questioned the requirement to immediately immerse any legitimately long lasting "food utensils" prior to their first use.<sup>[2]</sup> R. Menashe Klein (*Mishneh Halachos* 7:111) argues vehemently, against the majority of leading *poskim*, that the number of times a utensil is used is irrelevant in determining its status as a bona ... Continue reading

## 1. Dry Food

Rav Moshe Feinstein<sup>[3]</sup>, *Le Torah VeHaraah*, issue 2 p. 20, cited in *Tevilas Keilim*, ch. 3 n. 24 was asked about a person who, while eating in somebody's house, discovers that the utensils he has been given have not been immersed. Rav Moshe suggests that the prohibition of eating from a utensil that hasn't been immersed only applies if one is actually using the utensil for a practical reason. If, however, the utensil does not aid in the eating, but is simply used to maintain proper manners (e.g. a plate used to hold dry chicken or kugel where the chicken/kugel can just as easily be eaten off of the table), there is no prohibition to use the utensils. Some have suggested that the same logic may be used to permit using a candy dish that has not been immersed. The dish does not aid in the eating of the candy at all. It is only there because it is not considered proper manners to serve candies directly on the table. However, this leniency is highly questionable for several reasons.

First, candy dishes do in fact serve a practical function. While the function of a candy dish does not match the function of a soup bowl, its utility is undeniable. If jelly beans, for instance, are not served in a bowl or dish, they will roll all over the table. The dish makes the candies easily accessible and keeps them in one place.

Second, it is clear that Rav Moshe would not permit one initially (היחמיר) to eat from dishes that haven't been immersed. Rav Moshe was addressing a specific situation where one finds himself as a guest in a home where the utensils haven't been immersed. In fact, Rav Moshe suggests trying to avoid accepting any such invitation in the first place.

Finally, Rav Shlomo Zalman Auerbach disagrees with Rav Moshe's leniency and rules that a guest may be lenient for an entirely different reason.<sup>[4]</sup> Quoted in *Tevilas Keilim*, ch. 3 n. 20, Rav Auerbach suggests that since the owner of the house is the one who is required to immerse the utensil, and not the guest, we may permit the guest to ... Continue reading

## 1. The Pickle Jar/Coffee Can Heter

The halachic literature that most closely resembles our issue is that of substantial packaging, such as glass pickle jars or metal coffee cans. These are legitimate utensils, yet the overwhelming majority of *poskim*<sup>[5]</sup>. With the notable exception of the *Chazon Ish* have ruled that one is not required to empty their contents immediately upon purchasing them in order to immerse them. At first glance, the candy dish seems to be subject to the same leniency. However, a closer look at the logic for the permissibility of the coffee can and pickle jar will reveal that many (if not all) of the arguments made in the case of the coffee can and pickle jar will prove irrelevant in the case of our candy dish. The following is a comprehensive list of arguments made by leading *poskim* to permit usage of the coffee can and pickle jar without proper immersion. Following each point we will discuss whether the leniency applies equally to a candy dish,<sup>[6]</sup>. It should be noted that in situations where multiple reasons are given to be lenient, the reasons are often not independently accepted. Only the combination of the various reasons can serve to ... Continue reading

1. Rav Shlomo Zalman Auerbach<sup>[7]</sup>. Cited in *Sefer HaKashrus* ch. 4 n. 80 argues that when a Jewish consumer opens a sealed can, he is creating a utensil at that time. Prior to being filled in the factory, the can has sharp edges that make it dangerous to use. Once sealed, the can becomes unusable because the food is trapped inside. Only when the consumer opens the can does it become useful for the very first time. It is therefore considered a utensil made by a Jew, which does not require immersion at all. (See also *Chelkas Yaakov* vol. 2 no. 57 who presents a similar line of reasoning).

This leniency clearly has no application to our case of the candy dish (or to a glass pickle jar). In our case the utensil was certainly usable before being filled in the store, and the Jewish consumer makes no changes to the utensil at all.

2. Rav Shlomo Zalman Auerbach offers another reason to permit usage of a coffee can or pickle jar without *tevilah*. He writes that the consumer never intends to use the jar as a utensil. Therefore, as long as he hasn't decided to use it long term as a meal utensil it is considered as if he is temporarily using merchandise for a meal.<sup>[8]</sup> *Minchas Shlomo* vol. 2 no. 66

This leniency would also not apply to our candy dish. The glass dishes sold in the candy stores typically sell for at least double the price of the same candies sold in a plastic dish. The clear intent is to provide a dish that can be used long term.

3. Rav Moshe Feinstein (*Igros Moshe*, YD 2:40, 137) provides a third reason to be lenient with the pickle jar or coffee can. He argues that in these cases one is only interested in purchasing the food. That fact that it comes packaged in a utensil is insignificant, as the utensil is subordinate (*batei*) to the food. Only when, and if, the consumer decides to use it again, does it become an actual utensil. As a result the Jewish consumer is the one who actually produced the utensil, thereby exempting it from any requirement of *tevilah*. Rav Shlomo Zalman Braun (*Shaarim Metzuyanim BaHalacha* 37:8) similarly argues that the utensil may be deemed insignificant in light of the clear primacy of the food. He points to a Gemara (*Eiruvin* 66b) that states that although one may only use *maaser sheini* funds to purchase food, one may purchase wine in a cask with the *maaser sheini* money. Apparently we ignore the value of the cask when determining how the *maaser sheini* money was spent because it is negligible when compared with the primary status of the wine.

This leniency would also not apply to our case of the candy dish. As noted above, the fancier candy dishes typically cost more than the food they contain. Additionally, someone interested in only purchasing the food can purchase the same food for a fraction of the price in the same store, albeit in a plastic container. It is impossible to argue that the utensil is secondary to the food.

4. Rav Yakov Breisch (*Chelkas Yoav* vol. 2 no. 57) and the *Pri HaSadeh* (vol. 3 no. 109) suggest that the reason we are not required to immerse coffee cans is that the purchaser never intends to purchase the can, only the contents. He cites a comment of the *Taz* (OC 448:3) that we assume a Jew would have no interest in acquiring that which is forbidden. The Jew would never intend to purchase a utensil that he has no plans of immersing, since using it would be forbidden. The fact that the purchaser discards the can after the first use is a clear indication that he has no interest in the utensil. Rav Breisch contends that the Jewish owned factory need not concern itself with the problem of filling the utensil with food because the factory does not have the halachic capacity to effect a proper immersion and the consumer will not be in violation of any prohibition so long as he does not intend to acquire the item.

This leniency would also not apply to our case. The purchaser clearly intends to purchase the candy dish, as is evident from his continued use of the utensil.

5. Rav Yehoshua Leib Diskin, in a brief and cryptic response,<sup>[9]</sup> *Shu"t Maharil Diskin, Kuntres Acharon*, no. 5 par. 136 writes that when one purchases a utensil that is already filled with food, one need not empty its contents immediately since you are using it passively (*shev ve'al taasef*), which is not an active violation of the mitzvah of *tevilas keilim*.

The applicability of this leniency to our case would depend on how one understands it. Perhaps Maharil Diskin means to say that the only prohibition is for a Jewish person to *place* the food *into* the utensil. Using a utensil that already has food is not considered at all problematic. If this is his intention, it would seem to apply equally to our case of the candy dish. The logic for such a ruling would be that the real *issur* of using non-immersed dishes is in placing food into the dishes, not in usage of the dishes during the course of a meal – an assertion that is difficult to accept without substantial proof.

Maharil Diskin may simply mean that so long as one is not actively using the utensil, it does not require *tevilah*. When unpacking groceries, it is not necessary to immediately empty the coffee cans for immersion. Instead, one may put them away in the pantry until the time comes to use it. At that point, though, one may certainly not eat straight from the non-immersed utensil. If this is Maharil Diskin's intention, the candy dish would similarly be prohibited to use at a meal.

6. Rav Moshe Shternbuch<sup>[10]</sup>10. *Tshuvos Vehanhagos* vol. 1 no. 447 writes that the reason we have always been lenient to use pickle jars and coffee cans is that they are technically not considered meal utensils and therefore do not require *tevilah* at all. Only utensils that are used either in the preparation or eating of the food are considered meal utensils. Indeed, Rav Yehoshua Neuwirth<sup>[11]</sup>11. *Shmiras Shabbos Kehilchasah*, ch. 9 n. 49 in revised edition writes that one may only rely on the aforementioned leniency of Maharil Diskin for coffee cans when combining with this additional lenient consideration as well. Rav Neuwirth cites this leniency from the *Misgeres HaShulchan*<sup>[12]</sup>12. On *Kitzur Shulchan Aruch*, 37:6 who rules that any bottle that is neither used during the cooking or eating of a meal is not considered meal utensils and would not require *tevilah*. This additional leniency does not apply to candy dishes since we eat directly from them at the table. Rav Neuwirth implied that Maharil Diskin's leniency insufficient grounds on its own for leniency.

This leniency clearly does not apply to our case of a candy dish which is used at the table during the course of a meal. Rav Shlomo Zalman Auerbach<sup>[13]</sup>13. Quoted in *Shmiras Shabbos Kehilchasah*, cited above ruled that even wine bottles that one does not drink from, but are used to pour wine into smaller cups, are considered meal utensils since they are brought to the table. Certainly a candy dish which is both brought to the table and eaten from directly would qualify as meal utensils.

7. Rav Yechiel Yaakov Weinberg<sup>[14]</sup>14. *HaMaor*, *Kislev* 5715 offers a final reason for leniency in the case of the coffee can and pickle jar. He argues that one is indeed required to empty the can or jar after purchase. However, when emptying there is no prohibition to eat the food as he is emptying from the can/jar. There is also no timeframe within which the can/jar must be emptied. Rav Weinberg argues, therefore, that slow usage over time, where one eats from the jar, is just a slower way to empty it prior to *tevilah*.

While this leniency would seem to apply equally to our case of the candy dish, Rav Weinberg was not comfortable to rely on this logic alone. Instead, he suggests that one have specific intention not to acquire the utensil whenever purchasing a can of coffee or a jar of pickles. In this way, the utensil remains in the possession of the non-Jew and never requires *tevilah*. Clearly, most people who purchase candy dishes have the express intent to purchase the dish along with the candy.

Perhaps Rav Weinberg was not entirely comfortable with this leniency because a clear distinction can be made between one who empties the entire contents of a dish at once and one who brings it to a dining room table to present dessert in an appealing way. The former may not be considered usage, while the latter is certainly considered usage as meal utensils. Indeed, Rav Shlomo Zalman Auerbach<sup>[15]</sup>15. Cited in *Tevilas Keilim*, ch. 4 n. 14 explicitly disagrees with Rav Weinberg's leniency. Rav Auerbach suggests a slightly more nuanced leniency, arguing that there is no prohibition to eat from a container that was pre-filled with food. However, any action taken to use the container as a legitimate utensil, such as heating up the food while still in the container, would be prohibited prior to *tevilah*. While not abundantly clear, it would seem from Rav Auerbach's statement that serving a beautiful candy dish as part of a dessert to a table full of company would be prohibited, as it is an active use of the utensil.

### 1. Store Tovelng

The simplest solution to this problem would seem to be that the store should immerse all of their utensils before filling them with food. Upon closer examination, however, this solution appears to be insufficient. The *Shulchan Aruch* (YD 120:8) writes that one who purchases utensils with which to cut parchment (and not for meal usage) is not obligated to immerse them. The *Taz* (no. 10) cites the *Beis Yosef* who says that the same would hold true even for one who purchases "food utensils" to sell, rather than to use themselves in the context of a meal. Such utensils would be labeled merchandise and not meal utensils and would therefore be exempt from *tevilah*. Rav Yitzchak Weiss<sup>[16]</sup>16. *Minchas Yitzchak*, vol. 1 no. 44 notes that for this reason a store cannot immerse the utensils; they are the store's merchandise. Rav Weiss<sup>[17]</sup>17. *Minchas Yitzchak*, vol. 8 no. 70 explains that it is useless to immerse a utensil that is exempt from the requirement. Immersing it will not exempt it from further *tevilah* after it becomes designated a meal utensil. He proves this assertion from a

depend on whether the primary obligation of *tevilah* is due to bringing the utensil into Jewish ownership or due to removing the utensil from gentile ownership. If the former is true, utensils purchased from corporations should require *tevilah*. If the latter is true they would not require *tevilah*. Rav Hershel Schachter rules that utensils purchased from a corporation should be immersed without a *bracha*, out of concern that there is no *tevilah* requirement when purchasing from a corporation. Rav Schachter's opinion notwithstanding, it seems that the majority of *poskim* rule that utensils purchased from corporations where Jews do not have a controlling interest, would require *tevilah* with a *bracha*.

### III. The Solutions

Even if one concludes, based on the arguments presented, that a nice candy dish indeed requires *tevilah* prior to use, we may still suggest several creative solutions to allow a store to sell glass and metal dishes pre-packed with candy. Some of these solutions may not be very practical and others have halachic weaknesses. Some of these solutions involve the store immersing the utensil prior to filling it while others require no *tevilah* before the first usage.

1. **The solutions that don't seem to work**
2. **No Direct Touching**

The *Aruch HaShulchan* (YD 120:32) rules that any utensil that does not come into direct contact with the food does not require *tevilah*. Some have suggested that one can easily solve our problem by lining the dish with a napkin or plastic to ensure that the utensil does not touch the food. However, *Tevilas Keilim* (ch. 1 n. 7) points out that the *halacha* is not fundamentally about whether the food actually touches the plate, but whether the utensil is a meal utensil. Part of the definition of meal utensil is that it is made to be used with direct contact to the food. Therefore, Rav Shlomo Zalman Auerbach<sup>[21]21</sup>. Cited in *Tevilas Keilim*, ch. 1 n. 7 rules that a utensil that is *primarily* used with a plastic partition between the food and the utensil (such as the holders for bags of milk in Israel) does not require *tevilah* because it is not a meal utensil. But those utensils that are *primarily* used with direct contact between the utensil and the food require *tevilah*, even if a napkin or plastic is used.

2. **Having a Party**

If the store were to use the utensils as meal utensils before selling them, perhaps the store would have the right to do the *tevilah*. This would mean that the employees of the store would have to use each of the candy dishes before selling them. It seems, however, that this option is neither practically nor halachically viable. On a practical level, it is difficult to imagine how a place of business will find a use for such a high volume of utensils. On a halachic level, the status of the utensils depends on their *primary* use. Even if the store uses each utensil once, their primary use for the utensils are for business, thereby labeling the utensils as merchandise for which *tevilah* is both unnecessary and ineffective.

comment of the *Taz* (ibid.). The *Taz* notes a debate among *Rishonim* whether one who borrows utensils from a Jewish storekeeper is obligated to immerse them. Considering the debate, the *Taz* recommends immersing the utensils without reciting a *bracha*. However, the *Taz* states that when the storekeeper ultimately sells the utensils, the purchaser must immerse them again, but without a *bracha*, in deference to the opinion that the utensils did not require immersion when they were immersed the first time. The implication is that if the borrower had no obligation when he immersed the utensils, the purchaser will be required to immerse them again. Apparently, an immersion at a time that the utensil is exempt has no effect whatsoever. We may conclude that *tevilah* of utensils is fundamentally different from *tevilah* to purify an object. When an object is purified through *tevilah*, it is clear that the absence of an obligation does not affect the *tevilah*. However, the *tevilah* of utensils is only effective once the obligation sets in.

Rav Breisch<sup>[18]18</sup>. *Chelkas Yaakov*, vol. 2 no. 57 absolves a store of any responsibility to immerse utensils that it sells to Jews since the store is only using the utensils as merchandise. However, it would seem to be a violation of *lifnei iver* (placing a stumbling block in front of the blind) to sell a utensil that requires *tevilah* to a Jewish consumer who will likely not do so.<sup>[19]19</sup>. For further discussion of this point see (Tshuvos VeHanhagos vol. 1 no. 467) who distinguishes between a situation where the recipient may not immerse the utensil and a situation where he ... Continue reading Since the average recipient of a gift, even if normally scrupulous about immersing utensils, may not realize that the candy dish that came full of candies will require *tevilah* the store bears some responsibility to inform the consumer. Indeed, in an OU document, Rav Hershel Schachter and Rav Yisroel Belsky have ruled that a kosher supervision agency cannot in good conscious put their seal of approval on a product that the consumer is likely to use without realizing that it requires *tevilah*.

Rav Asher Weiss<sup>[20]20</sup>. *Mirchas Asher*, Bamidbar 68:4 disagrees with Rav Yitzchak Weiss and maintains that although a store is exempt from immersing the utensils that it sells, if it does immerse the utensils, the immersion permits the consumer to use the utensil without further immersion. Rav Weiss cautions that it is best that a store that sells utensils not immerse them, since a *bracha* may not be recited for the *tevilah* done by the store. However, given our case of a store that is selling utensils with food already in them, it would seem that the best option may be for the store to immerse the utensils.

1. **Corporations**

An additional lenient consideration may be in determining the status of a publicly owned corporation. *Tevilas Keilim* (p. 64 n. 1\*) cites the ruling of Rav Moshe Feinstein that if Jews do not have a controlling interest in the corporation, even if they are shareholders, the company's utensils are considered to be made by gentiles. On the other hand, Rav Shlomo Zalman Auerbach rules that a corporation is considered an independent entity that is neither Jewish nor gentile. Whether the utensil purchased from a corporation requires *tevilah* may

### 3. Not Acquiring

Rav Shlomo Zalman Auerbach<sup>[22]</sup>, *Minchas Shlomo*, vol. 2 no. 66 rules that if you never intend to acquire the utensil, it is considered ownerless and exempt from the *tevilah* requirement. Once you acquire it, though, rendering it ownerless does not remove the requirement because when you use the item it is clear that you are re-acquiring it. If the customer has in mind not to purchase the utensil, it may never become obligated in *tevilah*. This solution too seems both practically and halachically flawed. On a practical level, it would be difficult to explain to each customer (and each recipient of the dish as a gift) that they should have in mind not to acquire the item. Halachically, it is questionable whether one can specifically pay extra for a nicer dish, bring it home and use it like all his other dishes, and still claim that he has never acquired it.

### 4. Third Party Acquisition

The store may be able to have a third party (perhaps the *mashgiach*) acquire the utensils on behalf of the consumer and then do the *tevilah* for the customer. Although the store does not yet know which customer will buy which utensil, perhaps we may rely on the concept called *breira*, retroactive clarification. In this case, the acquisition is made by the third party for whom we should buy this utensil. The advantage of making the consumer the owner of the utensil prior to filling it is that as soon as the customer owns the utensil, it becomes a meal utensil that is eligible for *tevilah*. One potential problem with this solution is that we only rely on *breira* for rabbinic obligations, not biblical.<sup>[23]</sup> See *Beitzah* 39 While *tevilah* of glass utensils is only rabbinic, which would allow us to rely on *breira*, this solution will not work for metal utensils, which are biblically obligated in *tevilah*.<sup>[24]</sup> It would seem that sets of mishloach manos put together for shul members may be immersed by the members of the mishloach manos committee on behalf of the eventual recipients. Since there is a ...

#### 1. The solutions that are likely to work

##### 2. Relying on Rav Asher Weiss

As noted above, Rav Asher Weiss rules that *tevilah* of merchandise is effective, even if normally not recommended. Given the lack of other options it would seem that Rav Weiss would acknowledge that the store doing the *tevilah* is the best option in our case of a pre-packed candy dish. While the Rav Yitzchak Weiss clearly rejects this possibility, one may choose to rely on Rav Asher Weiss in this unusual circumstance.

##### 2. Special Order

The author of *Sefer Shiurei Halacha Al Purim*<sup>[25]</sup>25, *Mishloach Manos*, p. 36 writes that he asked Rav Shlomo Zalman Auerbach whether, in a situation in which the buyer has paid for the item but not yet done any formal acquisition, the store may then do the *tevilah* for the

buyer. Rav Shlomo Zalman ruled that while payment alone does not effect a transaction, it suffices to turn the utensil into meal utensils. Similarly, *Ohalei Yeshurun* (p. 64 n. 212) cites the ruling of Rav Moshe Feinstein that as soon as a purchaser expresses clear intent to buy an item, it is classified as a meal utensil and is therefore ready for *tevilah*. A viable solution may be to have stores only sell glass and metal candy dishes with advance orders. Once the item is ordered and payment is made, the store can immerse the dish on behalf of the customer. While this may prove tedious for the store, it is a halachically viable option.

### 3. Other Materials

A simple solution is that stores be careful not to use glass or metal utensils in these pre-packaged gifts. There is a wide selection of beautiful dishes that may not require *tevilah* at all. Wooden utensils and pottery utensils do not require *tevilah*.<sup>[26]</sup>26. See *Shulchan Aruch*, YD 120:6-7. If stores limit their stock to those decorative utensils that do not require *tevilah*, they may offer less of a selection but avoid the *tevilah* problem. Indeed, a visit to one of the popular candy stores in the Five Towns reveals that the vast majority of the expensive candy arrangements use dishes that do not require *tevilah*.

### 4. Filling the Utensils with Packaged Goods

Another solution is to fill the utensils with separately packaged goods (e.g. bag of potato chips, individually wrapped sucking candies, plastic bags filled with candy). These items will be eaten from their wrappers, not straight from the dish. However, the utensil should have a sticker indicating that it hasn't been immersed, informing the consumer that it may not be used for direct usage until immersed.

### 1. Opinions of Poskim

Rav Hershel Schachter has ruled that candy dishes require *tevilah* even before the first usage. The recipient is obligated to empty out the contents and immerse the utensil before eating anything from the plate. While this ruling was delivered orally, there is written evidence of Rav Schachter's stringent ruling on this issue. In an OU document<sup>[27]</sup>27. Document A-176 Rav Schachter ruled that a company that wanted to sell pre-filled salt shakers cannot be given a kosher certification because the consumer assumes that the certification permits normal use of the item, while the salt shaker would need to be emptied and immersed before being used. The parallel between the case of the salt shaker and that of the candy dish is clear – both are being sold primarily as a utensil and only contain food to provide for a more complete gift. Both will be used again after the initial product is empty. In both cases, Rav Schachter and Rav Belsky, the two leading *poskim* for the leading *kashrus* organization in America, have ruled stringently. Rav Yosef Eisen reports that this is also Rav Feivel Cohen's view. Therefore, the solutions proposed above seem like the best avenues for selling this type of "Shabbos gift."

