In **the end, we cannot read into it; - סיפא לא קרינא ביה וטבחו כולו באיסורא ‘And he slaughtered it’, entirely in a forbidden** manner

Overview

The רישא of the משנה states[1] that if a son stole and was טבח his father’s ox (and his father died), he pays ד' וה' to his brothers. The סיפא of the משנה states[2] that if he stole from his father and then his father died, and afterwards he was טבח, he is exempt from ד' וה'. The difference (as ר"נ explained) is that in the סיפא the טביחה was not entirely באיסורא, since the thief (also) owns part of the ox (however in the רישא it was וטבחו כולו באיסורא). Our תוספות is concerned why should the son pay the קנס (whether the כפל or ד' וה'), which he owed to the father, to his brothers; since they cannot inherit the קנס payment, for there is a rule אין אדם מוריש קנס לבניו.[3]

משמע אבל כפל מחייב[4] אף על גב דלא עמד בדין[5] -

It seems that it is only the ד' וה' payments that he is exempt from paying his brothers (since the טביחה was not כולו באיסורא), **however he is obligated** to pay them **the כפל, even though** the father **did not take him to** בית **דין -**

ואפילו ארבעה וחמשה הוה מחייב אי לאו דבעינן וטבחו כולו באיסורא[6] -

And in truth **he would be liable** (to pay his brothers) **even for ד' וה', if not** for the fact **that we require** that it be **'וטבחו' כולו באיסורא -**

ורישא נמי קתני חייב בארבעה וחמשה ואף על גב דאיירי בלא עמד בדין כמו בסיפא[7] -

And the רישא also states that he is liable for ד' וה', and even though it is

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[1] ע,א.

[2] ב,עד.

[3] The exception to this rule is where there was a דין תורה on the קנס, and ב"ד ruled that he is liable to pay the קנס, so once it was עמד בדין, and ב"ד ruled that he is חייב to pay the קנס, it is no longer considered a קנס, but rather it is ממון and one can bequeath it to his heirs.

[4] The stealing (as opposed to the טביחה) was כולו באיסורא; it belonged to the father. The משנה on ב,עד states explicitly that he pays the כפל to the heirs; תוספות is adding that presumably he pays it even if לא עמד בדין on the כפל.

[5] The reason why he is פטור in the סיפא from ד' וה' is (only) because there is no 'וטבחו', as ר"נ explained, in which case he was לא עמד בדין (which could not have happened, for the father died before the טביחה), therefore regarding the כפל, where the פטור of 'וטבחו' (obviously) does not apply (because it is in the sole רשות of the father), he would be חייב for כפל, even if לא עמד בדין (as is the case of ד' וה'). See כוס הישועות for an alternate explanation.

[6] תוספות is seemingly trying to prove from this that even by ד' וה' he would be מוריש קנס לבניו, if not for 'וטבחו'. See (however) ‘Thinking it over’.

[7] The סיפא cannot be discussing עמד בדין on the ד' וה', since the father died before the טביחה took place. The only reason he is פטור from ד' וה' in the סיפא is because there is no 'וטבחו', however in the רישא he is חייב to pay ד' וה' to the sons because the 'וטבחו' was fulfilled; this proves that even by לא עמד בדין, one is מוריש קנס לבניו. The רישא and the סיפא are discussing the same case (except by one the טביחה was בחיי האב and the other after מת האב).

discussing a case of **לא עמד בדין, just like the סיפא -**

דאין חילוק בין רישא לסיפא אלא דברישא טבח ואחר כך מת אביו -

For there is no other **difference between the רישא and the סיפא, except that in the רישא** the thief **was טבח first and his father died afterwards -**

ובסיפא מת אביו ואחר כך טבח -

And in the סיפא his father died first **and he was טובח afterwards,** however regarding עמד בדין both the רישא and the סיפא are in the same case where לא עמד בדין -

ולמאי דסבירא ליה מעיקרא לרב נחמן ולא חמשה חצאי בקר -

And even **according to what ר"נ assumed initially** that one does **not** pay **five half-oxen -**

לא מוקי כשעמד בדין[8] אלא משום דלא ליהוי ה' חצאי בקר -

He established the רישא **by עמד בדין, only so it should not be ה' חצאי בקר,** but for no other reason -

אם כן משמע כל הסוגיא דאדם מוריש קנס לבניו -

Therefore, it seems from this **entire סוגיא that a person can bequeath a fine (קנס) to his children.**

תוספות asks:

והקשה רבינו יצחק בן אשר דבריש נערה שנתפתתה[9] (כתובות דף מב,ב: ושם) אמרינן -

And the ריב"א asked that in the beginning of נערה שנתפתתה, פרק רבה **comments – כי קאמרינן ממונא הוי[10] להורישו לבניו בשאר קנסות -**

'When did I state that it is considered **money, to bequeath it to his sons by the other fines' -**

והתם הוי פירושו משום שעמד בדין -

And there the explanation why he can be מוריש the קנס to his sons is **because he was עמד בדין -**

אבל לא עמד בדין משמע כולה שמעתא דלא מצי להורישׁ[11] -

However, if he was not עמד בדין, it seems from the entire גמרא there in כתובות **that**

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[8] ר"נ in the הו"א did not establish the רישא in a case of עמד בדין to justify how he is מוריש קנס לבניו, rather he said it in order that it should not contradict his opinion (in the הו"א) that ולא חמשה חצאי בקר, therefore we need to be discussing that עמד בדין with his father on the ד' וה' so it should not be חצאי בקר. If not for the חצאי בקר issue, ר"נ would not have established the רישא by עמד בדין; proving again that אדם מוריש קנס לבניו.

[9] The משנה there (on מא,ב) states clearly that if the father (of the אנוסה ומפותה) died before he was עמד בדין (with the אונס ומפתה), the קנס is paid to the daughter (the אנוסה ומפותה), but not to the son's (her brothers).

[10] רבה stated there that קנס is considered ממון regarding that the children can inherit it. In order that this ruling of רבה should not be contradicted from the משנה (footnote # 9), רבא explained that רבה was discussing other types of קנסות (not אונס ומפתה) and in those קנסות one can be מוריש קנס לבניו, but only (according to תוספות) if עמד בדין.

[11] See (for instance) on מב,א, when the query was posed to רבה, it was in a case of עמד בדין, and the question was since it was עמד בדין, whether it is considered ממון or קנס. There was never any doubt if לא עמד בדין that it is surely not ממון.

he cannot be מוריש קנס לבניו; so why is it here that we say that the קנס which was due to the father (for כפל or ד' וה') is payable to his children even if לא עמד בדין?!

In summation; תוספות asks that in our גמרא it seems that אדם מוריש קנס לבניו even if לא עמד בדין (the cases of כפל and ד' וה'), while from the גמרא in כתובות it appears that א"א מוריש קנס לבניו if לא עמד בדין.

תוספות answers:

ויש לומר דרבא ורב נחמן דהכא לית להו סוגיא דהתם -

And one can say that רבא and ר"נ here do not agree with the גמרא there (in כתובות) -

דסבירא להו דיכול להוריש בשאר קנסות אף על גב שלא עמד בדין -

For they (רבא ור"נ) **maintain that one can be מוריש by other קנסות** (besides אונס ומפתה) **even though** the father **was not עמד בדין.** תוספות explains the difference between או"מ (where אדם מוריש קנס) and שאר קנסות (where א"א מוריש קנס) -

דנהי דקנס של אונס ופיתוי אין יכול להוריש בשום ענין כדקתני במתניתין דהתם[12] -

For granted that the קנס of אונס ופיתוי the father **cannot be מוריש it, under any circumstances, as the משנה taught there,** however by other קנסות he can be מוריש; the difference between אונס ומפתה and שאר קנסות is -

היינו משום דאותו דבר שהקנס יוצא ממנו דהיינו הבת אין יכול להורישו לבניו[13] -

Because by או"מ **the source from where the קנס emerges, meaning the daughter, he** (the father) **cannot be מוריש her to his sons -**

כדאמרינן התם אותם לבניכם[14] ולא בנותיכם לבניכם -

As the גמרא **states there, 'them'** (the עבדים כנענים), they can be bequeathed **to your sons, but your daughters cannot be** bequeathed **to your sons;** that is why the קנס of אונס ומפתה, which is generated by the daughter, one cannot be מוריש, just as he cannot be מוריש the daughter (the source of the קנס) -

אבל ממון דהכא שהכפל ד' וה' יוצאין ממנו דהיינו בהמה הוא מוריש לבניו -

However, regarding the money here, from which the קנס of **כפל, ד' וה' emerge from, which is the animal,** the father **can be מוריש לבניו -**

לפיכך זה הקנס מוריש לבניו -

Therefore, this קנס which emerges from this animal (namely כפל, ד' וה') he can be

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[12] The משנה there on ב,מא states that if the father (of the אנוסה ומפותה) died before the קנס was paid, the אונס ומפתה pays the קנס to the daughter, but the sons do not inherit the קנס (according to the רבנן, if he died before דין גמר, and according to ר"ש even if he died לאחר גמר דין).

[13] This means (for instance) that the מעשה ידיה (handiwork) of the בת (which generally belongs to the father), does not go over to the sons in case the father died while she was still a קטנה (or a נערה), but rather it belongs to her.

[14] The תורה (in ויקרא [בהר] כה,מו) writes regarding עבדים כנענים that 'אחריכם וגו **אותם לבניכם** והתנחלתם, we expound the words 'אותם לבניכם' to be an exclusion, only the עבדים כנענים are transferred to the sons, but not any rights which the father had in his daughters, these rights are not transferred to the sons.

מוריש לבניו (just as he can be מוריש the animal לבניו) –

In summation, answer # 1; there is a dispute, the גמרא in כתובות maintains א"א מוריש קנס לבניו if לא עמד בדין, however רבא ור"נ (here) maintain that only by אונס ומפתה do we say א"א מוריש because he cannot be מוריש the daughter (the source of the קנס), however regarding ד' וה' where he can be מוריש the animal (the source of the קנס), he can also be מוריש the קנס.

תוספות offers an alternate explanation:

ועוד נראה לרבינו יצחק דרבא ורב נחמן דהכא לא פליגי אסוגיא דרבה ואביי דפרק נערה (שם,א) **-**

And it appears furthermore to the ר"י that רבא and ר"נ here do not argue on the סוגיא of רבה and אביי of פרק נערה -

דמיירי הכא כולה מתניתין כשעמד בדין ואמרו ליה חייב אתה ליתן לו[15] **-**

For the entire משנה here (regarding ד' וה') **is discussing** a case **where** the father **was עמד בדין** with the son**, and** בי"ד **told him, 'You are obligated to pay him** (your father)' -

דכהאי גוונא אדם מוריש לבניו קנס כיון דאמרו ליה חייב אתה ליתן לו -

For in such a manner a person is מוריש קנס לבניו, since the בי"ד **told him, 'חייב אתה ליתן לו',** it is considered עמד בדין –

In summation, answer # 2; there is no dispute; all agree that א"א מוריש if there was no העמדה בדין at all, however here (by ד' וה') there was a partial העמדה בדין and therefore אדם מוריש קנס.

תוספות responds to an anticipated difficulty:[16]

ולא שייך השתא למפרך אריש ליפלוג בדידיה -

So now it is not appropriate to ask regarding the רישא, let him differentiate in this same case, meaning we should differentiate in the case of the רישא -

בטבח ומכר בחיי אביו בין עמד בדין ללא עמד[17] **-**

Where he was טבח ומכר while his father was alive, whether it was עמד בדין (so he has to pay the ד' וה' to the other sons) or **whether he was not עמד בדין** (so he is exempt from paying the ד' וה' to the sons, since א"א מוריש קנס לבניו); this is not a valid question -

דניחא ליה למתני כולה בעמד בדין דתו לא הוי קנס -

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[15] When בי"ד issues a ruling, they may initially say, 'חייב אתה ליתן לו', which is not the final פסק, until they say to him, 'צא תן לו', which is the final גמר דין. However since there was a partial פסק, it is considered עמד בדין, at least to the extent that one can be מוריש this קנס to his heirs.

[16] Our גמרא initially wanted to establish the רישא (where he is חייב for ד' וה') in a case of עמד בדין. However, the גמרא rejected this, for if there is a difference whether עמד בדין or not (in a case where he was טבח ואח"כ מת אביו), why does the משנה (in the סיפא) offer a case of טבח ואח"כ מת אביו where he is פטור, the משנה could have the same case as the רישא and teach us that he is פטור if לא עמד בדין. Seemingly this question applies to the current answer of תוספות as well.

[17] Why the need for the סיפא to discuss a case of טבח ואח"כ מת אביו, when we can have a case of פטור even when טבח ואח"כ מת אביו, the same case as the רישא.

For it is preferable to establish the entire משנה (the רישא and the סיפא) in a case **of עמד בדין,[18] so it is no longer** considered **a קנס** (so there is no issue of א"א מוריש קנס לבניו) -

דאפילו הכי בסיפא מת אביו ואחר כך טבח דפטור -

Where nevertheless in the סיפא, where his father died first, **and afterwards he was טבח** that he is still פטור from paying the other sons (for the כפל [for which he was עמד בדין with his father] and even for the ד' וה', which he owes directly to the sons) –

משום דבעינן וטבחו כולו באיסורא וליכא[19] -

Because we require וטבחו entirely באיסורא, and it is not באיסורא in this case -

וחידוש זה אינו יכול להשמיענו אלא במת אביו ואחר כך טבח ומכר[20] -

And he is not able to inform us of this novelty, only in a case **where his father died** first, **and afterwards he was טבח or מכר;** this reasoning works in the מסקנא, where ר"נ maintains אפי' חמשה חצאי בקר, and the reason he is פטור in the סיפא is because it is not 'וטבחו' כולו באיסורא -

אבל מעיקרא דסבירא ליה חמשה בקר אמר רחמנא ולא חמשה חצאי בקר -

However initially when ר"נ **assumed** that **the תורה said five oxen, but not five half-oxen -**

והיינו טעמא דמפטר בסיפא פריך שפיר דליפלוג וליתני בדידיה -

And that is the reason why he is exempt in the סיפא, therefore the גמרא **correctly asks, let him differentiate and teach us that in** very same case as in the רישא; it should have stated –

במה דברים אמורים כשעמד בדין ואמר לו צא תן לו -

When are these words said (that he is חייב if טבח ואח"כ מת אביו)**, when he was עמד בדין and** בי"ד **said to him 'צא תן לו',** it was a complete גמר דין and it is ממון and no longer קנס, and it is not חצאי בקר ה', for he owes his father בקר ה' -

אבל לא עמד בדין פירוש שלא אמר לו צא תן לו אלא חייב אתה ליתן לו -

However, if he was not עמד בדין, meaning that בי"ד **did not tell him, 'צא תן לו', but rather** they said **חייב אתה ליתן לו** which is not the complete גמר דין -

וטבח ומכר ואחר כך מת אביו פטור מטעם ולא ה' חצאי בקר דהיינו טעמא דסיפא[21] -

And he was טבח or מכר and afterwards his father died, in that case **he is exempt** from paying the sons ד' וה' **on account of, 'but not five half-בקר', which is the reason** why in the **סיפא** he is exempt -

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[18] This means an עמד בדין of (only) חייב אתה ליתן לו.

[19] Once the father died, the son inherits part of the ox, and so when he is שוחט it after his father's death it is not 'וטבחו' כולו באיסורא; he is permitted to be שוחט his share.

[20] However, if the משנה would say that he is פטור by לא עמד בדין and he was טובח before his father's death, the פטור would be on account of א"א מוריש קנס לבניו (since he is לא עמד בדין, it still remains a קנס).

[21] In this scenario there is no issue with א"א מוריש קנס לבניו since he was עמד בדין, meaning that they told him חייב אתה ליתן לו. However, the issue of חצאי בקר ה' ולא remains, since he need not pay himself.

דסיפא נמי מיירי בלא עמד בדין בחיי אביו[22] שלא אמר לו צא תן לו[23] אלא חייב אתה לו -

For the סיפא is also discussing a case **of לא עמד בדין while his father was alive,** meaning that בי"ד **did not tell him צא תן לו, but rather 'חייב אתה לו' -**

אם כן בחנם נקט בסיפא מת אביו ואחר כך טבח דבזה הענין אפילו טבח ואחר כך מת נמי -

So therefore, it was unnecessary to mention in the סיפא that he is פטור **if his father died, and afterwards he was טבח, for in this manner** of לא עמד בדין mentioned above, **even if טבח** first **and** his father **died afterwards, he is also** פטור because of ולא ה' חצאי בקר –

In summation; תוספות explains that the question of ליפלוג בדידיה (whether עמד בדין or not) is only appropriate if we maintains ולא ה' חצאי בקר (that reason applies whether טבח ואח"כ or מת ואח"כ טבח), however it does not apply when we assume אפי' ה' חצאי בקר and the פטור of the סיפא is because we require וטבחו' כולא באיסורא'.

תוספות is slightly skeptical of this explanation:

וקצת נראה דוחק פירוש זה[24] דמאחר דמועלת העמדה בדין דחייב אתה ליתן לו -

And this explanation appears to be slightly forced, for since the העמדה בדין of חייב אתה ליתן לו is effective -

לענין שחשוב כאילו זכה שיכול להוריש לבניו -

Regarding that it is considered as if the father **acquired it** as payment **so he can bequeath it to his sons,** and it is no longer considered a קנס (which he cannot be מוריש לבניו) -

אם כן גם לענין זה תועיל שיחשוב כאילו נתחייב לאביו ה' בקר שלמים -

So, it therefore follows that the חייב אתה ליתן לו **should also be effective regarding as if he is liable to** pay **his father five whole oxen,** but not ה' חצאי בקר -

שמכח האב הוא מתחייב לשלם[25] לאחיו ולא מכחם -

Since he is liable to pay his brother on account of the debt he owes to his **father, but not** for anything he **owes them –**

תוספות offers an alternate explanation:

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[22] This is referring to the קרן וכפל (the טביחה ומכירה was after his father passed on so there could not be any עמד בדין).

[23] If they would have told him צא תן לו, and afterwards he was טבח ומכר there would not be a חיוב of ד' וה' at all, for he is considered a גזלן (not a גנב); see previously סח,ב.

[24] According to this answer, if he was told צא תן לו there is no issue of א"א מוריש קנס לבניו (since it is ממון, not קנס), and no issue of ה' חצאי בקר, since he owes the ה' בקר to the father. However, if he was told חייב אתה ליתן לו, there is no issue of א"א מוריש קנס לבניו, however the issue of ה' חצאי בקר ולא still remains since it is not the complete גמר דין.

[25] He is liable to his father for ה' בקר (since there was a [partial] גמר דין), so just as the גמר דין is effective that it is no longer קנס and the sons can inherit what was owed the father, similarly the father was owed five whole בקר, so the sons inherit their share of those five whole בקר; there is no חצאי בקר here, since there was already a (partial) גמר דין, which gave the father the rights to ה' בקר שלמים.

ורבינו יצחק הלבן מפרש[26] דבכל קנס אדם מוריש לבניו –

And the ר''י הלבן explains that by every קנס, a person may bequeath it to his sons -

וההיא דפרק נערה (שם) **לענין קרבן שבועה[27] איירי -**

And that which is discussed **in פרק נערה, is regarding a קרבן שבועה,** but not regarding the payment of קנס to his heirs (which indeed they do inherit) **-**

כמו שמוכח תחילת הסוגיא[28] דלענין קרבן שבועה שאל אביי לרבה -

As is evident there **in the beginning of the discussion that אביי queried רבה regarding a קרבן שבועה -**

ועל זה השיבו[29] כי קאמינא ממון הוי לרבי שמעון להתחייב עליו קרבן שבועה להורישו לבניו -

And regarding **this** query, רבה answered אביי, '**when I said that it is** considered **ממון according to ר''ש,** I meant **that he is liable a קרבן שבועה for this** קנס **that he can bequeath it to his sons,[30]** meaning -

שאם מת ותבעוהו אחר מיתת אביהם -

That if the one to whom the קנס was owed, and there was העמדה בדין, **died** after the העמדה בדין, **and his sons demanded payment** (from the guilty party) **after their father's death,** saying and demanding **-**

קנס שהיית חייב לאבינו והעמידך בדין ונתחייבת לו בדין וכפר ונשבע ואחר כך הודה -

'The קנס which you owed our father and he took you to court, and you were found legally liable', and the respondent **denied it and swore** that he was not liable, **and afterwards he admitted** that he was found liable to their father after the העמדה בדין, we say -

הואיל ואגלאי מילתא דבשעת שנפל ליד היורשים כבר היה ממון אצל אביהם –

Since it is now apparent that when it 'fell' into the hand of the heirs. It was already money (and not a קנס) that was owed **to their father -**

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[26] תוספות initial question was that from our גמרא it seems that אדם מוריש קנס לבניו even if לא עמד בדין, however from the גמרא in (פרק נערה) כתובות it seems that א"א מוריש קנס לבניו if לא עמד בדין.

[27] A קרבן שבועה is when one wrongfully denied owing someone money (for any reason) and swore to uphold his denial. If he has remorse and admits to his falsehood, the law requires him to return the money owed plus a (fifth) [fourth], and bring a קרבן אשם (also called אשם גזילות). The cases mentioned in the תורה (in ויקרא ה,כא-כו) are regarding ממון obligation, קנס is not mentioned, so there is no קרבן שבועה (or אשם גזילות) for קנס.

[28] א,מב. We cite the query; בעא מיניה אביי מרבה האומר לחבירו אנסת ופיתית את בתי והעמדתיך בדין ונתחייבת לי ממון והוא אומר לא אנסתי ולא פיתיתי ולא העמדתני בדין ולא נתחייבתי לך ממון ונשבע והודה לר' שמעון מאי כיון דעמד בדין ממונא הואי ומיחייב עליה קרבן שבועה או דלמא אע"ג דעמד בדין קנס הוי א"ל ממונא הוי ומיחייב עליה קרבן שבועה. The query was whether there is a קרבן שבועה in a case where the one who is owed the קנס claims there was a העמדה בדין already and so perhaps it is considered ממון, and not קנס and therefore there should be a חיוב קרבן שבועה.

[29] ב,מב.

[30] If he subsequently admitted to the father, there will be no קרבן שבועה, since initially it was a קנס payment, however, if he admitted to the heirs (after the העמדה בדין with the father) there is a קרבן שבועה.

שהרי כבר עמד עליו בדין ונתחייב לו ולא היה יכול להודות ולהפטר[31] מהן -

For it was already tried in court and he was found liable, and he could no longer admit to his crime **and be exempt from** paying it -

אם כן לגבי דידהו אין עקרו קנס והוי ליה דומיא דפקדון דקרא ומתחייב עליה קרבן שבועה -

So therefore (since it was ממון when they inherited it), **regarding** the heirs **it is not essentially a קנס** (but rather ממון) **and it is similar to the case of a 'deposit'** which the **פסוק** mentions, and **he is liable** to bring **a קרבן שבועה for it -**

אבל אם לא עמד בדין אף על פי שהיורש יורשו -

However, if the father **was not עמד בדין** with the accused, **even though the heir inherits** the קנס, as the ר"י הלבן stated previously -

מכל מקום אין דומיא דפקדון ולא מחייב בטענתו קרבן שבועה -

Nevertheless, it is not similar to a פקדון, and the accused **will not be liable on account his** denial **claim a קרבן שבועה -**

אפילו העמידוהו בדין ונתחייב להו בדין ואחר כך עתה כשתבעוהו כפר ונשבע והודה -

Even if the heirs took him to court and he was found legally liable, and afterwards he denied and swore, and subsequently **he admitted,** he is not liable for a קרבן שבועה -

שהרי עיקרו קנס[32] -

Since essentially it is a קנס –

In summation; according to the ר"י הלבן there is no contradiction to speak of, because the rule is that אדם מוריש קנס לבניו, and the גמרא in כתובות is (only) discussing whether one can be מוריש a קרבן שבועה to his heirs. The conclusion according to רבה is that if it was a קנס payment due, then even if there was a העמדה בדין by the father there can be no קרבן שבועה to the father, since initially it was a קנס payment. However, if there was a העמדה בדין by the father and the father died before he received payment, the children who inherit this ממון (not קנס since there was a העמדה בדין obligation, and took the accused to court, and he denied, swore and then repented, there is a חיוב קרבן שבועה, since by the children it was never a קנס, for they inherited a monetary obligation.

תוספות anticipates a difficulty:

והא דאמר בתר הכי[33] דאיצטריך קרא וכיחש[34] לעמדה בדין ובגרה ואחר כך מתה -

And this which the גמרא **states later that we require** the word **'וכחש'** to let us know

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[31] One of the identifiers of a קנס is that מודה בקנס פטור, but that is only before the העמדה בדין, but after the העמדה בדין he can no longer admit and be exempt; this proves that the העמדה בדין makes it ממון, and no longer a קנס.

[32] Initially, when they were יורש the liability payment from their father, it was a קנס (since there was no העמדה בדין during the father's lifetime), therefore there can no longer be a קרבן שבועה, even if there was a העמדה בדין by the יורשים.

[33] כתובות מב,ב.

[34] See ויקרא ה,כא regarding a קרבן שבועה.

that in a case **where there was העמדה בדין, and she matured** (so the payment goes to her) **and afterwards she died** (before she received the payment) -

דהתם כי קא ירית מינה קא ירית[35] -

So there when the father **inherits** the payment, **he inherits it from her** (his daughter); so, the 'וכחש' teaches that (even) in this case there is no קרבן שבועה, since originally it was a קנס -

תוספות responds:

מכל מקום אין דומיא דפקדון[36] אף על פי שעל ידי ירושה בא ליד האב עכשיו -

Nevertheless, the case of the daughter **is not similar to פקדון, even though that now it came to the father through an inheritance** (after a העמדה בדין by his daughter), nevertheless -

הואיל ותחילתו קנס לגבי דידה ודידיה[37] אפילו מתה אחר שבגרה -

Since initially it was a קנס payment regarding both **her and him, so even if she died after she matured -**

עיקרו קנס מיקרי לגבי האב ולא מתחייב קרבן שבועה -

It is considered essentially a קנס regarding the father and there is no liability to bring a **קרבן שבועה.**

תוספות asks:

ואם תאמר בפרק אלו נערות (שם דף לח,ב ושם דיבור המתחיל יש) דקבעי[38] -

And if you will say, in פרק אלו נערות where רבא **queries -**

יש בגר בקבר ופקע אב[39] או אין בגר ולא פקע אב[40] -

'Is there maturity in the grave, so the father's rights **cease, or there is no maturity in the grave and the father's** rights **do not cease' -**

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[35] The question is why is it that by the children if there was a העמדה בדין by the father, there is a קרבן שבועה if he swore and denied to the children (since they did not inherit קנס money [for there already was העמדה בדין]), and by the daughter, even though when the father inherited it from his daughter, it also was no longer a קנס (since there already was a העמדה בדין), so why is there no קרבן שבועה when the father inherited it from his daughter?!

[36] A פקדון is one of the (typical) cases mentioned in the תורה, for which there is a קרבן שבועה.

[37] Before she became a בוגרת the קנס was owed to him, and after she became a בוגרת the קנס belongs to her. In any event it was a קנס due to him, so it always remains a קנס. However, by his heirs it was never a קנס for them (only for their father), therefore there can be a קרבן שבועה.

[38] The rule is that the קנס for a נערה (or a קטנה) who was נאנסה or נתפתה belongs to the father. However if the קנס was not collected by the time she became a בוגרת (six months after she became a נערה) the קנס belongs to her. The query there is in a case where she was נאנסה or נתפתתה while she was a נערה and she died (while she was a נערה) before the father collected the קנס. In the interim the father still did not collect the קנס, until she would have been a בוגרת had she lived. The question is to whom does the קנס belong to; the father, or no one.

[39] This means that since she is now the age of a בוגרת (granted a dead one) the father may not collect the קנס, since his rights cease when she becomes a בוגרת.

[40] She was never a live בוגרת; she died a נערה and therefore the קנס still belongs to the father.

ואמאי פקע אב כשיש בגר בקבר נהי דאין לו מכחו יהיה לו מכח ירושה שיורש את בתו -
But why should the father's rights **cease** even **when there is בגר בקבר,** for **granted that he has no** rights to the קנס, **on his merits** (since יש בגר בקבר, so it is transferred to her), nevertheless the father **should have** the קנס, **by the power of inheritance for** the father **inherits his daughter** (who has no children, as the case is here) –
כיון דקנס נמי בר ירושה הוא –
Since קנס can also be inherited according to the view of the ר"י הלבן?!

תוספות answers:

ויש לומר דהתם אין יכול לזכות מכחה שהבת לא היתה ראויה לזכות בו מעולם[41] -
And one can say that there, the father **cannot acquire the rights from her, since the daughter was never fit to acquire the** קנס -

תוספות asks:

ואם תאמר וכי בעי מעיקרא[42] יש בקבר ודבנה[43] הוי היאך יכול להיות של בנה -
And if you will say, initially when the query was whether יש בגר בקבר, so it belongs to her son, (or אין בגר בקבר and it belongs to her father), **how could it belong to her son -**

הלא אינה יכולה להורישה כדקאמר בבעיא בתרייתא יש בגר בקבר ופקע אב -
Since she cannot bequeath anything to him **as** the גמרא **states in the latter query** that if **יש בגר בקבר the father's** rights **cease** and he does not inherit her, as תוספות just explained, so how can we query that it should belong to her son -

תוספות answers:

ויש לומר דבעיא קמייתא הויא בבושת ופגם[44] דהוי ממונא ומורשת שפיר לבנה[45] -
And one can say that the first query was regarding **which is בושת ופגם ממון** (and not קנס), **which she can legally bequeath to her son –**

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[41] She was a נערה when she died so she had no rights to the קנס. The idea of יש בגר בקבר is only to the extent that the father cannot have it since now she is already a בוגרת, and the father cannot collect the קנס of a בוגרת, but it certainly does not belong to her, since she was not alive when she became a בוגרת, so she did not acquire any rights to the קנס, and therefore the father surely cannot inherit anything from her.

[42] This query of רבא was initially interpreted to mean that if יש בגר בקבר, it will belong to her son (as opposed to the final version [in footnote # 38] that if יש בגר בקבר it will belong to no one).

[43] The גמרא there ultimately has a difficulty how this woman/girl can have a child, and therefore rejects the first version and accepts the latter version of the query.

[44] The מאנס, in addition to paying the קנס (of חמשים כסף), must also pay her for her shame (בושת) and her devaluation (פגם), for she is no longer a בתולה, and therefore less desirable.

[45] See 'Thinking it over' # 2.

תוספות responds to an anticipated difficulty:

אף על גב דבושת ופגם איתקש לקנס כדתנן בפרק נערה (שם דף מא,ב) **-**

Even though that בושת ופגם are compared to קנס, as the משנה taught in פרק נערה –

לא הספיקה לעמוד בדין עד שמת האב הרי הן של עצמה -

'If she did not manage to go to court before her father died, <u>they</u> (all the payments) **belong to her'**

משמע דאבושת ופגם נמי קאי מדקתני הרי הן לשון רבים -

Indicating that this ruling **applies to בו"פ as well, since the משנה stated, 'they' in the plural** tense, so therefore it would seem that just as she cannot bequeath the קנס, she should also not be able to bequeath the בו"פ to her son either –

תוספות responds that the היקש of בו"פ to קנס -

היינו דוקא לענין גביית האב איתקוש לקנס[46] -

That is only regarding the collection of the father that בו"פ is **- איתקיש לקנס**

כדכתיב[47] ונתן האיש השוכב עמה לאבי הנערה חמשים וגומר-

As it is written, 'and the man who lieth with her shall give to the father of the נערה fifty, etc. שקלים',

ודרשינן[48] הנאת שכיבה נ' מכלל דאיכא בושת ופגם–-

And we expound that the **fifty** שקלים is only for **the pleasure of lying, indicating that there are** additional payments **of בו"פ, -**

ואית דדריש תחת אשר עינה מכלל[49] דאיכא בושת ופגם -

And others expound the verse of '**because he pained her'; indicating that there is** also **בו"פ,** but the היקש is also based on the פסוק of ונתן האיש וגו' לאבי הנערה (regarding the payment) -

אבל הכא נהי דמפטר המאנס מן הקנס לפי שאין יכולה להוריש שלא זכתה בו[50] -

However here, granted that the violator is exempt from קנס because she cannot bequeath the קנס, **which she never acquired,** nevertheless **-**

מבושת ופגם דהוי ממונא לא מפטר:

From the בו"פ which is ממון, he is not exempt from paying to her heirs.

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[46] This means that whenever the father cannot receive the קנס (where he died, for instance) and the קנס is paid to her, she receives the בו"פ as well.

[47] כב,כט) דברים (תצא reads וְנָתַן הָאִישׁ **הַשֹּׁכֵב** עִמָּהּ לַאֲבִי הַנַּעֲרָה חֲמִשִּׁים כֶּסֶף וְלוֹ תִהְיֶה לְאִשָּׁה תַּחַת אֲשֶׁר **עִנָּהּ** לֹא יוּכַל שַׁלְּחָהּ כָּל יָמָיו.

[48] כתובות מ,ב. This דרשה teaches us that besides קנס, there is also a בושת ופגם payment. The תורה limits the חמישים כסף payment solely for the fact that he was שוכב עמה, but he still needs to pay for בו"פ, like any other מזיק.

[49] The חמשים כסף is only for the pain he caused her, but he must also pay for בו"פ.

[50] There is a חיוב קנס here, however technically he has no one to pay it to, he cannot pay her (since she is dead), and not to her sons (because אין יכולה להוריש שלא זכתה בו); however, there is a חיוב קנס, so regarding בו"פ which she can bequeath to her son, he is liable to pay.

Summary

There are three approaches to resolve the (seemingly) apparent contradiction between our גמרא which maintains אדם מוריש קנס לבניו (without העמדה בדין), and the גמרא in כתובות which (seemingly) maintains א"א מוריש קנס לבניו (without העמדה בדין). One is that they argue; two that our גמרא is with a non-final העמדה בדין (חייב אתה ליתן לו), and three that the גמרא in כתובות never stated א"א מוריש קנס לבניו.

Thinking it over

1. In the beginning,[51] תוספות is seemingly trying to prove from the סיפא (where the reason he is פטור from ד' וה' is because it is lacking 'וטבחו'), that otherwise he would be חייב, proving that אדם מוריש קנס לבניו. However, in the סיפא he never owed the קנס to his father since the טביחה was after the father's death, so what connection does the סיפא (of ד' וה') have to the issue of א"א מוריש קנס לבניו?![52]

2. תוספות writes that there is a difference between קנס and בושת ופגם; that by קנס, even if we assume יש בגר בקבר, nevertheless she cannot be מוריש it to her heirs, however regarding בו"פ, since it is ממון she can bequeath it to her heirs (even though she died before she received it.[53] How can we explain the difference between the two?[54]

[51] See footnote # 4.
[52] See קובץ שיעורים אות מ'.
[53] See footnote # 45.
[54] See נחלת משה.