Summary

The Strange Destiny of a Responsum of Rashba.

How can we correct the consequences of its incorrect understanding on the rabbinic legislation?

The present article is devoted to the study of the conditions necessary to ensure the free delivery of the *get*. We show that a responsum of Rashba, which was the basis of the ruling of Rema in Even ha Ezer 134:4 raised many problems. This responsum was incorrectly reproduced in *Beit Yossef*. Rema and subsequent rabbis knew only this incomplete version. This was the origin of the misunderstanding of the ruling of Rashba. It was generally accepted by *Rishonim* that if a man accepts freely a penalty for not delivering a *get* to his wife, the *get* is kosher unless the man utters a protestation before witnesses. Rema ascribed to Rashba that in the case of retraction, the husband does not need a legal protestation to invalidate the *get*. Therefore, for fear of retraction, Rema required to release the husband from any self-accepted penalty before the delivery of the *get*. Later authorities were still more stringent and refused even the ruling of Rema accepting à posteriori the *get* given without releasing the penalty. In the same wake, it was ruled not to mention the purpose of the *get* in any condition, freely accepted by the husband, involving coercion on him. All these stringencies, which result in fact from an incorrect understanding of Rashba's ruling, make today the situation inextricable. If the thesis of this article could be accepted and acknowledged, we could adapt slightly the rabbinic legislation by removing some unjustified stringencies that were unknown to the greatest authorities, the *Rishonim*. It would allow the use of efficient prenuptial agreements fully justified on halakhic level. It would spare much pain, suffering and distress.

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1. Introduction.

The free acceptance by the husband of a penalty constitutes a great halakhic controversy between the rulers. The origin of the problem lies in the incomplete and misleading transcription of a responsum of Rashba[1] in *Beit Yossef* [2]and its understanding with regard of a responsum of R. Maïmon Nadjar.[3]
The responsum of R. Maïmon Nadjar dealt with the case of a man who had accepted a penalty of 100 gold pieces in favor of the mayor of the town if he would not divorce his wife. Afterwards, the delivery of the *get* took place normally with annulment of all possible protestations. Some scholars of the town were asking themselves if this get had been delivered voluntary or under the fear of the penalty. R. Nadjar, in an argued responsum, answered that the *get* was completely legal: "he had freely made his *get* depending on something independent (a penalty of 100 gold coins) and had freely decided to give the *get.* He had never lost his free choice. He was free to lose the penalty and to withdraw the *get*." In the words of R. Nadjar: "He could have beheld his wife by losing the 100 gold pieces, but this was his free will." The situation would have been different if he had been forced[4] to accept a penalty of 100 gold pieces to guarantee the delivery of the divorce.
R. Joseph Caro[5] was apparently not aware of the responsum 68 of the second part of *Tashbets*.[6] It was addressed to Constantine to R. Nadjar and dealt exactly with the same subject. Apparently R. Nadjar consulted Rashbaz[7] before answering the problem but he did not refer to the answer that he received from Rashbaz in his own responsum. However, we note their complete agreement. Rashbaz reached a similar conclusion in *Tashbets* I, 1, which is quoted by *Beit Yossef,* where he wrote in much more general terms:

And there exists another form of constraint, which represents a constraint exerted on him: it does not force him to divorce his wife but it forces him to do something else. But he, by his own initiative, in order to escape this other constraint, prefers divorcing his wife. This is not called a constraint because they did not force him really to divorce…. Anyhow, it is proved from here that we force him to pay the ketubah but sometimes, because of the reimbursement

[1] Responsa of Rashba, part IV, n° 40. This collection remained in manuscript until it was edited in 1803 in Salonika.
[2] First opus magnum of R. Joseph Caro.
[3] Rabbi of the 14th century, colleague of R. Shimon bar Zemah Duran and disciple of R. Vidal Ephraïm in Palma de Majorca. He fled to Algeria in about 1395 and became Dayan of Constantine. He remained in touch with Rashbaz. His name appears in the response of R. Isaac bar Sheshet Perfet (1326 – 1408).
[4] Unlawfully.
[5] R. Joseph Caro, Spain (probably Toledo) 1488 - Safed 1575. He was the author of Beit Yossef (Venice 1555-56) and Shulhan Arukh (Venice 1567).
[6] Tshuvot Shimon bar Zemah, the responsa of R. Shimon bar Zemah Duran (Palma de Majorca 1361 – Alger 1444) chief Rabbi of Algiers from 1408 onwards, after R. Isaac bar Sheshet's death.
[7] R. Shimon bar Zemah Duran.

of the ketubah he must practically divorce and he is thus obliged to divorce by this get.[8] *But as they did not coerce him really to divorce, but in order to free himself from the constraint of the reimbursement of the ketubah, he accepted to divorce, this get is not called "constrained" at all because the constraint was exerted on something else and the get was delivered voluntary because they never forced him to divorce……*

Thus a freely accepted penalty in order to guarantee the delivery of the *get* is acceptable and does not invalidate the *get*. Moreover, even a legal constraint relating to another object, for example the payment of the *ketubah*[9] that he is not able to pay and leading to an agreement, i.e. that the wife gives its payment up in exchange of the delivery of the *get*, does not invalidate the *get*.[10]

2. Examination of the litigious responsum of Rashba[11].

Perpignan, to rabbi Menahem,[12]

You asked me the following query: Ruben, Lea's husband and Lea's relatives agreed that Ruben would divorce his wife Lea and they came to an agreement of a penalty of 1000 denars if the get would not be delivered within a fixed date. Thereafter Ruben retracted and contested the agreement. Then Lea's relations warned Ruben against the penalty so that Ruben went to the treasurer and tried to find an arranging with him. The latter however, <u>because of the tricks and the stratagems of Lea's relations</u>,[13] *did not accept any concession. <u>On the contrary they threatened him with imprisonment if he would be delayed even by only one hour, until he fulfills his obligations.</u> Because of this fear Ruben delivered the get. But he did not make an official protestation because he did not know the procedure. Is that* get *forced (and invalid) or not?*

Answer.

[8] He cannot pay the *ketubah* and fears the consequences of this unpaid debt. In order to escape these consequences (execution, imprisonment) he proposes to deliver the *get* in exchange of a renunciation to the *ketubah*.

[9] It is accepted in the Jewish legislation that the *get* must be delivered freely without constraint. By contrast, the court is allowed, if the circumstances justify it, to force the husband to pay immediately the *ketubah.* Hence the rabbinical principle: "we force the payment of the *ketubah* but we demand the delivery of the *get*".

[10] Thus if the man cannot pay the *ketubah* and accepts to deliver the *get* in exchange of the annulment of his financial obligation, the *get* is considered as having been freely delivered because the constraint was indirect.

[11] R. Solomon ben Adret, Part IV, responsum 40 in the responsa of Rashba published in Salonika 1803, Pietrokow in 1883 and reproduced in Israel in 1960. The incomplete transcription in *Beit Yossef* does not allow a clear comprehension of the situation and of the answer. At the first glance, it is impossible, from *Beit Yossef*, to know how R. Caro understood the question. It depends whether he had a correct version or if his version was already corrupted.

[12] This responsum was thus addressed to R. Menahem ben Solomon Meiri of Perpignan, one of the most brilliant Talmudist of the time. Meiri considered himself as the pupil of Rashba as we can deduce from the following quotation at the end of his introduction to Avot, where he tells us that he wrote *Beit ha-Behira* from the age of 38 until 1300 when he was 51: R. Solomon ben Abraham Adret …..who wrote books, answered all the riddles. Thanks to him we succeeded explaining difficult and opaque laws in different Treatises of the Talmud, by the generosity and the goodness that he showed us……

[13] The underlined text is completely absent from the shortened version of the responsum as it appears in *Beit Yossef*, Even ha-Ezer 134. The rest of the text appears in a free and slightly adapted version.

It seems to me that this get is forced and invalid. [This situation exists] as soon as we are aware of his state of coercion even if the involved person did not make any protestation. Indeed we need a protestation only if he received money because we can assume reasonably that when a person accepts money he accepts the transaction and renounces to invoking any constraint.
We say indeed "they tortured him and he agreed to sell, the transaction is valid" because when he accepts the money (representing the value of the object) he accepts to sell. But if he made a protestation, he annuls the forced transaction.[14] *However in the case "they tortured him and he gave up his property" the transaction is worthless and he does not need to make a protestation. Our knowledge of his state of coercion is sufficient (to invalidate the transaction). Therefore if they tortured him and he gave a bill of divorce, then his divorce is not valid because he did not receive money (which would have made him accept the transaction). But you could argue that the get releases him from the expenses of living and clothing. It is however explicitly proved in the gemara that the release of these expenses is not considered as an encashment of money and therefore the situation must be compared to "they tortured him and he gave up his property" because a wife belongs to her husband and she is called "his money's acquisition". And the constraint resulting from the threat of a penalty constitutes a legal constraint and therefore when we say: "they tortured him." it does not mean only a corporal constraint but it can also be a financial constraint as we see in the story of the orchard.*[15]
And Rabad, of blessed memory, wrote about this last case: "from the story of the orchard we learn that a financial constraint constitutes a constraint." Rabbenu Hananel wrote similarly in the following terms: "from the story of the orchard we learn that if someone frightens his friend by threats that he could exert for example a loss of money or beating, and a fortiori, a moral beating when he tells him for example, if you don't sell me this object I will do you that. In the case of such threats, we (the witnesses) write a protestation and write explicitly: "we are aware of the state of constraint of the involved person."
Even if he did not carry out his threat and renounces to it, but as soon as he said: "I will do it, I can do it", this is the constraint exerted on the seller."[16]
Now if you want considering that we are in fact in the situation "they tortured him and he sold the property" because he accepted freely a penalty of 1000 denars and when he gives the get he wins this amount that he had freely accepted without any constraint, this is thus a situation similar to receiving money. No, this is not the case, he does not receive money, but he is released from losing money and this is worse than being released from the expenses of living and clothing which we don't consider as encashment of money.
Such a constrained get, if it was constrained by Jews, is invalid and a fortiori if it was constrained by non Jews, because when it were non Jews, even if the constraint was legal, the get is invalid unless they told him: "do what the Jewish court tells you to do".

This responsum is exceptional because it was addressed to the famous R. Menahem ben Solomon Meiri of Perpignan. It is thus an exchange between two of the most illustrious rabbis of Catalonia around 1300 C.E. We find in Meiri's commentary on *Gittin* 88b the confirmation that he received the responsum. Indeed the first part of the responsum and the

[14] After reading this responsum we get the conviction that from the beginning onward, Rashba speaks about a case of constraint imposed by the second party, thus in fact an illegal constraint. In such a case, when the husband receives money he is supposed to agree unless he utters an official and legal protestation.
[15] B. Bava Batra 40b. If he didn't agree to sell the orchard, the owner was threatened by the tenant to be dispossessed from it by the destruction of the mortgage contract and the application of the rule of חזקה.
[16] Here ends the quotation of R. Hananel.

quotation of R. Hananel are reproduced in the commentary. This proves beyond any doubt the authenticity of this responsum.[17]

The complete text of the query and its answer must allow a better analysis but it does not simplify the problem and suppress all the difficulties.
Now the complexity of the case results from the conjunction of three elements, which Rashba did not clearly separate in his answer. Therefore we meet a great confusion and perplexity among the commentators of *Shulhan Arukh* and rulers. The elements of the query are the following:

- Ruben accepts a penalty if he does not free Leah.
- The penalty is connected to a fixed delay and seems important. We have no idea why he accepted such a penalty. In the responsa of R. Nadjar it writes that it was to "encourage himself".[18]
- Ruben changes his mind and retracts.
- He is aware of the difficulty of the situation and tries to negotiate a deal with the treasurer (probably an official of the town). The text of the query gives us the impression that the treasurer would have found a deal with him. Thus he is ready to pay an acceptable penalty in order to avoid the delivery of the *get*.
- Now the family of the wife, probably rich and influential, managed by tricks and stratagems to league with the treasurer against the man and conspired against Ruben. They persuaded the treasurer to maintain his demand and to threaten Ruben with imprisonment until he fulfills his obligation. We don't know if this threat was a new element or if it was an automatic consequence of the non-payment of the penalty.
- Finally Ruben has no other solution than delivering the *get* reluctantly.

The answer of Rashba departs from the principle that the *get* was forced but he does not elaborate whether it was the threatening with imprisonment, the interference of Leah's family or the keeping of the amount of the penalty, which was the major element. Rashba explains that in some cases, a monetary constraint can be considered as an illegal constraint as a physical constraint. Thus apparently without the threat with imprisonment we would also be facing an illegal threat. By contrast, without the intervening of the wife's family, Ruben would have faced the same situation if the treasurer had not accepted a transaction. But it is not certain at all that Rashba would have considered the situation as an illegal threat as Ruben had freely accepted it; the contrary is even very likely.[19] Anyhow, R. Nadjar, Rashbaz and

[17] Many responsa were ascribed to Rashba but their authenticity remains uncertain.
[18] This is of course only secondary but this explanation seems questionable. I assume that these few responsa deal with wives belonging to influent and rich families. After a hard discussion about the division of the possessions and recovery of the family properties, the families granted probably some monetary advantage to the man and required in exchange a penalty or a pawning in the hands of an official in order to secure the delivery of the *get*. It is also possible that the influence and the power of harm of the wives' family were sufficient to persuade the men to accept *freely* the penalty or the pawning. The free character of the acceptance by the husband of the penalty was never disputed. It is also likely that the retraction of these men was not justified by any desire to pursue the common life but rather by the desire to renegotiate the deal. In such cases they tried to get back the pawn. As soon as the officials refused to give back the pawn, the men could only give the *get*. However the behavior of the men trying to *get* the pawn back gave the real impression that they had retracted and did not deliver freely the *get*. Hence the question often asked, did the men give freely the *get* or did they deliver the *get* because of the fear to lose the pawn or pay the penalty. If we exclude the unclear responsum of Rashba, all the other responsa accepted the principle that the *get* is valid unless a formal protestation in front of two witnesses who recognize his state of constraint.
[19] See the responsum I: 854 of Rashba according which a man who took an oath to deliver a *get* to his wife could be forced even by beating to execute his oath and it would not invalidate the *get*. A fortiori a freely accepted penalty, which looks still less than an oath to a constraint, would not invalidate the *get*.

Maharik[20] would have accepted the *get* given to escape the penalty as valid as long as no official protestation would have been uttered. Rashbaz even ruled that a get given in exchange of the release of the payment of the *ketubah* that the man cannot pay is valid.[21]
Similarly R. Joseph Colon (Maharik) wrote:[22]

Also about a financial constraint, it is evident that it is a constraint as you wrote. However I doubted about what you wrote that the money was pawned from the beginning for this purpose. If it means that it was intentionally pawned in order that the official would give him the money back only after he had delivered the bill of divorce, then it is clear that the husband had done it freely and voluntary from the beginning. It is thus evident that the fact that the official did not want to give him the money back without the delivery of the get, does not constitute a constraint. Indeed a constraint is only something caused by someone else at the exclusion of something caused by him.

Now coming back to the case of our responsum, we see that Rashba considered it a case of illegal constraint and compared it with one of the two cases : "they tortured him and he agreed to sell" and the transaction is valid (thus a forced transaction is made valid when the victim received money, unless he uttered a legal protestation) and "they tortured him and he gave up the property reluctantly" (thus a forced transaction without the payment of any money[23] is made invalid as soon as we know or assume reasonably that he was forced). In this last case we don't require a legal protestation, taking note of the unfairness towards the victim is sufficient. First Rashba compared the case to "they tortured him and he gave up the property reluctantly" and therefore he considered it as a pure extortion without any legal validity. In a second stage he would even consider it as "they tortured him and he agreed to sell" because of the annulment of the penalty.
However Rashba concluded on a very formal way and ascertained that in the present case the man did not receive effectively money and therefore the *get* is invalid because in the absence of an effective payment, we are still in the situation "they tortured him and he gave up the property reluctantly". Therefore we don't need a formal protestation; it is sufficient taking note of the unfairness towards the victim is sufficient to invalidate the *get*.[24] However if Ruben had effectively received money, then Rashba would have considered the *get* as valid, unless a formal protestation. This would probably have been the case if instead of accepting a penalty he had pawned the amount. Anyhow we note that Rashba characterize the case with the verb "they tortured" him which implies, at the first glance, an external intervening and certainly not a freely accepted penalty.[25]

It is far from certain that Rashbaz did agree with such a conclusion. At the end of the responsum II: 68 he writes:

[20] R. Joseph Colon (Chambéry in Savoy ~ 1420 – Pavia 1480). He was one of the greatest rulers of the 15th century. His responsa were already printed in Venice in 1519.
[21] See Tashbets I, 1. See the quotation above, just before the examination of the litigious responsum of Rashba. See also a similar conclusion in Tashbets II, 69.
[22] Responsa Maharik 63:2. The responsum is mentioned in *Beit Yossef* 134. The passage is slightly different but the meaning is not changed.
[23] It would be the same if he was forced to accept a ridiculous amount.
[24] It is not clear if the simple knowledge of a rumor is sufficient to invalidate the *get*, if we need rather an indication of his reluctance at the moment of the delivery of the *get*, or if it depends only on the objective elements surrounding the delivery of the *get*.
[25] In fact this is not a irrefutable argument. In general a constraint is exerted by other people and therefore the to models of constraint are indeed : «they tortured him and he agreed to sell » and «they tortured him and he agreed to sell ». Thus if a freely accepted penalty was indeed a constraint, it would be normal to compare it to one of these models.

Anyhow, from the words of our Rabbi[26] *who wrote that a pawning (replacing an initial oath) is not a constraint, we can deduce that the one who accepted a financial penalty if he does not divorce) and then he delivered a get, this is not a constrained get. Hence if someone says that he will give 100 gold coins to the king if he does not divorce his wife, he can divorce without any doubt. Indeed he obliged himself freely and therefore he really divorces voluntary……*

Thus Rashbaz made no difference between pawning an amount for guarantee of the *get* delivery and accepting the same amount as a penalty if he does not give the *get*.

Rashba makes a difference between these two cases for a formal reason in the case of an illegal constraint because of the rule "they tortured him and he agreed to sell". Therefore he required receiving effectively an amount of money and not accepting the release of a debt.[27] In order to get a deeper understanding of this ruling and prove the correctness of our understanding, let us examine what did really bother R. Menahem Meiri. It is evident that if the family of Leah had not interfered in the matter then two cases were possible: whether the official had reduced the penalty or not. In this last case Ruben would have delivered the *get* because of the impossibility for him to pay the penalty. Meiri would certainly have considered the get legal otherwise he should not have asked this more intricate query. Or in other words, if Rashba had considered the *get* illegitimate in this last case, he would not have made this long development and would have simply answered that even without the interference of Leah's family, a *get* given in order to avoid a penalty that he doesn't want to pay or an excessive penalty,[28] which he cannot carry out, is forced and illegal. Furthermore the use of the verb "they tortured him" to describe the situation would be incomprehensible.[29] It seems thus certain that Rashba and Meiri agree that a *get* given in order to break oneself from a penalty freely accepted is a legal *get*.[30] What bothered Meiri was in fact the following: Ruben had freely accepted a penalty of 1000 silver coins if he did not give a *get* before a fixed delay. Finally the interference of Leah's family did not fundamentally change the situation that Ruben had freely accepted. He was at the end still facing the same alternative: delivering the *get* or facing a penalty of 1000 silver coins. Thus should we say that the interference of Leah's family did not change the situation or should we consider that the interference of Leah's family, convincing the treasurer not to make any concession, which it is assumed, he was ready to make, must be considered as new element, illegitimately introduced without Ruben's agreement, creating the conditions of an illegitimate coercion and removing our case in a new category: the category of "They tortured him"?
Rashba's answer was not equivocal: we have a new situation; we are no more before a freely accepted penalty but before a penalty illegally imposed. The effort made by Rashba to prove that a penalty can become an illegal coercion, proves that he did not consider that the threat of

[26] R. Perez from Corbeil. From this passage of Rashbaz we see that the possibility to release the husband from his oath and replace it by a pawn, if the man agrees, which is ruled in *Shulhan Arukh Even ha-Ezer* 134: 4, finds its origin from the ruling of R. Perez. This appears also less clearly from the responsum n° 96 from Ritva.
[27] Rashbaz ruled in Tashbets I, 1 that when the rabbinic court coerces a recalcitrant man to pay the *ketubah*, the *get* given by the man in exchange of the annulment of the payment of the *ketubah* is a valid *get*. This cannot be considered as a valid proof that the annulment of a debt is considered as enrichment. Indeed the coercion to pay the *ketubah* is a legal coercion and cannot be compared with our cases of illegal coercion.
[28] Note that the problem of the excessive penalty or *asmakhta*, was not raised.
[29] Therefore it seems strange that a *get* given with the guarantee of a pawning is valid (*Shulhan Arukh* 134:4) while a *get* given with the guarantee of a penalty would be more problematic à priori (Rema 134:4 gloss). In the case of a freely accepted guarantee there is no difference between a pawn or a penalty, even for Rashba.
[30] More than a century later, R. Nadjar and Rashbaz would rule similarly. And another sixty years later Maharik will write the same.

imprisonment should be taken into consideration. Apparently it was not a new imposition of the treasurer at the instigation of Leah's family but it must be a legal disposition prevailing at their time for any unpaid debt of a certain importance to an official. The only question was thus to prove that the penalty imposed in the new conditions, by Jews and à fortiori by non-Jews, was illegal.

An additional proof can be found in the following quotation from *Beit ha-Behira Gittin* 88b,[31] which reflects Rashba's answer:

However, from the story of the orchard, we deduce that if someone frightens his friend by something that he can exert against him, for example a loss of money or beating him, it is a constraint and the witnesses write a declaration of protestation even if he finally did not what he had said. And as things are so, also in the case of a constrained get, there are cases where there is no need to have an official protestation. This is the case when it appears that people frightened him unlawfully threatening him with something that can happen or at least that the involved man thinks that this threat can happen. If this happened through gentiles then there is no get at all but if was through Jews, then the get is invalid but, however, it disqualifies the woman from the possibility to marry a Cohen[32].

Thus Meiri had indeed understood that we are in the case of an illegal pressure making the *get* illegal. Only in such a case we don't need a legal protestation. There remained however a doubt whether the illegal pressure was the fact of Leah's family and the *get* was (rabbinically) invalid or if it was the fact of the official and there was no *get* at all. This is clearly reflected in the last words of the passage.

If our reasoning is correct the difference made by Rashba between receiving money and getting the release of a penalty is a formal difference which is to be considered only in the case of a forced transaction. Rashba compared the forced release and divorce of Leah by Ruben to the forced selling of Ruben's orchard. The transaction, although forced, would have been made effective and legal, according to Rashba,[33] by the payment of new money, as far as no legal protestation would have be done. But in the case of annulment of an old debt no legal protestation is necessary and only taking note of the unfairness towards the victim would be sufficient to invalidate the *get*.

The insolvable contradiction[34] between Rashba and the other rulers Ritva,[35] Rashbaz, R. Maïmon Nadjar and especially Maharik seems to be definitively solved:

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[31] In the paragraph beginning with **ve'issuy**". *Beit ha-Behira* was the opus magnum of Meiri.

[32] In this case the *get* is invalid by rabbinic enactment only and therefore the woman is already considered divorced by Torah law and cannot anymore marry a Cohen even if she does not divorce and becomes a widow.

[33] It is not certain that Rashbaz would have agreed and accepted this difference between receiving an amount of money and removing a debt. It is also worthy of note that the *Shulhan Arukh* did not accept this ruling and considered, in the wake of Rivash n° 127 that a constrained *get* is always invalid.

[34] The correct text of Rashba's responsum was published in Salonika in 1803. All the rabbinical authorities before this date could not know the correct text. The rabbinical authorities of the 19th centuries were probably not yet aware of the correct text. But even today Rashba's responsum is still quoted according to the version of *Beit Yossef*. All these authorities considered that Rashba dealt with a case of a freely accepted penalty. Therefore they thought that according to Rashba, in the case of retraction, it is not necessary that the husband utters a legal protestation to invalidate the *get*. This position of Rashba seemed to be in contradiction with the other authorities. The simple fact that we know about his retraction is sufficient to invalidate the *get*. However, from the text of *Shulhan Arukh Even ha-Ezer* 134: 5, we can conclude whether that R. Caro understood correctly that the responsum of Rashba dealt with a case of an illegal pressure or it dealt with a case of legal pressure but he (R. Caro) did not rule according to Rashba. However the successive quotation in *Beit Yossef* of the responsa of

- Rashba dealt with an illegal coercion without real enrichment. This *get* was forced and invalid despite the absence of legal protestation. In the case of a real enrichment the get would have been made legal unless a legal protestation.
- Rashbaz[36] dealt with an illegal coercion but he doubted whether getting ones effects back can be considered as enrichment.[37]
- Maharik dealt with a case of a freely agreed pawn. Despite an attempt renegotiating the deal and getting the pawn back, the get was delivered without a formal protestation and was therefore valid.
- Ritva wrote that in any case of an agreed penalty there cannot be coercion (as far as no protestation is uttered before two witnesses).
- In the case of a freely taken oath to give a *get*, Ritva wrote that giving the *get* because of his oath is certainly not an illegal constraint because no illegal constraint can result from a freely accepted commitment. The requiring to releasing the husband from his oath is a stringency required by R. Perez. Rashba and Rashbaz would even accept to beat a recalcitrant husband refusing to fulfill his oath and would not be an illegal *get*. Anyhow even R. Perez agrees that an oath is not a constraint but it looks like a constraint.
- From the ruling of R. Perez allowing to replacing an oath by a freely accepted pawn (and according Rashbaz it makes no difference if it is a pawn or a freely accepted penalty) we can conclude that a freely accepted pawn or penalty does not even look like a constraint and is acceptable à priori. The *get* could only become invalid if a legal protestation would have been uttered.
- The difference between pawn and penalty could make sense in the case of an illegal constraint considered by Rashba because of the rule "they tortured him and he agreed to sell". But in the case of a freely accepted penalty or pawn, there is no difference and it does even not look like a constraint.

In conclusion we see that the responsum of Rashba dealt with a case of an unlawful interference considered as an illicit constraint invalidating the get. It was based on a preliminary assumption that a freely accepted penalty is not a constraint. Rashba answered that in the case of an illicit constraint exerted on the husband, the forced get becomes valid when the man accepts money. In the same way as a forced sale becomes valid when the forced seller accepts the money, a forced get becomes valid if the husband accepts money.[38]

3. The responsum of Rashbah through the history.

Rashba was among the most prolific rulers of Jewish history. The number of his responsa amounts to more than thousand and perhaps fifteen hundreds. They were printed in different collections. The authenticity of all the responsa is not always certain. Our responsum belongs to the collection called Part 4. It remained in manuscript until it was printed in 1803 in Salonika. The authenticity of this responsum is certain because we have the proof that Meiri received it and introduced it contains in his own composition: the *Beit ha-Behirah*. This responsum seems to have been ignored by the great rulers until the 16th century when R. Caro

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Rashba and R. Nadjar supports the principle that they are in agreement. Therefore it is likely that R. Caro understood correctly that the responsum of Rashba dealt with a case of an illegal pressure.

[35] R. Yom Tov ben Abraham Ishbili (~1250 – 1330) pupil of R. Aharon ha-Levi and Rashba in Barcelona.

[36] Tashbets I :1, the case of the woman stealing her man's effects in order to get the *get.*

[37] The conclusion seems to be that it is not enrichment. At the first glance I would say that the answer depends on whether the husband was desperate (יאוש) or not.

[38] Rivash n° 127 ignored this responsum and contradicted this ruling on the basis that no monetary value can be given to a woman. R. Caro and Rema followed this last opinion and did not rule like Rashba.

quoted it in his *Beit Yossef*.[39] Now, as we were still at the beginning of the printing, books were not very spread and most of the responsa were still in manuscript. Therefore, R. Caro when he was quoting a responsum wrote always a short summary of the important elements of the responsum. This was also the case for our responsum. We have underlined in the text of the responsum all the passages which were omitted in the summary of *Beit Yossef*. We note that three words were omitted in the wording of the query. The wording of the query in *Beit Yossef* is misleading and omits the interference of Lea's family which managed by tricks and stratagems to league with the treasurer and conspired against Ruben. The wording of the transcription of *Beit Yossef* gives the impression that Rashba was dealing with a freely accepted penalty of 1000 denars and that despite his retraction, Ruben gave the *get* in order to escape the penalty. And so was born the juridical anomaly in Jewish legislation that in the case of a freely accepted penalty for non delivery of the *get* followed by a retraction, the delivery of the *get*, in order to escape the penalty, constitutes a constrained delivery invalidating the *get*. Because of the very late printing of the fourth part of Rashba's responsa, the whole rabbinic corpus used the shortened and misleading version of Rashba's responsum. This erroneous conception ascribed to Rashba disturbed the rulers because it is in contradiction with the ruling of all the *Rishonim*, the rulers preceding approximately the printing. The prestige of Rashba was so great that some rulers adopted à priori this stringency ascribed erroneously to Rashba. Others, and this is the legislation today, adopted this stringency even à posteriori. This succession of elements explains this unfortunate introduction of a mistaken ruling ascribed to Rashba in *halakhah*.

4. R. Yossef Karo and the responsum of Rashba.

In fact at the first glance R. Caro remained quite evasive in the evaluation of the different types of constraint. However when we consider the different paragraphs of chapter 134 of *Shulhan Arukh* we can conclude:

Chapter 134:4:

- A freely taken oath is not a constraint but it looks like a constraint and therefore à priori, this constraint should be removed.
- It is allowed to replace the oath by a freely accepted pawn in order to secure the good delivery of the *get*.[40]

Therefore we may infer that a freely accepted financial commitment is not a constraint from a legal point of view even if an imposed financial obligation is a constraint from a legal point of view. This freely accepted financial commitment is allowed à priori without any restriction.

Chapter 134: 5 to 8:

- In any case if the husband utters a legal protestation before two witnesses, there is no *get*.[41]
- In the case of a licit coercion by a Jewish court a legal protestation by the husband makes the *get* invalid[42] but it carries along more physical coercion until the husband "agrees" to deliver the *get.*
- In the absence of a protestation, in the case of an illicit constraint the *get* is invalid פסול[43].

[39] *Even-ha-Ezer* 134.
[40] According to *Shulhan Arukh* there is no difference between penalty and pawn. But a penalty is not safer than the oath and will certainly not interest the woman. Therefore it was not mentioned.
[41] The *get* is invalid by Torah law.
[42] אינו גט מדאורייתא.

- If the constraint was exerted by gentiles the *get* is invalid פסול if the constraint was justified (legal) but if it was illegal there is no *get* at all אינו גט =גט בטל[44]

Therefore we may infer that

- If the husband, under a freely accepted oath, retracts he must make a legal protestation and the *get* will then be inexistent.
- A posteriori the *get* given freely by a man, under a freely accepted oath, is kosher and it can be invalidated only by a protestation.
- In the case of a freely accepted pawn or penalty the *get* can be invalidated only by a retraction.
- R. Caro did not mention that a forced get could be validated by acceptance of money.[45]

From these elements it seems likely that R. Joseph Caro understood correctly that the responsum of Rashba dealt with an illegal coercion by Lea's family. Therefore he could mention in *Beit Yossef* successively the responsa of R. Nadjar, Ritva and Rashba without any comment. Indeed these responsa don't contradict at all, R. Nadjar dealt with a freely accepted penalty which took place peacefully without any protestation and Rashba dealt with an illicit coercion which doesn't require an official protestation. Ritva ascertained that a freely accepted commitment (financial or oath) is not a constraint.
R. Joseph Caro ruled therefore that in the case of retraction following a freely accepted penalty or pawn we need a legal protestation before two witnesses. It is only in the case of an illicit constraint that we don't need such a protestation[46].

5. Rema[47] and the responsum of Rashba.

Rema wrote in his gloss on Shulhan Arukh Even ha-Ezer 134:4

Remark:……However if he accepted [freely] a penalty if he does not divorce, this is not called a constraint because he made his get depend on something else and he has then the possibility to pay the penalty and not to divorce. We find however authorities that are stringent even in such a situation and it seems better to worry a priori about this opinion and free him from the penalty. However if he already divorced because of this commitment, and even if he divorced because of his commitment taken by an oath that he took freely, the get is kosher because at the beginning he was not forced at all to take such a commitment.

Thus a penalty is not coercion because the free choice is ensured. However some are stringent and this should be taken into account à priori. This refers to the responsum of Rashba as reproduced in *Beit Yossef* (*Even ha-Ezer* 134) and understood by Rema. The transcription of this responsum in *Beit Yossef* was shortened; all the passages of the responsum underlined

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[43] Made invalid by the rabbis.
[44] By Torah law.
[45] R. Caro was probably influenced by the ruling of Rivash in Teshuvot Bar-Sheshet n° 127. Rivash ruled that we cannot give a value to a woman as we do for an object. Therefore he considered that the acceptance of money by the husband in the case of a forced *get*, does not validate it. Note however Maimonides, *Hilkhot Ishut* 14:19 where he rules that a man has not the obligation to redeem his wife at more that her value.
[46] One could also argue that on the one hand, R. Joseph Caro understood, as Rema, that Rashba's responsum dealt with a freely accepted penalty and however in the case of retraction, no official and legal protestation is necessary, but on the other hand R. Caro did not rule according to Rashba. This assumption is however not likely because it would not explain the successive quotation in *Beit Yossef* of the responsa of R. Nadjar, Ritva and Rashba without any comment. By contrast they certainly contradict each other according to Rema. *Aharonim* tried unsuccessfully to avoid it.
[47] R. Moses Isserels (~ 1525-1530 – 1572) . He was the author of *Darkei Moshe*, glosses on *Beit Yossef* and the *Mapah*, glosses on *Shulhan Arukh.*

were not transcript in *Beit Yossef*. This reference[48], added in Rema's gloss, makes sense[49] because the understanding of the unfaithful transcription of the responsum altered completely its signification. Indeed we saw in the original responsum that the illegal interference of Leah's family and its influence on the official had a deciding effect on the outcome of the matter and was the reason of the invalidity of the *get*. In the version of the responsum proposed in *Beit Yossef*, the interference of Leah's family and its decisive influence on the decision of the official to refuse Ruben's request to adapt the terms of his freely accepted penalty are completely omitted. We have now the impression to be in the case of a freely accepted penalty without any illegal interference. But the retraction of Ruben, even without a formal protestation, is sufficient to take notice of the unfairness towards Ruben and invalidates the *get*.[50]The text of Rema would thus rest on an unfaithful transcription of Rashba's responsum and its incorrect understanding. Rema ruled à priori like Rashba that in the case of a freely accepted penalty any retraction of the husband, even without protestation, invalidates the *get*. Rema in fact added his own stringency: he was fearing a retraction in any case by contrast with Rashba who would invalidate the get only if there was a real retraction. A posteriori he would rest on the responsa of R. Maïmon Nadjar, Ritva and Maharik and accept the *get*.
In order verify these assumptions let us examine the text of *Darkei Moshe* on *Even ha-Ezer* 134.

And Maharik wrote in n° 63 similar words as R. Maimon that if someone submits himself to a penalty [if he doesn't divorce] this is not called a constraint because he did it freely and voluntary. We find the same principle in the responsum of Ritva which I will transcript later. But Beit Yossef quoted a responsum of Rashba according to which, if someone submitted himself to a penalty if he did not divorce and we know about him that he does not divorce voluntary but only because he fears the penalty, his get is constrained and invalid even if he does not utter a protestation.[51]

Regarding the case of the freely accepted penalty by the husband, Rema knew Rashba's responsum through *Beit Yossef* and he could not understand the complexity of the situation. We see that *Darkei Moshe* has still shortened, simplified and clarified Rashba's responsum: we are indeed dealing with the classical case of the man accepting freely a penalty. Because of the suppression of some important details, Rema did not understand that the considered case was that of an illegal coercion resulting from the interference of Leah's family with the official and therefore, we are in a case of a freely accepted penalty. It is then difficult to understand why Rashba considered it as an external coercion as the verb "they tortured him" lets understand and why Rema accepted it without objection.
Rema[52] understood that Rashba addressed the case of a freely accepted penalty. Rema understood that Rashba contradicted the principle of Ritva and Maharik:

[48] I tried to find out the origin of the references appearing in the text of *Shulhan Arukh* and Rema. We find marginal references in *Be'er ha-Gola* from R. Moses Rivkes published from 1661 onwards. But the internal references are much older and are already extant in the Cracow edition of 1614 while still absent from the Cracow edition of 1600 and from the Venice editions of 1594 and before..
[49] Because it corresponds to the text of *Darkei Moshe* quoted below.
[50] According to the understanding of Rema, departing from the text of the responsa available in *Beit Yossef*, the difference between Rashba from one side and R. Nadjar and Ritva from the other side was that in the case of a freely accepted penalty, a retraction invalidates the *get* (Rashba). By contrast for Ritva and R. Nadjar the *get* is kosher unless there is an official protestation. The responsum of Rashba is thus contradicting the other quoted responsa.
[51] The text of Rashba's responsum at the disposal of Rema was the *Beit Yossef* version.
[52] And all the subsequent Aharonim.

Ritva n° 96:
We don't find that a get would be considered as a constrained get only when it is a constraint caused by someone else.
Maharik 63;2:
We consider as a constraint exerted on someone only a constraint caused by someone else at the exclusion of that caused by him.
According to Rema's understanding, à posteriori, the *get* is normally kosher (R. Nadjar and Maharik). However, à priori, according to Rashba, if we know that the man delivers the *get* against his free will and only in order to avoid the penalty, it is illegal.
As it is difficult to know such personal feelings and to make sure whether the husband gives the *get* because of the penalty or he accepted the penalty in order to prove that he accepted to deliver the *get* and to calm the fears of his wife's family we must, this seems Rema's position, be cautious and suspect any indication and sign. Furthermore in such a subject, the rumor embroiders, exaggerates and finally deforms an assumption and a suspicion into certitude. Therefore Rema decided to avoid purely and simply such a situation and advised à priori to release the husband from this freely accepted penalty. Thus à priori Rema fears always a retraction and rules like what he thinks to be Rashba's ruling. But à posteriori, as far as we did not remark anything special, there is no problem; the *get* is valid according to the responsa of R. Nadjar and Maharik. The practical consequence is huge because after releasing the man of his commitment to accept a penalty, the court loses any guarantee of the good delivering of the *get*. But the most important conclusion is that we ascertain that Rema's stringent ruling rests on a mistake in the understanding of Rashba's responsum.
According to our understanding, which appears clearly justified by the analysis of the original text of Rashba's responsum, all these considerations are a false problem because the Rishonim never considered them. Rashba never contradicted later authorities[53] and addressed a different case: an illegal coercion. Ritva,[54] Rashbaz and Maharik related to a freely accepted penalty. They wrote explicitly that there cannot be coercion with freely accepted penalty.[55]
In the case of a freely accepted penalty and retraction of the husband there must be a legal protestation before two witnesses. Otherwise there is no coerced *get*. Therefore we have a clear situation and there cannot be a problem of fear of a retraction. Furthermore we note an internal contradiction in Rema. In134:4, R. Caro required to release the husband from an oath before delivering the *get* but he allowed replacing the oath by a pawn freely agreed. Rema did not make any reservation on this point. This is surprising, Rema should have objected and forbidden it because, à priori, he ruled like Rashba and more, he feared always a retraction. Therefore he did not allow a freely accepted financial constraint which could become a constraint from a legal point of view, in the case of retraction.[56]

A last word about Rema's ruling.It seems important to note that we find in Shulhan Arukh and Rema different expressions with imperceptible gradation.
We find in Shulhan Arukh; *we must fear, it is just to fear, it is fine to fear and it is good to fear.* Similarly in Rema we find : *there are reasons to fear, it is good to fear*.

[53] Ritva, R. Maïmon Nadjar, Rashbaz and Maharik.
[54] It would have been strange that Ritva had adopted an opinion completely opposed to that of Rashba without advising.
[55] Unless he utters a legal protestation מודעה.
[56] One could argue in defense of Rema that in the case of a pawning we don't fear a retraction. Indeed in the case of retraction the state of constraint of the husband does not invalidate the *get* because he will receive money back and this will validate the constrained *get*. However this argument is not acceptable because in *Shulhan Arukh Even ha-Ezer* 134: 8 Rema wrote that the acceptation of the money does not validate the constrained *get*. In other words, Rema did not follow Rashba on this specific point but was influenced by Rivash n° 127.

Therefore we see that the requirement by Rema,a priori to free the man from the penalty that he had freely accepted is written in the mildest terms. It seems that it is not a requirement but if it is possible it is recommended, because it is the most secure way, to free him. It is thus certainly not forbidden to let him accept such a penalty and if there was any danger that this would endanger the delivery of the get, the court may probably proceed to the delivery of the get without removing the penalty. By way of proof let us consider the following quotation from Rema on Even ha-Ezer 126: 6 about the detail of the redaction of the get, where situations could happen that require to rewriting the get could, in some situations, create a danger of *iggun*: "*and it is good to fear that point unless we are in a situation with a danger of iggun.*"
Therefore I think that the position of Rema is a very mild one, much milder than generally considered. It is certainly not forbidden to accept such a penalty and, probably, according to the text of Rema, if there is any danger to free the husband from his penalty, the court could organize the delivery of the get without removing the penalty.
It is generally accepted that Rema ruled a priori like Rashba and a posteriori like R. Maimon Nadjar. If our assumption is correct we should rather say that he ruled like R. Maimon Nadjar but he would try, when it is possible without drawback, to satisfy Rashba's ruling.[57]

5. Additional stringencies resulting from the misunderstanding of Rashba's responsum.

Torat Gittin.

Pithei Tshuva[58] on Even ha-Ezer 134, n° 11, quoted and commented the book *Torat Gittin*[59]. *Torat Gittin* introduced a new difference and a new principle: he required that the *get* should not be mentioned in the enunciation of the element of constraint. He proposed that the *get* given to a woman who stole goods of her man is valid if she did not bind the restitution of the goods to the delivery of the *get*.[60] Similarly he explained that the threat to kill the son of the husband does not invalidate the get given by the father because the two elements were not bound.[61] If there was a direct link, for example, "we will kill your son if you don't deliver the *get* to your wife", the *get* would be invalid. This new rule has been created artificially, in order to solve a contradiction between the responsum of Rashbaz[62] and the custom of his time. The statements of *Torat Gittin* were made without checking the original text of the responsa; he was basing himself on quotations found in the book *Beit Yossef*. The details of independence between the coercion and the *get* that he wants to ascribe to Rashbaz are in complete contradiction with the text of the responsa. The author of *Pithei Tshuva* opposed vehemently this innovation contradicted by different responsa. Nevertheless this rule of independence entered the *halakhah*; in *Arukh ha-Shulhan* 134:25 it is taken for granted.

Mishkenot Ya'akov.

The Higher Rabbinic Court of Israel ruled in 1956 that the *get* delivered by a man who had accepted a penalty if he would not deliver the *get*, is illegal if he retracted and gave the *get* only in order to avoid the penalty.[63] Therefore the Higher rabbinic Court ruled that it is forbidden to sign such a prenuptial agreement.

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[57] The ruling that Rema ascribed to Rashba.
[58] Commentary on Shulhan Arukh (Orah Hayim excluded) by R. Abraham Zevi Hirsh Eisenstadt (1813 – 1868) .published in 1836 and 1861.
[59] Frankfort on Oder 1813.
[60] See Rashbaz I : 1 where this problem is examined.
[61] See Rashbaz I : 1.
[62] See Rashbaz I :1 : the woman who stole effects and would give them back against a *get*.
[63] Piskei din rabbani'im II, pp. 9-17.

This ruling contradicts the position of Rema in Even ha-Ezer 134:4 where he accepts the *get* à posteriori. This ruling of the Supreme Court rests certainly on the responsum of *Mishkenot Ya'akov*,[64] the only authority who adopted this position à posteriori. It is thus important to analyze the position of R. Ya'akov of Karlin. The main argument is that Rashba in responsum n° 40 did not contradict R. Nadjar because *Beit Yossef* quoted them together without any remark. Therefore there is no reason for Rema to rule in Even ha-Ezer 134:4 à priori like Rashba and à posteriori against Rashba. He should have ruled like Rashba even à posteriori and he should have applied his own stringency and feared a retraction even à posteriori. Of course this approach rests on the incorrect understanding of Rashba's responsum. But in fact *Beit Yossef* enumerated different responsa, notably those of R. Nadjar, Ritva, and Rashba. The responsum of Rashba (according the incorrect understanding) cannot agree with the other responsa which are based on the principle that a freely accepted penalty cannot be a constraint. The reasoning of R. Jacob of Karlin is untenable. The truth is that Rashba's responsum dealt with a coerced penalty. The responsum is based on the preliminary assumption that a freely accepted penalty is not a constraint. Therefore in the case of retraction a protestation is necessary to invalidate the *get*.

6. Consequences on the redaction of prenuptial agreements.

Prenuptial agreements have been imagined as a method for preventing *igun* (situation in which the wife, separated from her husband, is still under the bonds and the restrictions of the marriage).
Different forms of prenuptial agreements have been drafted in order to bring a solution to this painful problem. However the different provisions of the articles of chapter 134 of *Even ha-Ezer* and the additional glosses of Rema have a very restrictive character and limit considerably the possibility of drafting an efficient prenuptial agreement which could prevent cases of *iggun*. Therefore no agreement makes the unanimity.

The principle of most prenuptial agreements[65] is the commitment to pay increased alimony after the separation of the couple as long as the couple is married. In his halakhic justification of the convention, R. Kenuel rests on *Arukh ha-Shulhan* on *Even ha-Ezer*134: 23-25.
However this does not solve the requirement to release the husband from the penalty before the delivery of the *get*. The expression increased alimony is misleading: if it covers strictly *halakhic alimony* then it is an obligation inherent to the marriage. The problem is then that the aim of the agreement is to provide the payment of this obligation after the separation. Now according to the *halakhah* it is just at this moment that the obligation becomes problematic: according to Rema *Even ha-Ezer* 70: 12: this obligation disappears at the separation of the couple.Furthermore if the wife committed adultery the rabbinic court does not force the husband to provide alimony to his wife.
Now if the word increased alimony means that we have indeed increased and contractual alimony, then part of it is certainly an accepted penalty and it raises the problems mentioned above. Another difficulty is that according to the prenuptial agreement, the man must waive his right on the income of his wife. But according to the *halakhah* this waiver must be granted by the husband between *erusin*[66] and *nissuin*.[67]

[64] Vilnius 1837.
[65] The most popular prenuptial agreement in Israel is the prenuptial agreement of R. Elyachiv Kenuel. In the USA the most popular prenuptial agreement in orthodox society is that of RCA.
[66] *Erussin* is the first part of the ceremony: We have first two benedictions of *erussin*, then 5 benedictions of *nissuin.* Between these two parts of the ceremony we have the reading of the *ketubah* and its delivery to the bride.

It has been proposed to view the amount of the increased alimony as a penalty or damages because of the wife's status of "prevented from remarriage". This new concept does certainly not make the unanimity. More, here also the requirement not to mention the *get* makes any satisfying formulation difficult or even impossible.

7. Conclusions.

We insisted on the existence of a halakhic trend based on an incorrect version and understanding of Rashba.[68]This was the origin of Rema's ruling that a freely agreed penalty should be released before the delivery of the *get* because of the fear of a retraction. This ruling contradicts the rulings of Ritva, Rivash, R. Maimon Nadjar and Rashbaz and R. Joseph Caro.[69] It is the direct consequence of the mistaken understanding erroneously ascribed to Rashba. Furthermore some authorities followed even this ruling à posteriori and contradicted the à posteriori ruling of Rema. We mentioned another rule which is today strictly followed. This rule requires not mentioning the *get* in the formulation of the element of pressure or penalty in any agreement preceding the delivery of the *get* or in a prenuptial agreement. These rules are in contradiction with the practice of the great *Rishonim*. They are unjustified stringencies that people cannot support. To say things brutally, if we had to validate today the *gittin* examined by Rivash,Rashbaz, R. Nadjar and Maharik, alas the Israeli *Batei Dinim* would invalidate all of them on the ground of a coerced *get*.[70] All this because a correct version of Rashba's responsum was not available to the Rabbis![71]
How can we justify that by an accumulation of stringencies, which according to this paper are completely unjustified and certainly erroneous, we arrive to this situation that we invalidate *Gittin* which our greatest rulers accepted in theory and in practice. Today invalidating a *get* is often creating a new case of *iggun* and the risk of *mamzerut* and doing so by security and comfort, out of habit and tradition based on an incorrect understanding of Rashba's responsum, becomes "*humra de'ati lidei kula" a stringiness which will finally become a leniency*. It is an unfounded stringiness which can bring only calamities. If Rashba could rise from the dead he would be astonished and terrified by this ruling incorrectly ascribed to him and by the subsequent stringencies built on it.
The possibility to behold a penalty à priori during the process of delivering the *get* would be of great help. It would also make possible to draft an efficient and halakhic prenuptial agreement. This could be achieved, without disavowing Rema, by considering that the present situation has become catastrophic. This would allow us to consider that a situation à priori could be treated as a situation à posteriori. Therefore we should rule again according to the ruling of Rema for the situation à posteriori and not according the stringency of *Mishkenot ya'akov*. We could also rest on the opinion of R. Joseph Caro in *Shulhan Arukh*, who is authorizing, à priori, the free acceptance of a penalty or a pawning.[72]

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[67] See Rambam *Ishut* Chap 23 and *Shulhan Arukh Even ha-Ezer* 92. The waiver, signed by the witnesses must confirm that the act was signed between *erussin* and *nissuin*. See *Noda bi-Yehuda* II, *Even ha-Ezer*: n° 90.
[68] Part 4, n° 40.
[69] *Shulhan Arukh Even ha-Ezer* 134: 5.
[70] I would rather say: doubtful coerced get.
[71] The litigious responsum was known in its correct version with the edition in 1803 in Salonica of a collection of Rashba's responsa from a manuscript. The edition of Pietrokow of 1883 is identical. It is thus possible and even likely R. Jacob of Lissa and R. Jacob of Karlin did not know the correct version of Rashba's responsum. Even today the responsum is still quoted in its corrupt version.
[72] The commentators did not discuss the position of *Mehaber* in depth and did not note that he did not require the stringency adopted by Rema.