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Tevilat Kelim

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*I wish to make it known to all who read this composition, wherever it says “akum” (pagan)
or more generally “goi” (gentile) it refers to those worshipers of the stars and
constellations... who deny divine providence... It does not at all apply to the people with
whom we live and under whose government we reside. They believe in divine providence...
Let no one deign to think that the terms pagan or gentile that appear herein apply in any
way to the nations with whom we live. [Solomon Luria’s disclaimer in the preface to Yam
Shel Shlomo, vol 2]*

[Author’s disclaimer: In our sources the terms “akum” (pagan), “goi” (gentile), “kuti” (non-
Jew) and “nochri” (foreigner) have been used interchangeably, without regard to the
differences in nuance that native English speakers might wish to attribute to those terms,
and we are aware that copyists did not bother to distinguish one term from the other. Thus it
is always unclear what the precise intent of the author was. We have translated texts with an
eye to the nuance which fits the apparent intent of the author. As we indicate below, we
understand that the laws discussed here relate only to pagans, that is, to the adherents of
polytheism.]

She’elah: Is *tevilat kelim*, the immersion of new and used food utensils acquired from gentiles,
required before use in the home? Is *tevilat kelim* required when acquiring and kashering a gentile
commercial establishment that will be under Jewish ownership?

Teshuvah:

The biblical verses that are the basis for the law of *tevilat kelim* are in the biblical tale of the war
against Midyan. Midyan, like Amalek, is not just any enemy. They are marked for unusual
enmity for drawing Israel into idolatry.¹ When the *Torah* commands the war against Midyan it
states:

כל דבר אשר יבא באש תעבירו באש וטהר אך במי נדה יתחטא וכל אשר לא יבא באש תעבירו במים²
Any article that can withstand fire, you shall pass through fire and they shall be clean,
except that they must be purified with waters of purification: anything that cannot
withstand fire you must pass through water.

¹ Numbers chapter 25 tells the story. Although Moab’s name appears in the opening verse, the punishment is aimed
at the Midyanites both there and in chapter 31.

² Numbers 31:22

While it is possible to claim that the details of this war should be considered specific to this war (גזירת הכתוב), that is not how the verses were treated by the Rabbis. It became a general law applicable to all pagans. The primary rabbinic text is found in *Massekhet Avodah Zarah*.³

הלוקח כלי תשמיש מן העובד כוכבים, את שדרכו להטביל יטביל, להגעיל יגעיל, ללבן ילבן

One who purchases a utensil from a pagan, that which is usually immersed in water should be immersed, that which is normally boiled should be immersed in boiling water, that which is normally heated in fire until it is red hot should be heated in fire.

The *gemara* quotes a *baraita* that states: וכולן צריכין טבילה בארבעים סאה

And all require immersion in forty seah (a mikveh).

Rashi makes it clear that this extends to utensils that have been immersed in hot water or made red hot.⁴ Rava quotes the key verse⁵ as a proof text for this position:

כל דבר אשר יבא באש תעבירו באש וטהר -- הוסיף לך הכתוב טהרה אחרת

Any article that can withstand fire shall be put into fire and they shall be clean. The verse added an additional purification.

Two steps are required. The first is kashering the utensil, and the second is immersion in a mikveh.

Bar Kappara says:

מתוך שנאמר במי נדה שומע אני... מים שנדה טובלת בהן. הוי אומר ארבעים סאה.

From the fact that the verse states *mei niddah* I derive... water in which a menstruant immerses herself, and that is forty *seah*.

A *baraita* states:

ת"ר: הלוקח כלי תשמיש מן העובדי כוכבים: דברים שלא נשתמש בהן – מטבילין והן טהורין, דברים שנשתמש בהן ע"י צונן... מדיחין ומטבילין והם טהורין, דברים שנשתמש בהן ע"י חמין... מגעילין ומטבילין והן טהורין, דברים שנשתמשו ע"י האור... הלבנן ומטבילין והן טהורין.

The Rabbis taught: One who purchases utensils from pagans: if they were never used -- they are immersed and they are pure; if they were used cold... one rinses them and immerses them and they are pure; if they were used hot...one boils them and immerses them and they are pure; if they were used on a flame...one fires them and immerses them and they are pure.

The Tosefta⁶ and the Yerushalmi⁷ also require *tevilah*. Maimonides agrees with this position.⁸

The law is codified as follows:

³ A.Z. 75b.

⁴ Rashi, *ibid*, וכולן, ד"ה תנא וכולן,

⁵ See [note 2](#).

⁶ A.Z. 9:2

⁷ A.Z. 45b (5:15)

⁸ Mishneh Torah, *Hilkhot Ma'akhalot Asurot* (Laws of Forbidden Foods), 17:3

הקונה מהעובד כוכבים כלי סעודה של מתכות או של זכוכית או כלים המצופים באבר מבפנים אף על פי שהם חדשים⁹ צריך להטבילם במקוה או מעיין של ארבעים סאה.

If one purchases food utensils from a pagan whether they are made of metal or glass or [ceramic] utensils lined with lead on the inside, even though they are new, the utensils must be immersed in a *mikveh* or in a well containing forty *seah* of water.

⁹ *Shulchan Arukh, Yoreh Deah* 120:1

The reason for the immersion is explained by Rabbi Yirmiyah as follows:

צריך להטביל לפי שיצאו מטומאת הגוי ונכנסו לקדושת ישראל¹⁰

The utensils must be immersed because they are being changed over from the impurity of pagan use to use within the sacred covenant of the Jew.

Although this could be read as a chauvinistic statement, it need not be. Most famously, Judaism insisted that all of humankind was created in the divine image – בצלם א-להים -- and that one of the lessons of the unitary creation of Adam, the universal ancestor, was that “no person should say to another, ‘my ancestor is greater than yours’.”¹¹ Nor did it countenance oppression or discrimination. “You shall not wrong a stranger or oppress him, for you were strangers in the land of Egypt.”¹² But at the same time as Judaism was, from its inception, radically egalitarian in this regard, it recognized the distinctiveness of Israel’s monotheism, separating us from among the nations. “Has any god ventured to go and take for himself one nation from the midst of another... It has been clearly demonstrated to you that the Lord alone is God; there is none beside Him.”¹³ It is for that reason that these laws have to be understood as distinguishing Jew from pagan and not Jew from gentile, notwithstanding that the language of the sources is not always clear. The notion of the sacred covenant of Israel applied specially to the Israelite table, which was considered an analog of the Temple’s altar,¹⁴ and thus shared some of the distinctions of the sacred precinct which may be why this requirement applied only to food utensils and not to other implements.

The law of *tevilat kelim* in today’s context.

There are two primary reasons that the law of *tevilat kelim* is inapplicable in the context in which we find ourselves today. The first is the nature of the utensils we generally acquire. The second is the nature of the gentiles with whom we are generally in contact.

a) *Tevilat kelim* applies when a utensil owned by a pagan is sold to a Jew. The nature of the ownership is the controlling factor, as the laws indicate when a partnership is involved or when a craftsman has a substantial part in the manufacture of the item.

לא חייבו בטבילה זו אלא כלי מתכות של סעודה הנלקחין מן העכו"ם. אבל השואל... אינו צריך להטביל.¹⁵

The only utensils that were required to undergo immersion are metal ones bought from pagans, but one who borrows...does not have to immerse them.

¹⁰ Yerushalmi 45b (5:15). And thus Maimonides, op cit, 17:5.

¹¹ Genesis 1:27; (5:1); 9:6. Mishnah Sanhedrin 4:5 (In the preamble of the Mishnah some chauvinist versions read, instead of simply “one soul” -- “one soul in Israel,” offering a decidedly less universal message. That this version is tendentious and incorrect is plain, for the lesson is from the creation of Adam, the first human, not of Abraham, or Jacob the specifically Jewish ancestors.)

¹² Exodus 23:20

¹³ Deuteronomy 3:34-35

¹⁴ See, for instance, Lawrence H. Schiffman, “The Sanctified Table,” From Text to Tradition, pp. 255-257.

¹⁵ Maimonides, MT, op cit 17:6

השואל או שוכר כלי מהעובד כוכבים אינו טעון טבילה¹⁶.

A utensil borrowed or rented from a pagan does not require immersion.

ישראל שנתן כסף לאומן עובד כוכבים לעשות ממנו כלי -- אינו צריך טבילה. [הגה]: ויש חולקין... אם מקצת מן הכסף שנעשה ממנו הכלי של עובד כוכבים -- צריך טבילה. וכן אומן ישראל שעשה כלי לעובד כוכבים וקנאו ממנו -- יטבילנו... אם עובד כוכבים נתן כל המתכות, אבל אם עשאו לעצמו רק שקנה המתכות מן העובד כוכבים או שנתן מקצת מתכות משלו -- אין צריך טבילה¹⁷.

If a Jew gave silver to a pagan craftsman to make a utensil for him, it does not require immersion. [Rabbi Isserles' addendum]: Some disagree... but if some of the silver from which the utensil was made belonged to the pagan it requires immersion. Similarly, if a Jewish craftsman made a utensil for a pagan and then purchased it, he must immerse it if the pagan gave him all of the materials, but if he made it for himself even though he bought the materials from the pagan, or if he provided some of the materials, it does not require immersion.

¹⁸ ישראל ועובד כוכבים שקנאו כלי בשותפות אין צריך טבילה.

Utensils owned by Jews and pagans in partnership do not require immersion.

These texts discuss a personal and crafts-based culture very different from our own. It is not at all clear that these specific factors ought to apply to factory made utensils, wherein the workers are not self employed craftsman who may provide materials of their own. The *Arukh haShulchan*, however, has a discussion that more clearly relates to our situation and culture.

בעסק כללי כמו פאבריק שעושין כלים למאות ולא לפים, הכל הולך אחר בעל העסק ועל שמו נקראו הכלים והפועלים אינם אצלו אלא כמו שכירי יום, ולכן המחזיק הוא הישראל -- פטורים מטבילה... אפילו הפועלים הם כותים. ולהיפך, אם המחזיק הוא כותי והפועלים ישראל... חייבין טבילה¹⁹.

In a general business, like a factory, where they manufacture hundreds and thousands of utensils, everything is determined by the owner, for the utensils are known by his name. The workers are like day laborers. Therefore, if the owner is Jewish the utensils do not require immersion even though the workers are non-Jews, and vice versa if the owner is a non-Jew and the workers Jews they do require immersion.²⁰

We reiterate that while the text carries the term *kuti* (non-Jew), the law is specific to pagans. The principle, that one recognizes the owner by whose name it is known by, is enunciated by *Issur v'Heter*²¹ in explaining the partnership rule above, that the pagan's name is still recognized as owner when the vessel was bought by a personal partnership.

¹⁶ *Shulchan Arukh, Yoreh Deah* 120:8

¹⁷ *Ibid* 120:11

¹⁸ *Ibid* 120:11 in Isserles' annotation.

¹⁹ *Arukh haShulchan, Yoreh Deah* 120:58

²⁰ See *Igrot Moshe Orach Chayim* III, 4 where Rabbi Moshe Feinstein alludes to this position. He adds that the utensils made in factories are machine made and not made by the workers.

²¹ As cited by *Shakh* #24, in his commentary to the *Shulchan Arukh* *ibid*. The same point is made by Elijah of Vilna in his commentary #31, among others.

The *Tosafot* justify this approach based on another principle as follows:

הנותן כלי לאומן עובד כוכבים לתקן ואפילו למאן דאמר אומן קונה בשבבא כלי אין צריך טבילה כיון דאין שמו עליו
דלא הוי כמעשה שהיה שהיו הכלים של מדין.

If one gives a utensil to a pagan to repair, even according to the one who says that a craftsman acquires a utensil through improvement, one does not require immersion since it is not known by his name, for it is not like the event, wherein the utensils belonged to Midyan.²²

This raises the question whether a utensil made and sold by a large corporation, which corporation is known by its corporate name and not known by its owners at all, even more so a publicly traded corporation whose ownership is divided into tiny holdings which are constantly shifting, can be said to be owned by any single entity. “It is not like the event, wherein the utensils belonged to Midyan.”²³

Added to this are two perceptions of Rabbi Moshe Feinstein. One is that factory manufacture is more by machine than by individual human labor.²⁴ All the more so might it be said about the absentee ownership that factory manufacture is by machine, not by its human owners. The second is an attempt, not approved by all modern commentators, to recognize the nature of the corporation as a separate entity from its partners, akin to the American law of incorporation.

Rabbi Feinstein writes, in the matter of the permissibility of corporate bonds despite the prohibition of lending at interest,

אם הלואה הוא קארפאריישאן, שגוף האנשים חברי הקארפאריישאן אין חייבין כלום ואין על גופם שום חיוב ושעבוד...
נמצא שאין כאן לואה כלל. אלא הביזנעס הוא הלואה... מסתבר שלא נאמר ע[ל] ז[ה] איסור ריבית²⁵.

If the borrower is a corporation, where the members of the corporation are not liable at all, there is no personal liability or lien...it turns out that there is no borrower, just the business is the borrower...and it seems that the prohibition of lending at interest does not apply here.

Utensils manufactured en masse as part of a corporate enterprise and sold by a corporate retailer cannot be said to be owned by a pagan, were never in the sphere of idolatry, and therefore do not require immersion.

²² Tosafot A.Z. 75b, ד"ה אי משום. The limitation of the law of *tevilat kelim* to circumstances that are “like the event”

points to the original limitation to idolaters rather than to all gentiles. This attests to the fact that this is not an issue of the kashrut of the food, which is not affected by contact with the utensil that has not been immersed (see note 41), but a problem of a more philosophical nature.

²³ Responsa *Shoel uMeshiv* of Rabbi Joseph Saul Natahanson, First Edition, Vol.II, #73, opines that dishes manufactured in a factory with a Jewish partner do not require immersion because the dishes are not wholly owned by a gentile, which is required to be “like the event.” But Elijah Gaon of Vilna, in his commentary to the *Shulchan Arukh Yoreh Deah* 120, #28, rules otherwise, that wherever there is a non-Jewish partner immersion is required. Our argument goes more fundamentally to the nature of corporate ownership, and does not rely on simple rules of partnership.

²⁴ See above note 22.

²⁵ *Igrot Moshe, Yoreh Deah* 2:62.

Returning to Tosafot's claim about naming, it is only name ownership that affects the requirement of *tevilat kelim*. This raises an additional point concerning who actually establishes name ownership during the retail chain by which a utensil moves from manufacturer through wholesalers to retailers and then to the consumer. Several scenarios are in order. (a) Where a utensil is sold on consignment for its manufacturer, it certainly remains under its original ownership until purchase by the consumer. But (b) even where an item is manufactured by a known corporate entity – say Lenox -- and is purchased by a retailer but sold as Lenox to the consumer by that retailer, it has not changed name, and therefore the manufacturer by which the utensil is known remains the only “owner” for the purposes of *tevilat kelim*. (c) Where, however, a utensil is manufactured by a corporation, passes through the hands of several wholesalers, then is sold, for instance, by a department store under their own name or brand (e.g. Nordstrom's), then the utensil has acquired new ownership along with the new name. In each of these cases, as long as the utensil is never in the hands of an end user it is only the manufacturer and retailer that have a potential status as name owners. Possible variants here are many, but as long as the manufacturer and any name owner of the utensil was a corporate entity, and none were individual pagans, the utensil should not require immersion.

Since in almost all cases, we purchase utensils that are manufactured and marketed by corporate entities, or, if the retailer is a mom and pop store, they are unlikely to rebrand, no immersion of dishes is generally required. Nor is it necessary to verify the chain of possession, for כל דפריש מרובא פריש (any undefined individual item is assumed to be part of the majority),²⁶ thus the utensils may be assumed not to require immersion. What remains are craft items that are acquired personally from an artisan and antiques, where several individual intermediate owners might have established name ownership, to which situations we now turn²⁷.

b) It is well established that Christians, Muslims and members of major Western religions are not to be considered pagans, and most of the laws of *Avodah Zarah* are not applicable today.²⁸ The laws of *stam yeinam* (non Jewish wine) and *maga akum* (gentile touch) which prohibit the use of wine touched by gentiles because it is suspect of being used for idolatrous libation, is an example of how a law has become inapplicable today.

פרשו רשב"ם והריב"ן בשם רש"י שכתוב בתשובת הגאונים כי בזמן הזה אין איסור הנאה במגע עובד כוכבים ביין כי עובדי כוכבים של עכשיו אין רגילים לנסך לעבודת כוכבים וחשובין כאין יודעין בטיב עבודת כוכבים ומשמשיה... ועל זה סומכין לגבות יינות העובדי כוכבים בחובותיהם²⁹.

Rashbam and Rivan explained in the name of Rashi that it is written in a responsum of the Geonim that in our day there is no prohibition on the use of wine touched by a gentile because today's gentiles are not used to pour libations to idols and they are to be considered ones who do not know the substance of idolatry and its appurtenances...

This is what we rely upon in collecting gentile wine for our debts.

²⁶ Berakhot 28a and other references listed there.

²⁷ Included here would be (and those few situations where the retailer is known to be a family entity and they have rebranded).

²⁸ Much of the history of the abandonment of the laws of tractate *Avodah Zarah* has been reviewed by Jacob Katz in his *Exclusiveness and Tolerance*, particularly chapters 3, 10 and 14. And see the disclaimer of Solomon Luria that we have included as an epigram.

²⁹ Tosafot A.Z. 57b, ד"ה לאפוקי

ובזמן הזה שאינו שכיח שהאומות מנסכים לעבודת כוכבים, יש אומרים דמגע עובד כוכבים ביין אינו אוסר בהנאה רק בשתייה וכן סתם יינם שלהם אינו אוסר ליהנות ממנו³⁰.

Nowadays, when it is not common for the gentiles to pour libations to idols, there are those who say that a gentile's touch of our wine does not prohibit its use, just drinking it, and the same is true of gentile wines, it is not prohibited to profit by them.

ובזמן הזה דהאומות לאו עובדי כוכבים הם, כל מגען מיקרי שלא בכוונה. ולכן אם נגע ביין על ידי דבר אחר... מותר אפילו בשתייה... ואין לפרסם הדבר בפני עם הארץ³¹.

Nowadays, when the gentiles are not idolaters, their touch is considered without intent [of idolatrous libation]. Therefore, if he touched the wine indirectly...it is permitted even for drinking...But one should not make this known to the unlearned.

Rabbi Israel Silverman united these two leniencies of Isserles to permit drinking gentile wine in our context, because modern cleanliness requires that there be no direct human contact with the wine that is being manufactured for the market.³²

Menachem Hameiri was clearest in his forthright expression of religious tolerance in the modern world.

נראה לי שדברים אלו כולם לא נאמרו אלא על עובדי האלילים וצורותיהם וצלמיהם. אבל בזמנים הללו מותר לגמרי³³.
It appears to me that these matters all pertain only to worshipers of idols and their forms and images, but that nowadays these are wholly permitted.³⁴

כבר בארנו שדברים אלו כולם בזמנם נאמרו שהיו אותם הגוים אדוקים בעבודת האלילים. אבל עכשיו פסקה עבודת האלילים מרוב המקומות, ולפיכך אין צורך לדקדק בהם.³⁵

We have already explained that these things were all said of their times, when the gentiles were devout in idolatry; but now idolatry has come to an end in most places, and accordingly there is no need to be exacting with respect to them.

The CJLS has gone further. Rabbi Elliot Dorff in a teshuvah wrote:

We must squarely face the issue of whether we intend to be concerned any longer with what remains of the rabbinical prohibitions against drinking wine made by gentiles. I believe that the answer should be “no”...The original motivation for the prohibition against using wine touched by non-Jews was to prevent mixed marriages...If anything that problem is more acute in our day...I frankly doubt, however, that prohibiting wine touched by non-Jews will have any effect whatsoever on eliminating or even mitigating that problem...As Rabbi Silverman points out, the prohibitions against bread, oil and cooked foods prepared by non-Jews have been abrogated long ago...In keeping with our acceptance of the conditions of modernity, we in the Conservative Movement would

³⁰ *Shulchan Arukh, Yoreh Deah* 123:1 in Isserles' annotation.

³¹ *Ibid*, 124:24 in Isserles' annotation.

³² Israel Silverman, Are all Wines Kosher, Proceedings of the CJLS 1927-1970, III, p. 1395.

³³ Meiri, *Bet haBechira* A.Z. (Sofer), p. 4

³⁴ See the excellent article by Moshe Halbertal, Ones Possessed of Religion: Religious Tolerance in The Teachings of Meiri, in Volume 1 # 1 of the Edah Journal, online, in 2000.

³⁵ Meiri, *op cit*, p. 28

undoubtedly hold that, short of mixed marriages, Jews *should* (emphasis in the original) have social and business contact with non-Jews.³⁶

If gentiles are not to be considered pagans and all other laws related to gentile wine have fallen aside, the laws of *tevilat kelim* clearly should not apply as well.

A significant proviso is in order, however. Our sources apply to adherents of Western religions, all monotheistic religions. Eastern religions raise the issue of some faiths that still appear to worship multiple gods and even, apparently, idols. Can we exempt them from the rules formulated concerning idolaters?

The Meiri states:

ומכל מקום, אותם הקצוות ששיורי עבודת אלילים ננערו לשם, ישראל שבתוכם אסורין בכל אלו³⁷
Nevertheless in those distant places where the remnants of idolatry have been scattered, the Jews who are among them are prohibited in all these.

Based on the first consideration above, the only time where there remains a concern for *tevilat kelim* is with regard to previously owned ware and personally manufactured crafts. In general, with regard to those, we can assume that the owner or craftsman is not an idolater, for כל דפריש מרובא פריש (any undefined individual item is assumed to be part of the majority). However, if one knows or reasonably suspects the owner or craftsman, (or in the case of antiques, any previous owner³⁸), to be an idolater, then *tevilat kelim* is in order, with the appropriate blessing³⁹.

These leniencies apply equally to public establishments. Therefore *tevilat kelim* is not generally required. However since a segment of the population insists on maintaining the practice of *tevilat kelim*, even though the food prepared in utensils that were not immersed is permitted,⁴⁰ the owner of such an establishment may want to immerse all new utensils and used utensils acquired from a gentile. In that case, it should be done without a blessing, as it is not required by law, as argued above. It is only being done to satisfy the potential clientele.

In the very rare cases where a utensil does require immersion, if one transgressed and prepared food in a utensil which required immersion but has not been immersed, that which was prepared is not forbidden, but one should nevertheless immerse it before any further use.

³⁶ Elliot Dorff, The Use of all Wines, *Responsa of the CJLS 1980-1990*, p.295.

³⁷ Meiri, op. cit., p. 9

³⁸ One is responsible for all prior owners, see *Shulchan Arukh, Yoreh Deah* 120:8 in Isserles' annotation.

³⁹ על טבילת כלים / *al tevilat kelim*

⁴⁰ If one transgressed and prepared food in a utensil which has not been immersed, that which was prepared is not forbidden, but one should nevertheless immerse it. *Shulchan Arukh, Yoreh Deah* 120:16 in Isserles' annotation: אם עבר והשתמש בכלי בלא טבילה, לא נאסר מה שנשתמש בו. ויטבלנו עוד.

Psak

1. *Tevilat kelim* is not required in our day, save for personally owned or crafted food utensils purchased from idolaters. However, if one knows or reasonably suspects the owner or craftsman, (or in the case of antiques, any previous owner), to be an idolater, then *tevilat kelim* is in order, with the appropriate blessing.
2. If *tevilat kelim* is done in a public establishment out of concern for those who still maintain this practice, one should not recite a blessing.