

HALOCHOSCOPE

ב' ס' ז'

Congregation Shaaray Tefillah, Pittsburgh, PA

In this generation we witness a resurgence of interest in Judaism, with many alienated Jews becoming newly-observant. The Sh'eilos that arise present us with a new challenge since earlier Poskim did not need to deal with this set of circumstances. Generally it is the younger generation becoming Baalei Teshuva. In this issue we are discussing a case where the older generation has become observant, and the younger generation remains non-observant.

The question:

There is a mitzva of *Pidyon Haben*, to redeem a first-born son on the thirty-first day after his birth. This mitzva applies to anyone born to Jewish parents neither of whom is a Kohen or Levi. The father must give an amount of silver valued at five Shekalim to a Kohen. There is a Brocha and a pronouncement made at this ceremony.

Someone was unaware that he had to redeem his first-born son. His son is now an adult. Is it too late for the father to perform this mitzva now?

What are the issues?

- (A) When must the mitzva be performed?
- (B) By whom must this mitzva be performed?
- (C) *Sh'lichus* - Agency. May the person obligated in this mitzva appoint a *shliach*, an agent in his place?
- (D) *Zechiah* - Acting as an agent to benefit a party without their knowledge.

(A) The Timing of the Mitzva:

The verse says that this mitzva is to be performed when the baby is one month old. [Parshas Korach 18,16] However, this is taken by the Talmud to be a minimum age. The first-born may be redeemed at any time after he is one month old. [Bechoros 49a, Kidushin 29a]

(B) Who is Obligated:-

The mitzva is first and foremost incumbent on the father. [Parshas Bo 13,13 and 15] If the father did not redeem the son in his childhood, then when the son becomes an adult, he has an obligation to redeem himself. [See Kidushin 29a.] There is a slight variation in the wording of the pronouncement and, according to some authorities, in the wording of the blessing when the son redeems himself.

The son need not be present at the ceremony. Once again, there is a variation in the language of the pronouncement depending on the presence of the son.

The question now is: once the boy has reached the age when he has his

own mitzva to redeem himself, is the father no longer obligated? If the obligation is solely upon the son, does the father still have a mitzva of a voluntary nature? This would mean that if the father performed the mitzva, the son need not do it as well, as he was already "redeemed". Alternatively, once the boy has reached adulthood, he is the only person who has the mitzva, and the father, or anyone else, may not perform the mitzva instead of him.

On the other hand, maybe when the son reaches adulthood, the father is not freed from his own obligation to redeem his son, but since the father neglected to redeem his son in childhood, the son becomes obligated in the same mitzva in adulthood. This, too, could be understood in two ways. Would both of them be equally commanded to fulfill this mitzva and the first one to do so would be credited with it? Or is the father the main person obligated, but the son can act as an "understudy" if the father is unwilling to perform the mitzva himself, or the father dies?

In order to elaborate on this section of this Sh'eila, it is necessary to explain the next section first.

(C) Sh'lichus

May the father appoint a Shliach, an agent, to perform the mitzva for him? To explain this issue, we must discuss the idea of Sh'lichus for mitzvos.

There are two categories of mitzvos. A mitzvah requires us either to perform an act or to accomplish a particular feat. The mitzva of saying Bircas Hamazon is in the first category. If someone has eaten a meal, he must say Bircas Hamazon, and nobody can perform this mitzva in his place. In the second category is the mitzva of *Teruma* - tithing one's crop. After harvesting a crop, there is a mitzva to set aside some of it as tithes to be given later to the Kohen or Levi. This mitzva need not necessarily be performed by the person obligated himself, i.e. the owner of the harvest; he may appoint an agent to tithe his crops. This agent is a Shliach and his performance of the mitzva is attributed to the owner. [See Pesachim 7b and Ran; this appears to be the reasoning behind the Ran.]

Into which category does *Pidyon Haben* fall? Is it a mitzva that needs active participation of the father himself, or, as we have mentioned, the son himself? Or is it merely to accomplish the redemption and can be achieved by way of an agent?

We find in a responsum of the fourteenth century authority, Rivash, that both the questioner and the Rivash in his response assume that one may not appoint a Shliach for *Pidyon Haben*. [See Rivash No. 131.] However, the Ran states explicitly that *Pidyon Haben* is an example of a mitzva that may be performed by a Shliach. [See Ran Pesachim 7b.] Furthermore, although Rema does rule in keeping with Rivash, that one may not appoint a Shliach, most commentaries disagree with him, claiming that Rivash was misinterpreted. [See Shulchan Aruch Yoreh De'ah 305,10; Rema, Shach, Taz, etc.]

The following is a translation of the language used by Rivash: "As for the father, this mitzva may be performed by his son when he reaches adulthood, whereas when the son reaches adulthood, he is the only person who may perform this mitzva."

Rema infers from Rivash's words that there is no way an agent can perform this mitzvah in place of the father or the son. The other commentaries interpret the words differently: Of course an agent may perform the mitzva, but in

whose place does he act? Rivash is only defining who is obligated: when the son is a child, it is not only the father's obligation. The son is also obligated, and although he is unable to fulfill his obligation at present, he will be able to fulfill his own obligation when he reaches adulthood. However, when the son is an adult, the obligation is his alone. [For a reconciliation of the Rema, see Teshuvos Chasam Sofer Yoreh De'ah 296.]

Either way, according to this Rivash, we have resolved our earlier question: only the son is obligated when he is an adult. In our case, the father can still act as a Shliach according to the majority of Halacha authorities.

(D) Zechiah:

May the father appoint himself as the agent without consulting his son? The answer to this depends on whether this mitzva is a *Z'chus* for his son, meaning: if the son considers this mitzva in his best interests, then anyone else may perform the mitzva as his self-appointed Shliach. There is an opinion that when the son is a child, really his father is not obligated in his own right, but acts in the best interests of his son as a *Zochch*, a self-appointed agent. A careful reading of the Rivash might also lead to this interpretation. [See Taz Yoreh De'ah 305,11.] The Vilna Gaon states that anyone may act as a *Zochch* even if he is not appointed as a Shliach. [See Biur HaGro Yoreh De'ah 305,17.]

What would the Halacha be if the son, being irreligious, does not want to cooperate? If the son offers any resistance to the idea of a *Pidyon Haben*, the father is no longer acting in the son's best interests. One cannot act as a self-appointed Shliach against someone's interests. In light of the Rivash, once the son is an adult, he alone is obligated in the mitzva, and the father is excluded from performing the *Pidyon Haben*.

There is, however, another opinion, disagreeing with Rivash. Rashba, in a responsum, discusses a case where the father wishes to perform a *Pidyon Haben* on his adult son, but the son wishes to perform the mitzva himself. Rashba rules in favor of the father, stating that the father was never relieved of his initial obligation, and that, therefore, the father is the first person obligated. The adult son is only obligated to perform the mitzva as a "second choice", when the father neglects his own duty. [See Teshuvos Rashba Vol 2 No 321.]

According to Rashba, our case is clear-cut. The father may definitely perform a *Pidyon Haben* for his non-observant adult son, with or without consent. Moreover, Rashba addresses our issue explicitly whereas the opinion of Rivash is only implicit. Nonetheless, the Rivash is cited in the Shulchan Aruch regarding various Halachos that are decided on the basis of this responsum. Rashba's responsum, while appearing in *Bedek Habayis*, a work adding revisions to the text of *Bais Yosef* by the author, does not appear in the Shulchan Aruch. It also appears that the *Bedek Habayis* was not available to Rema. [See Tur Yoreh De'ah 305, *Bedek Habayis* and *Darkai Moshe* 3.]

There are later Halacha authorities who decide in favor of each side in this dispute. [See Kneses Hagedolah, Chacham Tzvi no. 105; Minchas Chinuch 392,1; Teshuvos Chasam Sofer Yoreh De'ah no. 293; *Ikrei Dinim Hilchos Bechor 24*.]

It must be noted that the Chinuch also gives the father the primary obligation, following the same reasoning as Rashba. [See Chinuch, end of mitzva

In conclusion: In our case, if the son agrees, the father may perform the full ceremony of Pidyon Haben including the Brocha, at the very least as a Shliach, since the consensus is not to follow Rema. If the son does not agree, then we have a dispute between the Rishonim (early Halacha authorities). The father should perform the Pidyon Haben anyway, relying on the Rashba and the Chinuch. Since there is a dispute, saying the Brocho is a question, which is beyond the scope of this discussion.

If the son is unavailable for comment, or if the father wishes to perform the Pidyon Haben without asking the non-observant son, may he assume that the son will feel that it is in his best interests? This depends on whether the son's general attitude towards religion is favorable or not. Generally, if he does not object to religion, although he is unwilling to commit himself to observance, the father may presume consent.

c 1993 Rabbi Shimon Silver

ANNOUNCEMENTS

SCHEDULE:

SHABBOS MINCHA	5:35 PM
SHACHARIS SUNDAY	8:00 AM
SHACHARIS MONDAY-FRIDAY	7:00 AM
MINCHA SUNDAY-THURSDAY	5:55 PM
CANDLE-LIGHTING SHABBOS TERUMAH	5:50 PM
MINCHA EREV SHABBOS TERUMAH	6:00 PM

SHIURIM:

THE RAV IS STILL ON VACATION UNTIL FRIDAY. THERE ARE A VARIETY OF SHIURIM AVAILABLE IN THE KOLLEL. PLEASE INQUIRE WITH ANY KOLLEL MEMBER.

This Issue of HALOCHOSCOPE is sponsored in memory of Bessie Taback Americus, Basya bas Efrayim Fischel HaKohen, whose Yortzite is on the thirtieth of Shevat, by Parke, Beverly, Philip and Michael Americus, her children and grandchildren.