יש בגר בקבר ודבנה הוי –

There is maturation in the grave, and so it is belongs to her son

Overview

רבא queried whether there is בגר בקבר or not. Initially, the גמרא assumed that this is relevant in a case where the נערה שנאנסה died before the קנס was paid to her father, and the מאנס was judged after she became a בוגרת (while she was deceased). If we assume יש בגר בקבר, the קנס money should be awarded to her son, for if she were alive, she would receive the קנס money (since she is a בוגרת, not a נערה), so now that she is deceased, if יש בגר בקבר, the קנס will go to her son, who inherits his mother. תוספות discusses whether a קנס payment is inheritable.

תוספות asks:

ואם תאמר היכי מצי למימר שתהא מורשת קנס לבנה הא אין אדם מוריש קנס לבניו -

And if you will say; how is it possible to say that she bequeaths the קנס to her son, since the accepted rule is that **a person cannot bequeath קנס to his children -**

כדאמרינן ריש פרק נערה לקמן[1] (דף מב,ב) -

As we say later in the beginning of פרק נערה -

ובסמוך[2] נמי אמר יש בגר בקבר ופקע אב -

And shortly the גמרא **also states,** if we assume **יש בגר בקבר, so the father's** rights **are forfeited,** and the מאנס does not have to pay. This concludes the גמרא -

ואי אדם מוריש קנס כי יש בגר בקבר נמי לא פקע אב ויהא לו מתורת ירושה -

However if a person can be מוריש קנס, even if יש בגר בקבר, the father's rights should not be forfeited and the קנס **should belong to him according to the laws of inheritance;** he should inherit his daughter; he is her closest relative –

תוספות rejects the latter proof:

ומיהו ההיא דבסמוך יש לדחות דנפקא מינה אם היא חייבת לאחרים -

However regarding **that** גמרא which is mentioned **shortly, we can disallow** that

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[1] See 'Appendix' A. רבה there states, that when I said that after העמדה בדין (after the בי"ד ruled that he has to pay the קנס), it is considered ממון, it means that (if the receiver died before being paid the קנס) he can bequeath it to his children, and they receive the payment. Indicating that if there was no העמדה בדין, he cannot be מוריש קנס לבניו. Others maintain that תוספות proof is from the משנה on ב,מא, which states that if the father died before they managed to go to בי"ד, the קנס belongs to her, If אדם מוריש קנס לבניו, it should seemingly go to his male heirs, not to his daughter. This proves that א"א מוריש קנס לבניו. See תוס' ב"מ לד,ב ד"ה הריני, see (however) also פני יהושע..

[2] לט,א. If the העמדה בדין was after she became a בגר בקבר (where, if she would have been alive, the קנס would be hers, not her father's), so if we assume יש בגר בקבר the father's rights are forfeited. The קנס is supposed to be hers (יש בגר בקבר), and since she is deceased the מאנס is פטור.

proof (just mentioned), **for the outcome** that אב פקע if בגר בקבר יש, is in a case **where she owes** money **to others -**

דאם יש בגר בקבר פקע אב אף על גב דאדם מוריש קנס דנוטלין בעלי חובות -

Therefore if יש בגר בקבר, so the money belongs to her, then we say **פקע האב** (the father receives nothing), for **even though that אדם מוריש קנס,** nevertheless the father does not receive the קנס, **since her creditors take it -**

אבל אם אין בגר בקבר אין נוטלין בעלי חובות כלום דלא פקע אב והקנס הוא שלו ולא שלה[3] -

However if we maintain **אין בגר בקבר, the creditors do not receive any** of the קנס money (because since the deceased daughter is not owed any money from the מאנס), **for לא פקע האב**, **therefore the קנס belongs to** the father **and not to the** deceased daughter.

תוספות answers:

ויש לומר דהכא הוה מצי לאקשויי והא אין מורשת קנס לבנה אלא דעדיפא מיניה פריך -

And one can say that indeed **here** the גמרא **could have asked,** how can you say if יש בגר בקבר, it goes to her son, **but אין מורשת קנס לבנה, however** the גמרא **asked an even better question** that it is impossible for her to even have a son!

תוספות offers an alternate explanation:

ורבינו יצחק מוקי הך בעיא דהכא[4] בבושת ופגם[5] דממונא הוי ויכולה להוריש -

And the ר"י establishes this query here of רבא **regarding the בושת ופגם,** which the מאנס is required to pay, **for this is ממון** (not a קנס) **and she can bequeath it** to her son –

תוספות anticipates a difficulty:

ואף על גב דתנן בריש נערה (שם מא,ב) לא הספיקה לעמוד בדין עד שמת האב[6] -

And even though the משנה teaches in the beginning of נערה פרק, 'if **there was no opportunity to go to court, before the father passed on'** the rule is -

הרי הן של עצמה ואבושת ופגם נמי קאי מדקתני הרי הן[7] -

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[3] We have negated the second proof (from דבסמוך ההיא; on א,לט), however we still have the proof from the beginning of פרק נערה that אן אדם מוריש קנס לבניו, so how (in the הו"א) can we say יש בגר בקבר ודבנה הוי?!

[4] See מהרש"א that only regarding this first איבעיא can we answer that it is concerning בו"פ, but not concerning the following איבעיא of רבא whether יש בגר בקבר ופקע האב או לא, where it is discussing קנס, ועיי"ש.

[5] בושת is a payment for the embarrassment, which he caused her, and פגם is payment for the amount he devalued her from her worth as a בתולה, to become a בעולה. These payments are not set (like the קנס payment of 50 שקלים), but rather it depends on the social status of the individual girl. Therefore it is ממון and not קנס.

[6] Normally all the payments, including קנס בושת ופגם, go to the father לאבי הנערה.

[7] If the משנה meany that only the קנס belongs to her (but not the בו"פ), the משנה should have stated הרי הוא של עצמה (or הרי קנס לעצמה), the fact that it states הרי הן של עצמה indicates that she receives everything including the בו"פ.

'That <u>they</u> belong to her' (the נערה), **and,** continues תוספות, **this is referring to the בושת ופגם also,** not only the קנס, **since the משנה states** (in the plural) **that <u>they</u>** belong to her –

משמע דאין יכול להוריש בושת ופגם[8] -

This indicates that the father **cannot bequeath** even **the בושת ופגם,** so how can the ר"י answer that if יש בגר בקבר, she can be מוריש the בו"פ to her son?!

תוספות responds:

ואומר רבינו יצחק דלענין זה ודאי איתקוש בושת ופגם לקנס דכתיב[9] תחת אשר ענה -

And the ר"י says that regarding this matter (to whom the בו"פ should be paid), **certainly בו"פ is compared to קנס, for it is written 'since he tormented her' -**

מכלל דאיכא בושת ופגם[10] דלמי שזה ניתן זה ניתן -

From which we infer that there is a payment for **בו"פ** and the היקש teaches us **that the** person **to whom** the קנס **is given, this** בו"פ is also **given -**

אבל למילי אחריני לא איתקוש -

However they (קנס and בו"פ) **are not compared** to קנס **regarding other matters -**

דהא בושת ופגם משלם על פי עצמו וקנס אינו משלם[11] על פי עצמו[12] -

For the מאנס **pays בו"פ by his own admission , but he does not pay קנס by his own admission,** therefore she can be מוריש the בו"פ to her son.

In summation: the rule is אין אדם מוריש קנס לבניו and indeed the גמרא could have asked, 'how could רבא say that if יש בגר בקבר the קנס would belong to her son, but א"א מוריש קנס לבניו'. Alternately, רבא was not discussing קנס, but rather בושת ופגם which is ממון.

תוספות asks:

אבל הקשה רבינו יצחק בן מאיר דאמרינן במרובה[13] (בבא קמא דף עא,ב ושם) -

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[8] We can understand why the קנס is לעצמה (and not to the יורשי האב), since the קנס is not due until the בי"ד rules that it is due, therefore since at that time the father was no longer alive, it never belonged to him, therefore he cannot be מוריש it. However regarding בו"פ which is ממון, it is owed to the father immediately (even before העמדה בדין; the העמדה בדין by ממון just verifies that this money is owed [but it does not create the obligation as it does by קנס]), and he acquired legal rights to these payments, so why should it go to the נערה; it should belong to his legal heirs (her brothers)?!

[9] The פסוק (in כב,כט [דברים תצא]) reads, וְנָתַן הָאִישׁ הַשֹּׁכֵב עִמָּהּ לַאֲבִי הַנַּעֲרָה חֲמִשִּׁים כֶּסֶף וְלוֹ תִהְיֶה לְאִשָּׁה תַּחַת אֲשֶׁר **עִנָּהּ** וגו'.

[10] See later ב,מ and רש"י there מכלל ד"ה. The חמשים כסף is for תחת אשר ענה, however since by any other מזיק there are also the payments of בו"פ, so why should she be different. In any even the תורה writes these two types of payment together in the same פסוק, so we rule that all these payments go to the same person, namely the father.

[11] The rule is מודה בקנס פטור.

[12] Similarly the rule of אין אדם מוריש לבניו <u>קנס</u> is only by קנס, but not by בושת ופגם. Therefore, since here there is no קנס payment (to her father, for she is a בגר בקבר), the payment of בו"פ can go to her son. The rule is that למי שזה ניתן זה ניתן, but not, if one (קנס) is not paid, the other (בו"פ) is not paid. There is no such rule!

[13] רבא posed to following query to רב נחמן, one stole an ox which belonged to two partners and slaughtered it (this would normally make him liable to pay five oxen, as a קנס), however the thief admitted to one of the partners that he

However, the ריב"ם asks, for the גמרא **stated in מרובה** פרק -

אמר ליה חמשה בקר אמר רחמנא[14] ולא חמשה חצאי בקר[15] -

רב נחמן **said to** רבא, '**the תורה stated five oxen, but not five half-oxen' -**

איתיביה גנב משל אביו וטבח ומכר ואחר כך מת אביו משלם תשלומי ד' וה'[16] -

ר"נ **refuted** רבא, the ברייתא teaches, '**one who stole from his father and** either **slaughtered it or sold it, and afterwards the father died,** the son (the thief) **pays the payments of four and five',** this concludes the ברייתא, and רבא continues -

והא הכא כיון דמת אביו[17] זכה ליה במנתא דידיה[18] וקתני דמשלם תשלומי ד' וה' -

But here since the father died, the son **acquired his portion, and** nevertheless, the ברייתא **taught that he pays the ד' וה' payments.** The גמרא continues -

ומשני הכא במאי עסקינן שעמד בדין[19] -

And the גמרא **answers, we are discussing a case here where there was a ruling** from the בי"ד. This concludes the citation from פרק מרובה. Our תוספות continues -

משמע דאי לאו משום דחמשה בקר ולא חמשה חצאי בקר הוה אתי ליה שפיר[20] -

It seems if not for the problem based on ר"נ's ruling of '**five oxen, but not five half-oxen',** the ברייתא **would have been properly understood -**

ולא הוה צריך לאוקומי בשעמד בדין אלמא דאדם מוריש קנס לבניו[21] -

And it would not be necessary to establish the ברייתא in a case of **עמד בדין** (which makes it ממון), so **it is evident that אדם מוריש קנס לבניו –**

תוספות answers:

ומיהו יש לדחות דהוי מצי למימר וליטעמיך[22] -

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stole and slaughtered the ox (which makes him a מודה בקנס, so he is exempt from paying this one partner); the question is does he need to pay the other partner five half oxen (since he only owes half the קנס), or not.

[14] The פסוק (in שמות [משפטים] כא,לז) reads, כִּי יִגְנֹב אִישׁ שׁוֹר אוֹ שֶׂה וּטְבָחוֹ אוֹ מְכָרוֹ **חֲמִשָּׁה בָקָר** יְשַׁלֵּם תַּחַת הַשּׁוֹר וְאַרְבַּע צֹאן תַּחַת הַשֶּׂה.

[15] Therefore the thief is exempt from paying the קנס (to both partners).

[16] Let us assume that there are two sons; the thief and another son. The ox was worth $100, the תשלומי ד' וה' is $500. The father is not here, so the money goes to the sons $250 to the thief, and $250 to the other son.

[17] Obviously the thief need not pay anything to himself, he only has to pay $250 to his brother, so we see clearly that there is a payment of חמשה חצאי בקר, not like ר"נ answered.

[18] In our גמרות the text reads, אביו **כמו שקדם והודה לאחד מהן דמי** וקתני (instead of אביו **זכה ליה במנתא דידיה** וקתני).

[19] בי"ד ruled already that the son owes the father $500. The thief therefore owes his father $500. This is now considered money due and (not a קנס), so therefore the children can inherit this money.

[20] רבא asked on ר"נ based on his ruling of ולא חמשה חצאי בקר, if however this ruling would not be true, meaning that there is a payment of חמשה חצאי בקר, the ברייתא would be understood, he pays his brother the $250, which he owes his father, but how can that be; this is a קנס payment, how can this be given over to the son אין אדם מוריש קנס לבניו?!

[21] We have here a contradiction; previously תוספות stated that from the גמרות it is evident that אין אדם מוריש קנס לבניו, however here we see that אדם מוריש קנס לבניו.

[22] The truth is that even without the ruling of ר"נ we would need to establish the ברייתא in a case of עמד בדין, for otherwise it is indeed not understood why he needs to pay his brother, since א"א מוריש קנס לבניו. The גמרא could have challenged רבא in this manner saying the question you have on ר"נ is valid even if you do not agree with ר"נ, since

However we can reject this question, **for** the גמרא **could have said** to רבא, **'and according to your reasoning** is the ברייתא understood'?! –

תוספות asks:

אבל קשה דמסיק לצפרא אמר ליה חמשה בקר אמר רחמנא ואפילו חמשה חצאי בקר -

However there is a difficulty, for the גמרא there in מרובה **concludes, 'in the morning, ר"נ said to** רבא, **the תורה states five oxen, so even if it is five half-oxen' -**

אמר ליה מאי שנא רישא[23] ומאי שנא סיפא -

רבא **said to** ר"נ, **'what is the difference between the רישא and the סיפא -**

פירוש דקתני גנב משל אביו ומת ואחר כך טבח ומכר פטור[24] -

The explanation of the סיפא is where the ברייתא teaches, **'he stole from his father and his father died and afterwards he slaughtered or sold,** the son **is exempt** from paying ד' וה' to his brother (but he is required to pay [half] the קרן and כפל) -

אמר ליה רישא קרינן ביה וטבחו כולו באיסורא[25] סיפא לא קרינן וטבחו כולו באיסורא[26] -

ר"נ **said to** רבא **in the רישא we can read** into his act of טביחה the verse **וטבחו,** the **entire** slaughtering **was prohibited, in the סיפא we cannot apply** and say **that the entire slaughtering is prohibited -**

משמע דאי קרינן ביה וטבחו כולו באיסורא חייב[27] -

It seems that if we could apply וטבחו כולו באיסורא he would be חייב in the סיפא -

אף על גב דלא עמד בדין דאדם מוריש קנס לבניו -

Even if לא עמד בדין; the reason being **that אדם מוריש קנס לבניו.** Our תוספות now proves that he would be חייב even if לא עמד בדין -

דאי בעמד בדין לא מחייב קנס דשלו הוא טובח ומוכר[28] –

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we have the issue with א"מ מוריש קנס לבניו. Instead the גמרא gave the correct answer whether we agree with ר"נ or not, that it is a case of עמד בדין therefore once there was a פסק בי"ד, the payment becomes ממון and not קנס.

[23] The רישא is the case mentioned earlier where the father dies after the טביחה ומכירה, and the son needs to pay (half) to his brother.

[24] Why is it that by the רישא (where he was טבח ומכר when the father was alive) he is required to pay his brother, and why in the סיפא where he was טבח after his father died is he פטור, seemingly when the father died the ox belongs (half) to his brother, so let him pay his brother חמשה חצאי בקר (just like in the רישא).

[25] The ox belonged completely to the father, the son had no right at all to kill it.

[26] The thief owns half the ox, and in that half he is not prohibited from slaughtering it. Therefore we say that the rule of ד' וה' is only if the entire 'וטבחו' was באיסורא, otherwise where it was partially not באיסורא there is no תשלומי ד' וה'.

[27] The only reason why he is פטור in the סיפא is because we are lacking the כולא באיסורא, if not for that (meaning that we will consider the סיפא כולא באיסורא) he would have to pay.

[28] The סיפא must be discussing a case where there was no העמדה בדין for the כפל, for if he was עמד בדין על הכפל and then he was טבח ומכר, there would be no חיוב of ד' וה' regardless. Once there was a העמדה בדין on the קרן וכפל and he was טו"מ, he is considered a גזלן, and there is no חיוב ד' וה' by a גזלן (only by a גנב). There is no need to mention וטבחו כולו באיסור. This proves that there was no העמדה בדין, and nevertheless he must pay כפל to his brother. This proves that אדם מוריש קנס לבניו. See מהרש"א.

For if the סיפא is discussing a case of **עמד בדין he is not liable for קנס since his טובח ומוכר his own** ox –

תוספות answers:

ותירץ רבינו יצחק דמיירי דעמד בדין ואמרו חייב אתה ליתן לו -

And the ר''י answered that we are discussing a case **where he was עמד בדין and** בי"ד **told** the thief, **you are obligated to pay him** (but they did not say, 'go and pay him'); in which case -

דאם הוא טובח אחרי כן חייב כדאמרינן בהגוזל[29] (שם דף קו,ב ושם) -

Where he was טובח afterwards he is liable for ד' וה' **as** רבא **rules in** פרק **הגוזל –**

תוספות offer an alternate approach:[30]

ורבינו יצחק הלבן תירץ דההיא דפרק נערה אייריי לענין קרבן שבועה[31] -

And the ר''י הלבן answered that this גמרא in פרק נערה is a discussion regarding קרבן שבועה (but not להוריש קנס לבניו) -

והכי פירושו דסוגיא דהתם[32] מודינא לך לענין קרבן שבועה -

And this is the explanation of the סוגיא there in the beginning of פרק נערה; רבה said, '**I admit to you regarding a קרבן שבועה** if one swore falsely that he was not מאנס the נערה -

דרחמנא פטריה מוכחש[33] בעמיתו בפקדון -

For the תורה exempted him from being מחוייב a קרבן שבועה **based** on the פסוק of **וכחש בעמיתו בפקדון (and he denied his friend regarding a deposit) -**

וכי קאמינא דממון הוי להורישו לבניו[34] -

And when I stated that it is ממון it was meant **to bequeath it to his children -**

שאם יתבעוהו לאחר מיתת אביהן קנס שהיה חייב לאביהן שהעמידו בדין ונתחייב -

That if the children**, after their father's death, will demand** from the מאנס **the קנס which he owed their father, who brought him to court and was found liable -**

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[29] רבא rules there that if בי"ד told the גנב, go and pay him (צא תן לו),, which is a final פסק, and nevertheless he is טובח afterwards he is considered a גזלן and a גזלן does not pay ד' וה' only a גנב. However if בי"ד told him חייב אתה ליתן לו that is not considered a final פסק, and if he is טובח afterwards he pays ד' וה'. The answer of the ר"י is that there was a העמדה בדין, therefore it is no longer considered a קנס, however he is still חייב בד' וה', because he is not a גזלן since בי"ד only told him חייב אתה ליתן לו.

[30] תוספות in the beginning (see footnote # 1) brought proof from פרק נערה that א"א מוריש קנס לבניו. This answer wishes to refute that proof. See 'Appendix' B.

[31] One is liable to bring a קרבן שבועה, if one denied and swore that he does not owe money, which indeed he owes. If he confesses he must repay the money plus a חומש and bring a קרבן for the false שבועה (an אשם גזילות).

[32] מב,ב.

[33] ויקרא ה,כא. This is the פסוק concerning קרבן שבועה. All the cases there are regarding ממון, to the exclusion of קנס.

[34] We assumed this to mean that the children can collect it (only after העמדה בדין), However the ר"י הלבן has a different explanation.

וכפר ונשבע והודה הואיל וכשנפל ליורשין כבר היה ממון שכבר עמד בדין -

And he denied it **and swore** falsely to the heirs, and **subsequently admitted;** in this case, **since when** this debt was **inherited by the heirs it was already ממון;** it was no longer a קנס, **since he was already עמד בדין** by the father -

ולא היה יכול להודות ולהפטר אם כן הוי דומיא דפקדון דקרא ומחייב קרבן שבועה -

And he could not have been exempt by admitting, therefore it is similar to the פקדון in the פסוק, and he will be מחייב a קרבן שבועה. The גמרא there continues -

איתיביה רבי שמעון אומר כולי[35] דאחין הוא -

אביי **challenged** רבה; the ברייתא teaches **ר''ש states, etc.** but if it is money as you claim, it belongs **to the brothers** for they inherit it from the father -

ופירוש[36] שאם אינו לאחין איך מתחייב הכופר קרבן שבועה על טענותם -

And the explanation of the question is **that if it does not belong to the brothers how can the denier be liable for a קרבן שבועה based on their claim -**

והא לאו בעל דברים דידהו הוא אלא שמע מינה דאחין הוא -

But they are not his litigants (if we say it does not belong to the brothers), **rather this proves that it belongs to the brothers,** so why does ר"ש maintains הרי הן של עצמה?!

ומסיק כי קאמר רבה דממון הוא להורישו לבניו בשאר קנסות[37] לענין חיוב קרבן שבועה -

And the גמרא **concluded that when did רבה rule that it is ממון להורישו לבניו concerning the חיוב קרבן שבועה, regarding other קנסות** only, not by אונס ומפתה–

תוספות responds to an anticipated difficulty:[38]

ומסיק דאצטריך וכחש לעמדה בדין ובגרה[39] ואחר כך מתה דמינה קא ירית[40] -

And this which the גמרא **concludes that וכחש is necessary** in a case where the מאנס **was עמד בדין and she became a בוגרת** before he paid, **and she died afterwards**

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[35] ר"ש maintains that if the father died לאחר העמדה בדין, the קנס belongs to the daughter, and not to her brothers (the father's heirs). However according to רבה that after העמדה בדין it is ממון it should belong to the אחין (the יורשים).

[36] תוספות needs to explain the question according to the ר"י הלבן; seemingly according to him רבה never said that it belongs to the אחין he merely said that there is a קרבן שבועה if he denies the יורשים. Therefore תוספות needs to explain.

[37] All other קנסות besides אונס ומפתה, since in those cases (of או"מ) the father is זוכה in the קנס only when he receives it, so even after העמדה בדין it is not his (to be מוריש) so by או"מ there is no קרבן שבועה by the יורשים.

[38] We just concluded (See footnote # 37) that the reason why by אונס ומפתה, the heirs do not inherit it, is because the father is not זוכה in the קנס, until he actually receives it. The גמרא there (in כתובות מב,ב) asks if that is the case, why did ר"ש exclude אונס ומפתה from a קרבן שבועה because it is not similar to the other cases, ר"ש should have said there is no קרבן שבועה by או"מ, for even after the העמדה בדין it is still not a חיוב ממון, since the תורה does not grant the father the payment until he actually receives it. תוספות continues with explaining the answer of the גמרא there.

[39] In which case the קנס belongs to her.

[40] In this case if the מאנס denies that there was a העמדה בדין, etc. and swears to that effect and then confesses; we may have thought that there is a קרבן שבועה, the וכחש teaches us that even in this case there is no קרבן שבועה. This seemingly contradicts what that ר"י הלבן stated that regarding the יורשים there is a קרבן שבועה, and here too the father is also a יורש, so why is there no קרבן שבועה here and in the other cases there is a קרבן שבועה by the יורשים.

(before he paid), the rule is **that** the father **inherits** the קנס **from her –**

תוספות replies and distinguishes between the case of the father and the יורשים:

מכל מקום עיקרו קנס מיקרי לגבי דידה[41] ודידיה[42] -

Nonetheless in the case of the father inheriting the daughter, **it is mainly considered a קנס** both **regarding her and him** (the father) so therefore there is no קרבן שבועה -

ולא דמי לשאר קנסות[43] דמוריש לבניו דלגבי בניו לא הוה קנס כלל -

And it is not similar to the other קנסות where he can be מוריש לבניו, because regarding the בניו it is not a קנס at all, therefore when they claim against the קנס מחויב there can be a קרבן שבועה.

תוספות has a difficulty with פי' ר"י הלבן:

ומיהו לשון להורישו לבניו לא משמע[44] כפירוש זה. [ועיין תוספות בבא קמא עב,א דיבור המתחיל סיפא]:

However the expression of להורישו לבניו (which רבה used)**, does not lend itself to this interpretation of** the ר"י הלבן.

Summary

If we maintain א"א אדם מוריש קנס לבניו, the statement of רבא (that להורישה לבניו) is referring to בושת ופגם. According to the ר"י הלבן when רבה stated ממון הוא להורישה לבניו he was referring to a קרבן שבועה that if there was a העמדה בדין both by the מוריש and the heirs, he is חייב a קרבן שבועה.

Thinking it over

We learnt in this תוספות that אונס ומפתה is different from other קנסות, where after the העמדה בדין it becomes ממון, however by בו"פ it is not ממון until שעת נתינה.[45] Later תוספות cites the גמרא (regarding בו"פ) in a case where בגרה ומתה that the father inherits her (מינה קא ירית).[46] This two statements seem to contradict each other,

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[41] It is considered a קנס regarding the woman and she receives it after שבגרה as a קנס payment.

[42] It was a קנס which belonged to the father initially. Therefore now when he inherits the קנס from his daughter (which initially was his קנס payment) we still consider it a קנס payment and therefore no קרבן שבועה.

[43] For instance כפל; the קנס was only to the father there never was any קנס obligation to his heirs, therefore if there was a העמדה בדין by the מוריש, there can be a קרבן שבועה by the יורשים, since by them it was never a קנס payment; only ממון. See 'Appendix' C.

[44] When we interpret להוריש לבניו to mean that the heirs inherit the קנס that is appropriate because he is bequeathing the קנס to his heirs. However according to the ר"י הלבן, he is not bequeathing anything to the heirs; it is merely that if the בעל הקנס swears falsely to the יורשים he will be liable for a קרבן שבועה, but that is not a ירושה from the father. רבה should have rather said אם השביעה בניו וכי קאמינא or something similar but not להורישו לבניו.

[45] See footnote # 37.

[46] See footnote # 40.

either it belongs to him after העמדה בדין (the second case) or it does not (the first citation); which way is it? How can we resolve this?!

Appendix

A. אביי queried רבה what would be the ruling (according to ר' שמעון)[47] if one denied the charge that he was both מאנס a נערה and was found guilty in בי"ד, and he swore to that effect, and then later he confessed that all if it is true (that he was convicted in בי"ד); is he מחוייב a קרבן שבועה,[48] or not.[49] רבה replied that it is considered ממון (since there was a העמדה בדין) and he is חייב a קרבן שבועה.

אביי challenged רבה from a ברייתא where ר"ש rules that if a מאנס denied and swore and later confessed that he is not liable for a קרבן שבועה.[50]

רבה replied that indeed he is פטור from a קרבן שבועה, and when I replied that it is ממון (it was not regarding a קרבן שבועה, but rather it is considered ממון להורישו לבניו. The meaning (according to תוספות) is that the מאנס must pay the קנס money to the heirs of the אבי הנערה. The inference from this answer is that if there would not be a העמדה בדין, it would be considered a קנס, and therefore if the father died before collecting this קנס, his heirs would not receive the קנס payment for אין אדם מוריש קנס לבניו; however since there was a העמדה בדין it is now considered ממון and therefore his heirs inherit this payment.

B. The ר"י הלבן disagrees with the ruling of א"א מוריש קנס לבניו and he interprets this גמרא in a different manner.

When רבה answered that he means ממון הוי להורישו לבניו (it does not mean that the heirs inherit the קנס [for they inherit the קנס even without העמדה בדין], but rather) if the father passed on (after the העמדה בדין, and his heirs are demanding payment from the מאנס and he swears that he does not owe them anything, and then admits that he does owe them, the מאנס is liable for a קרבן שבועה.[51]

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[47] ר"ש maintains there is no קרבן שבועה (see footnote # 2) by קנס only by ממון. The details enumerated by a קרבן שבועה (in ויקרא ה,כא-כב) are all cases of money, not קנס.

[48] A קרבן שבועה (or an אשם גזילות) is brought when someone swore falsely that he does not owe money, which in fact he does owe, and then he confesses and admits that he owes the money. He is then obligated to repay the money plus a חומש and to bring an אשם גזילות (or a קרבן שבועה).

[49] Do we say that since the origin of this payment was a קנס (for being מאנס a נערה), there is no קרבן שבועה (see footnote # 1), or since there was already a ruling in בי"ד (a העמדה בדין) it is considered ממון, and not קנס.

[50] The גמרא infers that it is in a case of עמד בדין, contrary to the ruling of רבה.

[51] This is more consistent with the original answer of רבה that 'ממונא הוי ומיחייב עליה קרבן שבועה', while according to תוספות we will have to amend that answer and delete ומיחייב עליה קרבן שבועה.

C. According to the ר"י הלבן when he swore and denied to the father after the העמדה בדין, there is no קרבן שבועה (since regarding the father the initial claim was for קנס), however regarding the יורשים he is liable for a קרבן שבועה if he wore and denied after a העמדה בדין with the יורשים (since regarding the יורשים it was always ממון for there was already a העמדה בדין by the אבי הנערה).