

Pidion ha-Ben: Who has the obligation of redeeming, the father or the son ?

Pidion ha-Ben in the Torah.

The obligation of Pidion ha-Ben is mentioned a few times in the Torah. We find indeed in

Exodus 13:13, וכל בכור אדם בבניך תפדה,

Exodus 13:15, וכל בכור בני אפדה,

Exodus 22:28. בכור בניך תתן לי.

Exodus 34:20, וכל בכור בניך תפדה,

Numeri 3:46, ואת פדויי השלשה והשבעים והמאתים העודפים על הלויים מבכור בני ישראל,

Numeri 3:47, ולקחת חמשת חמשת שקלים לגלגלת...

Numeri 13:2, קדש לי כל בכור פטר כל רחם בבני ישראל באדם ובבהמה לי הוא...

Numeri 34:19, כל פטר רחם לי,

Numeri 18:15, פדה תפדה את בכור האדם,

Numeri 18:16, ופדויו מבן חדש תפדה בערך כסף חמשת שקלים...

The positive mitsvah of the Torah is thus that the father should redeem the first born of his wife. However, at the beginning of the process, after the exchange of the firstborn against the Levites available, the remaining 273 firstborn, without a Levite other party, had to redeem themselves by 5 shekel. Apparently none of these 273 firstborn was redeemed by his father. Thus, from the biblical text, we learn already that normally the firstborn should be redeemed by their father. But a firstborn has also the capacity to redeem himself.

Obligation of the father and the son in the Talmud.

In Talmud Bavli, Kiddushin 29a they deduce the redeeming obligations from two different verses.

לפדותו מנלן ? דכתיב [שמות לד] כל בכור בניך תפדה. והיכא דלא פרקיה אבוא מיחייב איהו למפרקי, דכתיב [במדבר יח] פדה תפדה.

In Talmud Yerushalmi Kiddushin, chap 1, halakhah 7 (edition Vilna p. 19a),

לפדותו דכתיב וכל בכור אדם בבניך תפדה [שמות יג, יג]..מניין שאם לא עשה לו אביו שהוא חייב לעשות לעצמו ? תלמוד לומר, אדם תפדה [שמות יג, יג].

We note that, both, the Talmud Bavli and the Talmud Yerushalmi, deduce first that a man has the obligation to redeem his firstborn (one man can have one or several firstborn) and second that if the father does not fulfill his obligation before his son reaches his majority, then the son has the obligation to redeem himself. We note further that the Talmud Bavli uses two different verses while the Talmud Yerushalmi uses only one verse. Why this difference? Rabbi Samuel Pinson made the following proposition: we could say that in the Bavli, the obligation of the father and the son, deduced from two different verses, are completely independent. Therefore the obligation of the father is not suppressed by the majority of the son.¹ The son becomes also accountable for this redeeming but it does not discharge the father. By contrast in Talmud Yerushalmi, both obligations are deduced from the same verse. We could perhaps say that the two obligations are connected: when the son becomes accountable for his redeeming then the father loses his accountability. According to this approach we could say that the obligation of redeeming relies on the son. However during his minority, the son has not the capacity to redeem himself and the father has then the obligation

¹ This would correspond to the opinion of Minhag Hinuh. Rashba in his Responsa II: n° 321 has a more nuanced position. It is only when the son is poor and has no property that the father beholds his obligation.

in his place.² This explanation is only an assumption. But it would have the advantage to explain the origin of two extant divergent opinions. Rambam.

In Hilkhhot Bikurim 11: 1 – 3:

1. מצות עשה לפדות כל איש מישראל בנו שהוא בכור לאמו הישראלית שנאמר כל פטר רחם לי. ונאמר אך פדה תפדה את בכור האדם.
2. ואין האשה חייבת לפדות את בנה, שהחייב לפדות את עצמו הוא שהחייב לפדות את בנו. עבר האב ולא פדהו, כשיגדל יפדה את עצמו.³
3. היה הוא לפדות ובנו לפדות, יפדה עצמו תחלה ואח"כ בנו. ואם אין לו אלא כדי פדיון אחד יפדה עצמו.
4. היה בנו לפדות....
5. הפודה את בנו מברך אשר קדשנו במצותיו וצונו על פדיון הבן. וחוזר ומברך שהחיינו. ואח"כ נותן הפדיון לכהן. ואם פדה עצמו מברך לפדות הבכור ומברך שהחיינו.

In Hilkhhot Berakhot 11:11,⁴

יא. כל העושה מצוה בין שהיתה חובה עליו בין שאינה חובה עליו, אם עשה אותה לעצמו מברך לעשות. עשה אותה לאחרים, מברך על העשייה. [ראה פירושי הכסף משנה, והגהות מיימוניות על אתר].

In Hilkhhot Mila⁵ he writes:

1. ומצוה על האב למול את בנו ועל הרב למול את עבדיו יליד בית ומקנת כסף, עבד האב או האדון ולא מל אותן, ביטל מצות עשה ואינו חייב כרת שאין הכרת תלוי אלא בערל עצמו. ובית דין מצווים למול אותו הבן או העבד בזמנו ולא יניחו ערל בישראל.
2. אין מלין בנו של אדם שלא מדעתו אלא אם כן עבר ונמנע למולו, שבית דין מלין אותו בעל כרחו. נתעלם מבית דין ולא מלו אותו, כשיגדל הוא חייב למול את עצמו, ועל יום ויום שיעבור עליו משיגדל ולא ימול את עצמו, הרי הוא מבטל מצות עשה...

From the words of Rambam in Hilkhhot Bikkurim 11;3 we learn that the father who did not redeem his son is an עבריין, a sinner who neglected a positive mitzvah of the Torah and we get the impression that this father is now barred from the accomplishment of this mitzvah in favor of his son. It is certainly not a subject of proud to be redeemed by a father who waited more than thirteen year to decide himself to come into operation! More, the text of the berakhah that the son pronounces, different from that the father should have said when the mitzvah was at his disposal, proves that this berakhah, in its essence, belongs to the son. As we don't want to delay it, it is delegated to the father, but he pronounces a berakhah which bears the character of this delegation.

² This would agree with the opinion of R. Isaac bar Sheshet Perfet in Responsa Bar Sheshet n° 131.

³ This text is the adaptation and the translation of the quotation of B. Kiddushin 29a:

היכא דלא פרקיה אבוא מיחייב איהו למפרקיה...

Rambam added to words: עבר and כשיגדל. These additions are not negligible: the father has sinned and transgressed a positive mitzvah during 13 years and apparently he should not do it anymore. However the son cannot perform validly this mitzvah before his majority.

⁴ Rambam in Hilkhhot Berakhot 11; 11 – 16, tries to justify the form and text of the different berakhot. In fact the problem could be more intricate and connected to divergent traditions, Babylonian and Palestinian traditions. See Rosenthal David: Al birkhot ha-tefilin be-Erets Yisrael u be-Bavel. Tarbitz Vol 69, n° 1, 2010 – 2011, pp. 63 – 86, and additional remarks by Solomon Naeh, idem pp. 87 – 89; by Biniamin Katsuf, idem pp. 385 – 387. See also Henshkah David: Birkhat ha-Mitsvot; halakhah ve-toldote'hah, Sidra, 27-28, pp. 27 – 109.

⁵ Mila and Pidion ha-ben belong to the mitzvot that the father must perform for his son. They begin the series of the obligations mentioned in Tossefta Kiddushin I;8: mila, pidion ha-Ben, teaching him Torah, teaching him a profession, marrying him a wife, teaching him swimming. Some poskim and Rashba at their head want to prove that pidion ha-ben has no limit of time as other obligations like marriage and profession. However each mitzvah is different and in the case of Mila the time window granted to the father is very narrow.

Rabbi Raphael ben Solomon Ardit⁶ in Marpeh Lashon⁷ quotes a responsum from Rabbi Katsabi:

מדברי הרמב"ם שכתב עבר האב וכו' כשיגדיל יפדה עצמו ונראה שהכונה היא שכל שעבר האב ולא פדהו לאיזה סיבה, לכשיגדיל יפדה עצמו. דכיון שהגדיל, תו לא רמיא עליה דאב אלא עליה דידיה והיינו שכתב הרמב"ם ז"ל עבר האב, כלומר כבר עבר זמנו ובטיל מצותו וכמ"ש גם כן הרמב"ם בהל' מילה. הרי שכל אלו המצוות המוטלות על האב לעשות לבנו הקטן⁸, כשיגדיל ונתחייב במצוה הרי כבר האב עבר ובטיל מצותו⁹ ולא יכול לתקן את אשר עותו אלא מכאן והלאה על הבן מוטל לעשותו.

R. Ardit rejects this reasoning because it contradicts the responsum of Rashba. But it is genuine and it corresponds perfectly with our understanding of Rambam's words. It seems also evident that this was also the understanding of Rabbi Isaac bar Sheshset in his responsum n°131. One must accept the existence of contradictory opinions.

Rashba.

Rashba in responsum II: 321.

Question. Reuben is the firstborn of Jacob. The latter did not redeem Reuben and he is still alive. Reuben wants now to redeem himself but Jacob does not want to allow him and contends that it is his privilege. Reuben argues that now that he reached his majority, the privilege of his father ended.

Answer. It seems to me clear that the privilege of the father did not end and if he wants now to redeem his son he should do it. As soon as the son reaches the age of 30 days, the father has the obligation to redeem his son. However if the father refuses to redeem his son or dies, then it is the obligation of the son to redeem himself if he has property. Now think about, when does the privilege of the father end? And when does the mortgage on the father's property warranting the redeeming of the son end and fall over the son? Did the Torah fix a limit in time to the father's obligation? On the contrary, even when the son became major and has property, the mortgage on the father's property warranting the redeeming of the son was not canceled: Indeed we learned a Mishnah in Bekhorot 8;3: A man whose wife had never been pregnant and now gave birth to two twin brothers, gives 5 Shekalim to the Cohen. If one of the twins deceased during the first 30 days (and we don't know which one was the firstborn) the father must not pay the 5 Shekalim.¹⁰ If the father deceases after the twins reach 30 days and the twins are living then we have two divergent opinions. Rabbi Meir says: if the twins gave (together) the 5 Shekalim from the father's estate before they shared it, then they correctly paid but if they didn't and they divided the estate, they are not more obliged to pay the 5 Shekalim.¹¹ Rabbi Juda says that the twins are still collectively indebted for the 5

⁶ Rabbi of Izmir of the eighteenth-nineteenth century.

⁷ Salonica 1826.

⁸ Here the author makes a different analogy between the different obligations of the father towards his son. He compares pidion ha-ben to mila and he notes that mila is strictly limited in the time.

⁹ It recalls the quotation : ל"ב ע"א : כיון דלא בנה שוב לא יבנה. יבמות י עמ' ב, ל"ב ע"א :

¹⁰ We don't know which brother was the firstborn. It belongs to the Cohen to prove that the amount is due. In other words he must demonstrate that the living brother was the firstborn.

¹¹ Each of them is not obliged because we don't know who the firstborn was: The Cohen cannot force them to pay. Now the mortgage on the father's property warranting the redeeming of the firstborn was canceled by the division of the estate. Indeed the heirs are considered as clients and the obligation of the payment of 5 Shekalim is considered as an obligation similar to a verbal borrowing and a verbal borrowing cannot be opposed to the clients (contrary to a written borrowing). By contrast, before the division of the estate, the mortgage on the father's property warranting the redeeming of the firstborn was effective, כבר נתחייבו הנכסים .

Shekalim.¹² In the Gemara they explained according to Rabbi Judah that even if the sons have important properties and even if they already divided the estate, they must pay collectively the 5 shekalim because there is a mortgage on the father's estate warranting the payment of the 5 Shekalim. Thus although the sons became major, and they have properties, the mortgage on the father's estate was not canceled.¹³ If the mortgage was canceled and fell over the sons, then each of them could have repelled this obligation.¹⁴

Nevertheless if a firstborn wants to redeem himself, whether the father has or hasn't an estate, he is redeemed because it is written "you shall redeem". And the first, who proceeds to the redeeming, had the privilege to accomplish the mitzvah of redeeming and he pronounces the benediction of the redeeming because the obligation was put on both. Nevertheless it makes sense to contend that the father has the priority because it is a mitzvah of the son put on the father. But if the father refuses to redeem after the son reaches the majority, and the son has property, we do not coerce the father but the son.¹⁵

But this is true¹⁶ only if we can coerce the son, when we know for sure that he is the firstborn and he has property.¹⁷ If this is not the case, whether because it is not certain that he is firstborn because his mother had twins¹⁸ or because he has no property, we cannot coerce the son, then we coerce the father because there is already a mortgage on his estate because the mitzvah was put on him. We learned indeed in the Mishnah in Bekhorot 8; 6 (end): If he must redeem himself and his son must also be redeemed, the father has precedence over his son. Rabbi Judah says that his son has the priority. Indeed the obligation to pay his own redeeming (father) relied on his father (grandfather) and the obligation to pay his son's redeeming relies also on him (father). The exact meaning of the discussion in the Mishnah was clarified in the Gemara. Grandfather sold a ground worth 5 Shekalim after father reached the age of 30 days. Besides, father owns a ground worth 5 Shekalim. Rabbi Judah considers that the debt of 5 Shekalim to the Cohen is a debt written in the Torah; it has, according to R. Judah, the value of a contractual debt, anterior to the selling of the ground. Therefore the sold ground is mortgaged in favor of the Cohen for father's redeeming. The Cohen can thus collect the 5 Shekalim of father's redeeming from the ground sold by grandfather, whether he is still alive or not.¹⁹ By contrast father's free ground is mortgaged for his son and can thus be used to pay

¹² They are not clients but they are heirs and a verbal borrowing can collect from the heirs. Maimonides writes (Bikurim 11;20) according to the halakhah, that the assets of the deceased father were already indebted for this amount: שכבר נתחייבו הנכסים.

¹³ This demonstration seems to me problematic. We are in a special case where the firstborn is unknown. We know that the firstborn is one of them but we don't know who he is. Therefore the obligation of redeeming cannot fall from the father over the firstborn. Therefore the obligation remains with the father and the mortgage on the father's estate is not cancelled. But this is not the case in a normal situation. When the firstborn is known, and has property, then as soon as he reaches his majority, the obligation of redeeming falls from the father over the son. The mortgage on the father's estate is cancelled; it falls over the estate of the son. Rashba wrote clearly:

ואם לא רצה האב לפדות אחר שהגדיל הבן, ויש לו נכסים, אין כופין את האב אלא הבן.

¹⁴ Because the Cohen could not prove that any of them is a firstborn.

¹⁵ I have underscored the text because it seems to me, fundamental. Rashba proposes proves of this principle in his responsum from two mishnayot of Bekhorot, Mishnah 8;3 and Mishnah 8;6 but he puts the emphasis on the fact that the liability and the warranty of the 5 Shekalim of the redeeming rest on the father or on his assets although the son reached his majority. But he neglects to underscore that this situation results from the poverty of the son who has no property.

¹⁶ The fact that we cannot coerce the father anymore is true only....

¹⁷ And is major.

¹⁸ And we don't know who the firstborn was.

¹⁹ Alive as assumed by Rashi in the gemara Bekhorot p. 49b and in Tossafot ודידיה, or dead as assumed by Rashi on the Mishnah On p. 49a. If grandfather is still alive, we have the proof, according to Rabbi Judah, that the Cohen can collect the five Shekalim from the grounds sold by Grandfather, even after father reached his majority. Rashi understands also that we speak about the clients of grandfather who is still alive. This would

his son's redeeming. Therefore he uses his free ground to pay his son's redeeming. Thus his free ground is mortgaged to warranty his son's redeeming.²⁰ By contrast the hakhamim contend that a debt written in the Torah has not a contractual value but the value of an oral debt. Therefore the Cohen cannot collect the 5 shekalim of father's redeeming from the grounds that grandfather sold. He can only collect from father's free assets and as he has only the value of 5 Shekalim for one redeeming, father takes precedence on his son.

Similarly in the case of the man whose wife had two twin sons (and we don't know who was the firstborn and the father died after they reached 30 days) and they divided the father's assets. Although they have important assets above the amount of the redeeming, as we don't know for sure who the firstborn is, the Cohen cannot collect the amount of the redeeming from either of them but he can collect the amount from the father's assets.²¹ Now in the case of a known firstborn, who has the necessary means and whose father doesn't want to redeem him, the son must redeem himself and we coerce him if necessary. But we don't coerce the father. Indeed we established in Yerushalmi Kiddushin that the different obligations alluded in the Mishna Kiddushin I:7 and enumerated in the Tosefta I:8,²² are mentioned as a mitzvah, a moral obligation but if the father fails to accomplish them it belongs to the son to perform them; he is not entitled to coerce his father.

Let us now summarize the conclusions of this important responsum.

- The privilege of the father to redeem his son does not end with the majority of his firstborn.
- The father beholds the privilege to redeem his major firstborn and he has precedence over his son.
- If the father does not redeem his son, the latter cannot coerce the father to do it.
- The estate of the father is mortgaged for an amount of 5 Shekalim in favor of the Cohen to ensure the son's redeeming..
- Beit Din can coerce the father to carry out his obligation. Therefore Beit Din can collect the 5 Shekalin from his estate.
- If the firstborn of the father is not known with certitude because they were twin children (two brothers or a brother and a sister) and we don't know which the firstborn is, then even after their majority, they have no obligation and the liability of the father and his estate doesn't end.
- Similarly, if the firstborn is known for sure but he has no property and cannot carry out his obligation, the liability of the father and his estate doesn't end.
- Only if the firstborn is known, has reached his majority and has property, then we can coerce the son and we are not more allowed to coerce the father. The estate of the father is not more mortgaged by the obligation of the son.

prove that the mitzvah of redeeming his son did not end with the majority of father. But this is not so simple. It is likely that the mitzvah did not end with the majority of father because father was poor and had no property. If grandfather died then we must say again: כבר נתחייבו הנכסים. Anyhow this demonstration works only according to Rabbi Judah according whom the Cohen can collect from the clients. And as remarked it is only proved that that the mitzvah and the warranty of grandfather did not end with the majority of father when he has no property to redeem himself. But according to Hakhamim the Cohen cannot collect from grandfather's clients and therefore there is no reason to contend that grandfather remained warranting father's debt when he became major.

²⁰ Thus, according to Rabbi Judah, the mortgaged property of grandfather was used to pay the redeeming of father although father is major. But the reason is that father is poor and has no property, except a ground of 5 shekalim which he earned after the birth of son and it was thus mortgaged as warranty of the son's redeeming.

²¹ Thus from both sons collectively or, after the division of the assets, the half of the amount from each son.

²² Circumcise his son, redeem him, teach him Torah, teach him a profession, find him a wife and some add: teach him swimming. The different obligations are enumerated according to the natural order in life.

- After the division of the father's estate, the two twin brothers remain heirs and therefore the obligation of the father to pay 5 Shekalim for the firstborn, which is a verbal debt, can be collected from the heirs (but not from clients, see further).
- The obligation of the 5 Shekalim of redeeming is a debt written in the Torah but it has not the value of a contractual debt and therefore it cannot be collected from a ground sold to clients.
- In other words the ground that the father sold after his son reached 30 days are not mortgaged by the amount of 5 Shekalim because a verbal debt cannot be opposed to the clients.

Rivash in responsa Tshuvot Bar Sheshet n° 131.

Rivash was asked to describe the ceremony of the redeeming of the firstborn and precise the benedictions to be said.

Rivash explained that according to Yoreh Deah (Rabbi Jacob ben Asher) and Sefer ha-Mitsvot²³ of R Moses ben Jacob of Coucy, the father pronounces the benedictions: al-pidion ha-ben and she'he'hianu in both cases, whether the father redeems his son or if the son redeems himself. In this last case he says: al-pidion ha-behor. Rivash explains the use of "al" in the two cases by the fact that this benediction requires the help of the Cohen.

He explains further that according to Maimonides the father redeeming his son says indeed al-pidion ha-ben but the son redeeming himself says: lifdot et ha-behor. We can justify this opinion by the fact that the benediction made by the father could at a pinch be replaced by the benediction of the son when he will reach the majority. But the benediction made by the concerned person can be said only by him.²⁴ If this man had to redeem himself and his son, we know that he has the precedence over his son. We see therefore that the essence of the mitzvah is to redeem oneself but this is not possible during the man's minority and therefore his father must step in.

The divergence between Rashba and Rivash.

Their divergence is about the following point.

According to Rashba the privilege of the father to redeem his son does not end with the majority of his firstborn. The father beholds the privilege to redeem his major firstborn and he has still precedence over his son. The warranty of the father and his estate ends when the incontestable firstborn son reaches his majority and disposes of the necessary means to redeem himself. Otherwise the warranty of the father's estate is maintained.

According to Rivash the privilege, obligation and the warranty of the father ends at the majority of the son.²⁵

The essential divergence between them could then limit itself to the following point: whether the father beholds the privilege and the precedence of the mitzvah of pidion ha-ben after the majority of the son.

²³ Today: Sefer Mitsvot Gadol.

²⁴ Rema in Shulhan Arukh Yoreh Deah 305, 10, at the end of the note, ascribes to Rivash that Beit Din does not redeem a firstborn. Apparently this is deduced from the fact that after his majority the redeeming can be performed only by himself. According to other authorities gathered by Shakh, Beit Din is allowed to redeem a firstborn (Be'er Heiteev 11).

²⁵ Rivash did not enter into all the details. He will probably agree with Rashba that in the case where the firstborn is not known, the obligation of the father does not end. Similarly if the son is poor and has not the economic means, the father will probably behold his obligation.

Sefer ha-Hinukh. Mitzvah 392. The redeeming of man's firstborn.

עבר האב ולא רצה לפדותו, מצוה על הבן לפדות עצמו משיגדיל...

ואפילו אחר שהגדיל הבן, המצוה מוטלת על האב, וכמו שאמר הכתוב: וכל בכור אדם בבניך תפדה [שמות י"ג, י"ז] הרי שהטיל המצוה על האב וכן נראה בקדושין.²⁶

Minhat Hinukh.

It is a mitzvah on each man in Israel to redeem his son who is the firstborn of his mother. If he has several wives and each boy is the firstborn of his mother, and they are not his firstborn but only the firstborn of their mother,²⁷ the father has nevertheless the obligation to redeem each of them and to pay 5 Shekalim for each. Now if the father does not redeem his son, whether voluntary, by mistake or under duress, the firstborn is obligated to redeem himself when he becomes major. The mitzvah falls indeed on both the father and the son. If the father did not redeem the son until he became major, the mitzvah falling on the father does nevertheless not end and the father is still obligated to perform it but the mitzvah is also falling on the son. However the mitzvah is not cancelled from the father. So did the author (Hinukh) write and he wrote that it seems to result from the gemara Kiddushin. There on p. 29a it enumerates different obligations of the father in favor of his son, to marry him, to redeem him etc. As the mitzvah to marry him is valid when he reached the majority, similarly the mitzvah to redeem the son (see Shemot 22;28) where it writes: the firstborn of your sons...the major son is still included in the sons.²⁸ Further on p. 29b, Rabbi Judah says that when both must be redeemed, the father and the son, the son has the precedence because the mitzvah to redeem himself belonged to his father²⁹ and the mitzvah to redeem the son belongs to him³⁰...The Tana kamma does not contradict this point but he thinks that the mitzvah falling on his own person has precedence on that of his son.

²⁶ Apparently Hinukh, like Rashba, deduces also from the enumeration of the different obligations of the father towards his son that these obligations are not limited in the time. As the obligation to find him a wife and teach him a profession, are valid when the son is major the obligation of redeeming him from the Cohen is still valid when he reaches majority. We noted however that the obligation of circumcision works differently and disturbs this analogy.

²⁷ For example he had already a girl from another wife. This man has no inheritance firstborn בכור לנהלה, but he has a few firstborn for the priest בכור לכהן.

²⁸ This argument is weak. The different obligations of the father were enunciated in the natural order of the life. They are independent the one from the other. Each of them concerns another stage of the child's life. The most similar obligation is that of the circumcision of the son. But the obligations are very different and we don't say that the obligation falls on the father until the majority of the son or even after. Similarly it is not mentioned that after the majority the son must perform the mitzvah. Indeed if the father fails to perform the mitzvah, Beit Din substitutes for the failing father.

²⁹ Although he is now major, the mitzvah of redeeming is still falling on his father (the grandfather).

³⁰ This explanation can be misleading. Refer to the explanation of the Mishnah Bekhorot 8 ;6 given above. Minhat Hinukh wants to prove that the obligation of the grandfather is not cancelled by the majority of the father. The grandfather did not redeem his son. According to Rabbi Judah the 5 Shekalim are a debt which is considered as a contractual debt. It can be collected from the clients. The grounds that grandfather sold after father reached 30 days warrant the redeeming of father. Now father is major and has his own son. Rabbi Judah says that the Cohen might collect the 5 shekalim of father from the grounds that Grandfather had sold and the 5 shekalim that father owns will cover the redeeming of the son. Minhat hinukh proves then that despite the majority of father, the grounds sold by grandfather still warranted the redeeming of father. Thus the mitzvah of redeeming remains on grandfather although father reached his majority. In fact Minhat Hinukh adopts the argument of Rashba.

Minhat Hinukh concludes that the obligation of redeeming rests more on the father than on the concerned himself. Therefore the son is forbidden to catch the mitzvah from his father. If he catches the mitzvah he should pay a penance of 10 gold coins.³¹ It seems that it depends on the appreciation of Beit Din who has the power to coerce anyone to redeem his firstborn in the same way it has the power to coerce anyone to perform any positive mitzvah to such a point as *עד שתצא נפשו*.³² This is also valid for the payment of the 5 shekalim of the firstborn redeeming, whether by the father or the son. Their assets are also mortgaged to warranty this liability. And according to the Tana who considers that a debt written in the Torah has the same weight that a contractual debt which may collect from the clients, the estate of both, father and son are mortgaged. Even if one of them has free property and the second sold a mortgaged ground, the Cohen can collect from both at his discretion.³³ We note that the position of Minhat Hinukh is not very realistic. It mixes the most dared assumption of Tossefot and different unique positions, which were not held back by halakhah.³⁴ The position is thus extreme but it has no practical consequence.

Recapitulative Table

Rambam and Rabbi Isaac bar Sheshet (Rivash) according to our understanding, It remains an assumption.

- The privilege of the father to redeem his son does ends with the majority of his firstborn.
- The father does not behold the privilege to redeem his major firstborn.
- If the father does not redeem his son, the latter cannot coerce the father to do it.
- Beit Din can coerce the father to carry out his obligation. Therefore Beit Din can collect the 5 Shekalin from his estate.
- Even if the firstborn is known for sure but he has no property and cannot carry out his obligation, it would seem that the liability of the father and his estate doesn't continue.

Rashba.

- The privilege of the father to redeem his son does not end with the majority of his firstborn.
- The father beholds the privilege to redeem his major firstborn and he has precedence over his son.
- If the father does not redeem his son, the latter cannot coerce the father to do it.
- Beit Din can coerce the father to carry out his obligation. Therefore Beit Din can collect the 5 Shekalin from his estate.
- If the firstborn is known for sure but he has no property and cannot carry out his obligation, the liability of the father and his estate doesn't end.
- Only if the firstborn is known, has reached his majority and has property, then we can coerce the son and we are not more allowed to coerce the father. The estate of the father is not more mortgaged by the obligation of the son.

³¹ Shulhan Arukh Hoshen Mishpat 382,1.

³² This principles is enunciated in B. Hulin 132b: *אבל במצות עשה כגון אומרים לו עשה סוכה ואינו עושה, עשה צצית ואינו עושה, מכין אותו עד שתצא נפשו.* But this principle was not held back in the halakhah, nor in Rambam nor in Shulhan Arukh.

³³ This is an assumption of Tossafot Kiddushin 29b: *ד"ה אזיל*. This is a dared assumption which turns anything upside down. It contradicts the established rule that the creditor collects from the free property *בני חורין* before the mortgaged property, *משועבדים*.

³⁴ In Shulhan Arukh Yoreh Deah 305,16 it writes very clearly:

אם אין לו נכסים בני חורין כדי פדיון, אין הכהן גובה מהמשועבדים אף על פי שקדם חוב הפדיון לחוב הבעל חוב.

Minhat Hinukh.

- The privilege of the father to redeem his son does not end with the majority of his firstborn.
- The father beholds the privilege to redeem his major firstborn and he has precedence over his son.
- If the father does not redeem his son, the latter cannot coerce the father to do it.
- Beit Din can coerce the father to carry out his obligation. Therefore Beit Din can collect the 5 Shekalin from his estate.
- Even if the firstborn is known for sure and has property, the liability of the father and his estate doesn't end.
- Even if the firstborn is known, has reached his majority and has property, then the Cohen can collect from any of them. The estate of the father is still mortgaged by the obligation of the son.