

UNDERSTANDING THE NATURE OF “PSYCHOLOGICAL INCAPACITY”

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INTRODUCTION

Upon the promulgation of the Family Code of the Philippines,¹ a new ground for considering marriages void *ab initio* was added to the existing grounds contained in the Civil Code. This ground is commonly referred to as “psychological incapacity” and is embodied in Article 36 of the Family Code which, as amended,² reads:

A marriage contracted by any party who, at the time of the celebration, was psychologically incapacitated to comply with the essential marital obligations of marriage, shall likewise be void even if such incapacity becomes manifest only after its solemnization.

A great deal of controversy surrounded this cause for the declaration of nullity of marriage.³ The root of the controversy was the lack of a straightforward definition of “psychological incapacity” under the law,⁴ compounded by the omission of the Civil Code Revision Committee to give examples thereof,⁵ which made the term susceptible to varying interpretations.

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¹ Exec. Order No. 209 (1987).

² Article 36 was amended by Exec. Order No. 227 dated 17 July 1987 which deleted the sentence “The action for declaration of nullity of the marriage under this Article shall prescribe in ten years after its celebration.” The 10-year prescriptive period was incorporated in Article 39.

³ Santos v. Court of Appeals, G.R. No. 112019, January 4, 1995, 240 SCRA 20 (1995).

⁴ *Id.* at 26.

⁵ A. SEMPIO-DIY, HANDBOOK ON THE FAMILY CODE OF THE PHILIPPINES 37 (1988); Salita v. Magtolis, G.R. 106429, June 13, 1994, 233 SCRA 100, 107; *Id.* at 31.

Much of the controversy was resolved by the Supreme Court in the case of *Republic v. Court of Appeals and Molina*⁶ (hereafter referred to as *Molina*) where guidelines for the interpretation and application of Article 36 were laid down. However, in this case, the Court still did not give an explicit definition of "psychological incapacity."

In this note, the origin and development of this novel ground are traced in an attempt to provide the reader with a better grasp of what constitutes "psychological incapacity." Included is a recapitulation of the deliberations of the Civil Code Revision Committee on what is presently Article 36 as well as a review of the Supreme Court rulings as regards "psychological incapacity." Special attention is devoted to the *Molina* guidelines, of which a brief critique is made.

THE GENESIS OF "PSYCHOLOGICAL INCAPACITY"

In 1979, the Integrated Bar of the Philippines constituted the Family Law Revision Committee (hereafter Family Law Committee) which was tasked with preparing a draft of a revision of Book I of the Civil Code of the Philippines.⁷ The said committee held meetings at the University of the Philippines Law Center from September, 1979 to March, 1984. Thereafter, the draft was turned over to the *Civil Code Revision Committee* (hereafter referred to as Code Committee) of the Law Center, which went over and revised the draft up until May, 1987.

The Family Law Committee initially thought of including a chapter on absolute divorce in the draft.⁸ Justice Jose B.L. Reyes was requested to prepare a proposal on this matter. Subsequently, however, the Code Committee defined marriage as —

a special contract of permanent partnership between a man and a woman entered into in accordance with law for the establishment of conjugal and family life. It is an inviolable social

⁶ *Republic v. Court of Appeals and Molina*, G.R. No. 108763, February 13, 1997 (*en banc*).

⁷ A. SEMPIO-DIY, *op. cit.* note 5 *supra* at xxviii.

⁸ *Santos v. Court of Appeals*, *supra* at 39 (Romero, J., concurring) (quoting a letter dated April 15, 1985 from Judge Alicia V. Sempio-Diy written on behalf of the Family Law and Civil Code Revision Committees to Assemblywoman Mercedes Cojuangco-Teodoro).

institution whose nature, consequences, and incidents are governed by law and not subject to stipulation, except that marriage settlements may fix the property relations during the marriage within the limits provided by law.⁹

Considering this definition and the Christian traditional concept of marriage as a permanent, inviolable, and indissoluble social institution upon which the family and society are founded, and realizing the strong opposition that any provision on absolute divorce would invite from the Catholic Church and the Catholic sector of the citizenry, the committee abandoned the idea of absolute divorce. The Code Committee instead opted for an action for judicial declaration of invalidity of marriage based on grounds available in the Canon Law.¹⁰ Such an action, it was believed, would not only be an acceptable alternative to divorce but would also solve the problem of church annulments of marriages on grounds not recognized under civil law. Justice Reyes was again requested to draft the provisions for such an action for declaration of nullity of marriage.

Later, the committee decided to consolidate the present provisions on void marriages with the proposals of Justice Reyes in order to avoid the overlapping of provisions on void marriages.¹¹ The result was the inclusion of "psychological incapacity" in the proposed Article 35 on void marriages, to wit:

Article 35. — The following marriages shall be void from the beginning:

.....
(7) Those marriages contracted by any party who, at the time of the celebration, was wanting in the sufficient use of reason or judgment to understand the essential nature of marriage or was psychologically incapacitated to discharge the essential marital obligations, even if such lack or incapacity is made manifest after the celebration.¹²

⁹ *Id.* at 39–40.

¹⁰ *Id.* at 40.

¹¹ *Id.*

¹² CIVIL CODE AND FAMILY LAW COMMITTEES, MINUTES OF THE 148TH MEETING 6 [hereinafter 148TH MEETING] (held on 26 July 1986) (unpublished, available in the U.P. College of Law Library).

This ground was lifted from Canon 1095 of the New Code of Canon Law¹³, which provides:

Canon 1095. They are incapable of contracting marriage:

1. who lack sufficient use of reason;
2. who suffer from a grave lack of discretion of judgment concerning essential matrimonial rights and duties, to be given and accepted mutually;
3. who, for causes of psychological nature, are unable to assume the essential obligations of marriage.¹⁴

UNEARTHING THE NATURE OF “PSYCHOLOGICAL INCAPACITY”: THE DELIBERATIONS OF THE CIVIL CODE REVISION COMMITTEE

The Code Committee took up the proposed Article 35 in its 148th meeting. During the deliberations on subparagraph (7), a debate took place on the nature of “psychological incapacity.” The core of the controversy was whether or not “psychological incapacity” is a vice of consent and, concomitantly, whether it ought to be a ground for voidable, instead of void, marriages.

On subparagraph (7), which was lifted from the Canon Law, Justice Reyes suggested that they say “wanting in sufficient use” instead of “wanting in the sufficient use”, but Justice [Eduardo P.] Caguioa preferred to say “wanting in the sufficient use”. On the other hand, Justice Reyes proposed that they say “wanting in sufficient reason”. Justice Caguioa, however, pointed out that the idea is that one is not lacking in judgment but that he is lacking in the exercise of judgment. He added that lack of judgment would make the marriage voidable. Judge [Alicia V. Sempio-] Diy remarked that lack of judgment is more serious than insufficient use of judgment and yet the latter would make the marriage null and void and the former only voidable. Justice Caguioa suggested that subparagraph (7) be modified to read:

¹³ *Id.* at 8.

¹⁴ Santos v. COURT OF APPEALS , *supra* at 32; see A. SEMPIO-DIY, *op. cit.* note 5 *supra* at 36.

That contracted by any party who, at the time of the celebration, was psychologically or mentally incapacitated to discharge the essential marital obligations, even if such lack or incapacity is made manifest after the celebration.

Justice Caguioa explained that *the phrase "was wanting in sufficient use of reason or judgment to understand the essential nature of marriage" refers to defects in the mental faculties vitiating consent, which is not the idea in subparagraph (7), but lack of appreciation of one's marital obligations.*

....

Justice Caguioa stated that there are two interpretations of the phrase "psychologically or mentally incapacitated" — in the first one, there is vitiation of consent, while in the second one, there is no understanding of the effects of the marriage. He added that the first one would fall under insanity.

Justice [Ricardo C.] Puno, however, opined that in the second interpretation, there is also vitiation of consent because one does not know all the consequences of the marriage, and if he had known these completely, he might not have consented to the marriage.

....

Prof. [Esteban B.] Bautista stated that he is in favor of making psychological incapacity a ground for voidable marriage since otherwise it will encourage one who really understood the consequences of marriage to claim that he did not and to make excuses for invalidating the marriage by acting as if he did not understand the obligations of marriage. Dean [Fortunato] Gupit [Jr.] added that it is a loose way of providing for divorce.

Justice Caguioa explained that his point is that in the case of incapacity by reason of defects in the mental faculties, which is less than insanity, there is a defect in consent and, therefore, it is clear that it would be a ground for voidable marriage because there is the appearance of consent and it is capable of convalidation for the simple reason that there are lucid intervals and there are cases when the insanity is curable. *He emphasized that psychological*

*incapacity does not refer to mental faculties and has nothing to do with consent; it refers to obligations attendant to marriage.*¹⁵

At this point in the meeting, the committee defined the bases for reformulating the provisions on void and voidable marriages. Upon Justice Puno's suggestion, the committee determined the classification of bases for the void character of marriage in Article 35. In so doing, "psychological incapacity" was classified under marriages void *ab initio* comprising special cases and special situations. But the debate was far from over.

On psychological incapacity, Prof. [Florida Ruth P.] Romero inquired if they do not consider it as going to the very essence of consent. She asked if they are really removing it from consent. In reply, *Justice Caguioa explained that, ultimately, consent in general is affected but he stressed that his point is that it is not principally a vitiation of consent since there is a valid consent.* He objected to the lumping together of the validity of the marriage celebration and the obligations attendant to marriage, which are completely different from each other, because they require a different capacity, which is eighteen years of age, for marriage but in contract, it is different. *Justice Puno, however, felt that psychological incapacity is still a kind of vice of consent and that it should not be classified as a voidable marriage which is incapable of convalidation; it should be convalidated but there would be no prescription.*

....

... Justice [Leonor Ines-] Luciano suggested that they invite a psychiatrist, who is the expert on this matter. Justice Caguioa, however, reiterated that *psychological incapacity is not a defect in the mind but in the understanding of the consequences of marriage, and therefore, a psychiatrist will not be of help.*¹⁶

After further deliberation, the committee agreed to include the issue in the matters for policy decision at the next meeting.

¹⁵ 148TH MEETING, see note 12, *supra*, at 8–10 (emphasis added).

¹⁶ *Id.* at 12 (emphasis added).

In its 149th meeting, the Code Committee made a review of Article 35.¹⁷ It was agreed in principle that subparagraph (7) should be the subject of a separate article. This came about when the committee considered the question of prescription of the action for declaration of nullity on the ground of "psychological incapacity."

Justice Puno raised the question: If it is a void marriage, the declaration of nullity is imprescriptible. Supposing the spouse, who had the psychological incapacity, is already dead, can the action for declaration of nullity of the marriage be brought even after the death of the psychologically incapacitated spouse for the purposes of determining the legal effects of the marriage? In reply, Justice Caguioa stated that the action is not imprescriptible but should be brought within ten years.

After further discussion, Justice Puno remarked that the problems may be solved if they will go back to the bases since they may want to segregate subparagraph (7). Justice Reyes opined that at the very least, it should be a separate article, with which the other members concurred.¹⁸

The Code Committee took up for policy decision the issue of whether or not "psychological incapacity" is a specie of vice of consent in its 150th meeting.¹⁹

Justice Puno formulated the next article as follows:

Article 37. A marriage contracted by any party who, at the time of the celebration, was psychologically incapacitated to comply with the essential obligations of marriage, shall likewise be void from the beginning even if such incapacity becomes manifest after its solemnization.

Justice Caguioa suggested that "even if" be substituted with "although". On the other hand, Prof. Bautista proposed that the clause "although such incapacity becomes manifest after its solemnization" be deleted since it may encourage one to create the

¹⁷ CIVIL CODE AND FAMILY LAW COMMITTEES, MINUTES OF THE 149TH MEETING 3 [hereinafter 149TH MEETING] (held on 2 August 1986) (unpublished, available in the U.P. College of Law Library).

¹⁸ *Id.* at 5.

¹⁹ CIVIL CODE AND FAMILY LAW COMMITTEES, MINUTES OF THE 150TH MEETING 4 (held on 9 August 1986) (unpublished, available in the U.P. College of Law Library).

manifestation of psychological incapacity. Justice Caguioa pointed out that, as in other provisions, they cannot argue on the basis of abuse.

Judge Diy suggested that they also include mental and physical incapacities, which are lesser in degree than psychological incapacity. *Justice Caguioa explained that mental and physical incapacities are vices of consent while psychological incapacity is not a specie of vice of consent.*

Dean Gupit read what Bishop Cruz said on the matter in the minutes of their February 9, 1984 meeting:

On the third ground, Bishop Cruz indicated that the phrase "psychological or mental impotence" is an invention of some churchmen who are moralists but not canonists, that is why it is considered a weak phrase. He said that the Code of Canon Law would rather express it as "psychological or mental incapacity to discharge."

Justice Caguioa remarked that they deleted the word "mental" precisely to devoid it of vice of consent. *He explained that "psychological incapacity" refers to lack of understanding of the essential obligations of marriage.*

Justice Puno reminded the members that, at the last meeting, they have decided not to go into the classification of "psychological incapacity" because there was a lot of debate on it and that this is precisely the reason why they classified it as a special case.

At this point, Justice Puno remarked that, since there have been church annulments of marriage arising from psychological incapacity, Civil Law should now reconcile with Canon Law because it is a new ground even under Canon Law.²⁰

After further deliberation, the committee agreed to place a 10-year prescriptive period on the action for declaration of nullity due to "psychological incapacity." Thus, Article 37 read:

A marriage contracted by any party who, at the time of the celebration, was psychologically incapacitated to comply with the essential obligations of marriage shall likewise be void from the

²⁰ *Id.* at 9-10.

beginning although such incapacity becomes manifest after its solemnization.

The action for declaration of nullity of the marriage under this Article shall prescribe in 10 years after its celebration.²¹

The Code Committee approved the provision. This would become what is now Article 36 of the Family Code.

Based on the foregoing, it appears that:

(1) "Psychological incapacity" does not refer to mental faculties nor is it a "defect of the mind;"

(2) It refers to the "lack of appreciation of one's marital obligations" or the "lack of understanding of the essential obligations of marriage;" and

(3) It is not a specie of vice of consent but, rather, it is classified as a "special case."

SUPREME COURT RULINGS ON ARTICLE 36 OF THE FAMILY CODE

The Supreme Court found the occasion to acknowledge that the scope of Article 36 was in need of circumscription in the case of *Salita v. Magtolis* (hereafter referred to as *Salita*).²² The Court however desisted from addressing this need because the threshold issue in that case was the sufficiency of the allegations in the petition for annulment of marriage and the subsequent bill of particulars filed in amplification thereof, and not the scope nor the interpretation of Article 36. In the decision, penned by Justice Josue N. Bellosillo, the Supreme Court made the following observation:

We do not see the need to define or limit the scope of the provision. Not in this case, at least. For, we are not called to do so, the actual controversy being the sufficiency of the bill of particulars. To interpret the provision at this juncture would be to give an *obiter dictum* which is ill-timed. Besides, it appears that

²¹ *Id.* at 12.

²² *Salita v. Magtolis*, *supra* at 107.

petitioner in her memorandum has demonstrated a good grasp of what Art. 36 actually covers. Suffice it to say that Mme. Justice Sempio-Diy, formerly of the Court of Appeals and a member of the Civil Code Revision Committee that drafted the Family Code, explains—

The Committee did not give any examples of psychological incapacity for fear that the giving of examples would limit the applicability of the provision under the principle of *ejusdem generis*. Rather, the Committee would like the judge to interpret the provision on a case-to-case basis, guided by experience, the findings of experts and researchers in psychological disciplines, and by decisions of church tribunals which, although not binding on the civil courts, may be given persuasive effect since the provision was taken from Canon Law.²³

The Supreme Court did not descry the need to limit the extent of Article 36 in *Salita*. Such need would however arise in the landmark case of *Santos v. Court of Appeals* (hereafter referred to as *Santos*).²⁴ In the latter, the Court gave its first definitive ruling on the scope of “psychological incapacity.”

In *Santos*, the Supreme Court made reference to the deliberations of the Code Committee to shed some light on the import of Article 36. It also resorted to the jurisprudence under Canon Law as an aid in the construction or interpretation of the codal provision.

On the nature of “psychological incapacity,” Justice Jose C. Vitug, on behalf of the majority, wrote:

Article 36 of the Family Code cannot be taken and construed independently of, but must stand in conjunction with, existing precepts in our law on marriage. Thus correlated, “*psychological incapacity should refer to no less than a mental (not physical) incapacity that causes a party to be truly incognitive of the basic marital covenants that concomitantly must be assumed and discharged by the parties to the marriage which, as so expressed by*

²³ *Id.* at 107–108.

²⁴ *Santos v. Court of Appeals*, *supra* at 20.

Article 68 of the Family Code, include their mutual obligations to live together, observe love, respect and fidelity and render help and support.²⁵

And, clarifying the animus underlying Article 36, it was explained that:

[T]he use of the phrase "psychological incapacity" under Article 36 of the Code has not been meant to comprehend all such possible cases of psychoses as, likewise mentioned by some ecclesiastical authorities, extremely low intelligence, immaturity, and like circumstances... There is hardly any doubt that the intentment of the law has been to confine the meaning of "psychological incapacity" to the most serious cases of personality disorders clearly demonstrative of an utter insensitivity or inability to give meaning and significance to the marriage.²⁶

In the case, Leouel Santos ("Leouel") sought to have his marriage to Julia Rosario Bedia-Santos ("Julia") declared a nullity, invoking Article 36. Leouel believed that Julia was psychologically incapacitated to enter into married life. His belief was grounded in Julia's failure to return to the Philippines from the United States, where she was employed as a nurse, as well as her omission to communicate with the former for more than five years. The trial court dismissed Leouel's complaint and the respondent court affirmed. Leouel elevated the case to the Supreme Court on a petition for review on certiorari.

The Court denied the petition, holding thus —

The factual settings in the case at bench, in no measure at all, can come close to the standards required to decree a nullity of marriage. Undeniably and understandably, Leouel stands aggrieved, even desperate, in his present situation. Regrettably, neither law nor society itself can always provide all the specific answers to every individual problem.²⁷

²⁵ *Id.* at 34 (emphasis added).

²⁶ *Id.*

²⁷ *Id.* at 36.

The Supreme Court refused a similar petition in *Chi Ming Tsoi v. Court of Appeals*.²⁸ Unlike in *Santos*, however, the Court determined that the marriage in *Chi Ming Tsoi* was void *ab initio* on the ground of psychological incapacity.

In the latter case, Gina Lao-Tsoi ("Gina") was successful in procuring from the trial court a decree of nullity of her marriage to Chi Ming Tsoi based on Article 36. Not wanting the marriage annulled, the latter appealed to the Court of Appeals. The respondent court affirmed the trial court's decision and correspondingly denied the motion for reconsideration. Chi Ming Tsoi elevated the case to the Supreme Court.

The statement of the case and of the facts made by the trial court reveal that during a 10-month period beginning from the celebration of the marriage until their *de facto* separation, there was no attempt of sexual intercourse between the spouses. Gina claimed that this was so because Chi Ming Tsoi was psychologically incapacitated. The latter however alleged that it was the former who avoided him.

Both the trial court and the Court of Appeals gave more weight to the wife's presentation of evidence and found the husband to be suffering from psychological incapacity under Article 36. In his petition for review, Chi Ming Tsoi contended that the respondent court erred in holding that the refusal to have sex constitutes psychological incapacity.

The Supreme Court sustained the appellate court and held that the marriage was void under Article 36. The Court, through Justice Justo P. Torres, Jr., held:

Evidently, one of the essential marital obligations under the Family Code is "To procreate children based on the universal principle that procreation of children through sexual cooperation is the basic end of marriage." Constant non-fulfillment of this obligation will finally destroy the integrity or wholeness of the marriage. In the case at bar, the senseless and protracted refusal of one of the parties to fulfill the above marital obligation is equivalent to psychological incapacity.²⁹

²⁸ G.R. No. 119190, January 16, 1997.

²⁹ *Id.* at 9.

In ruling in this manner, the Court found persuasive, if not controlling, the opinion of Dr. Gerardo Ty Veloso, former presiding judge of the Metropolitan Marriage Tribunal of the Catholic Archdiocese of Manila:

If a spouse, although physically capable but simply refuses to perform his or her essential marriage obligations, and the refusal is senseless and constant, Catholic marriage tribunals attribute the causes to psychological incapacity than to stubborn refusal. Senseless and protracted refusal is equivalent to psychological incapacity. Thus, the prolonged refusal of a spouse to have sexual intercourse with his or her spouse is considered a sign of psychological incapacity.³⁰

While in *Chi Ming Tsoi*, the Court was content in ruling on the given facts and the related law and jurisprudence, it went beyond that in the leading case of *Republic v. Molina*.³¹ In the latter, the Supreme Court found the need to lay down specific guidelines in the interpretation and application of Article 36, given that, in spite of the *Santos* ruling, interpreting the meaning of “psychological incapacity,” several lawyers and judges still had difficulty applying the provision in specific cases.³²

In deference to Justice Artemio V. Panganiban’s illuminating *ponencia*, the guidelines are reproduced in full:

(1) The burden of proof to show the nullity of the marriage belongs to the plaintiff. Any doubt should be resolved in favor of the existence and continuation of the marriage and against its dissolution and nullity. This is rooted in the fact that both our Constitution and our laws cherish the validity of marriage and unity of the family. Thus, our Constitution devotes an entire Article on the Family, recognizing it “as the foundation of the nation.” It decrees marriage as legally “inviolable,” thereby protecting it from dissolution at the whim of the parties. Both the family and marriage are to be “protected” by the state.

³⁰ *Id.* at 8–9.

³¹ *Republic v. Court of Appeals*, *supra*

³² *Id.* at 2.

The Family Code echoes this constitutional edict on marriage and the family and emphasizes their *permanence, inviolability and solidarity*.

(2) The *root cause* of the psychological incapacity must be (a) medically or clinically identified, (b) alleged in the complaint, (c) sufficiently proven by experts and (d) clearly explained in the decision. Article 36 of the Family Code requires that the incapacity must be psychological — not physical, although its manifestations and/or symptoms may be physical. The evidence must convince the court that the parties, or one of them, was mentally or psychically ill to such an extent that the person could not have known the obligations he was assuming, or knowing them, could not have given valid assumption thereof. Although no example of such incapacity need be given here so as not to limit the application of the provision under the principle of *ejusdem generis*, nevertheless such root cause must be identified as a psychological illness and its incapacitating nature fully explained. Expert evidence may be given by qualified psychiatrists and clinical psychologists

(3) The incapacity must be proven to be existing at “the time of the celebration” of the marriage. The evidence must show that the illness was existing when the parties exchanged their “I do’s.” The manifestation of the illness need not be perceivable at such time, but the illness itself must have attached at such moment, or prior thereto.

(4) Such incapacity must also be shown to be medically or clinically permanent or *incurable*. Such incurability may be absolute or even relative only in regard to the other spouse, not necessarily absolutely against everyone of the same sex. Furthermore, such incapacity must be relevant to the assumption of marriage obligations, not necessarily to those not related to marriage, like the exercise of a profession or employment in a job. Hence, a pediatrician may be effective in diagnosing illnesses of children and prescribing medicine to cure them but may not be psychologically capacitated to procreate, bear, and raise his/her own children as an essential obligation of marriage.

(5) Such illness must be *grave* enough to bring about the disability of the party to assume the essential obligations of marriage. Thus, “mild characterological peculiarities, mood changes, occasional emotional outbursts” cannot be accepted as root causes. The illness must be shown as downright incapacity or inability, not a refusal, neglect or difficulty, much less ill will. In

other words, there is a natal or supervening disabling factor in the person, an adverse integral element in the personality structure that effectively incapacitates the person from really accepting and thereby complying with the obligations essential to marriage.

(6) The essential marital obligations must be those embraced by Articles 68 up to 71 of the Family Code as regards the husband and wife as well as Articles 220, 221 and 225 of the same Code in regard to parents and their children. Such non-complied marital obligation(s) must also be stated in the petition, proven by evidence and included in the text of the decision.

(7) Interpretations given by the National Appellate Matrimonial Tribunal of the Catholic Church in the Philippines, while not controlling or decisive, should be given great respect by our courts. It is clear that Article 36 was taken by the Family Code Revision Committee from Canon 1095 of the New Code of Canon Law, which became effective in 1983 and which provides:

The following are incapable of contracting marriage:

Those who are unable to assume the essential obligations of marriage due to causes of psychological nature.

Since the purpose of including such provision in our Family Code is to harmonize our civil laws with the religious faith of our people, it stands to reason that to achieve such harmonization, great persuasive weight should be given to decisions of such appellate tribunal. Ideally — subject to our law on evidence what is decreed as canonically invalid should also be decreed civilly — void.

This is one instance where, in view of the evident source and purpose of the Family Code provision, contemporaneous religious interpretation is to be given persuasive effect. Here, the State and the Church — while remaining independent, separate and apart from each other — shall walk together in synodal cadence towards the same goal of protecting and cherishing marriage and the family as the inviolable base of the nation.

(8) The trial court must order the prosecuting attorney or fiscal and the Solicitor General to appear as counsel for the state. No decision shall be handed down unless the Solicitor General issues a certification, which will be quoted in the decision, briefly

stating therein his reasons for his agreement or opposition, as the case may be, to the petition. The Solicitor General, along with the prosecuting attorney, shall submit to the court such certification within fifteen (15) days from the date the case is deemed submitted for resolution of the court. The Solicitor General shall discharge the equivalent function of the *defensor vinculi* contemplated under Canon 1095.³³

In *Molina*, the Solicitor General filed a petition for review on certiorari challenging the decision of the Court of Appeals affirming *in toto* the decision of the trial court which declared the marriage of Roridel Olaviano Molina ("Roridel") to Reynaldo Molina ("Reynaldo") void *ab initio* on the ground of "psychological incapacity" under Article 36. Petitioner contended that the respondent court erred in interpreting and applying "psychological incapacity" to the facts of the case.

Roridel claimed that Reynaldo was "immature, irresponsible, dependent, disrespectful, arrogant, a chronic liar, and an infidel."³⁴ The appellate court agreed with the trial court in finding "that the marriage between the parties broke up because of their opposing and conflicting personalities."³⁵

The Supreme Court granted the petition and held that the marriage of Roridel and Reynaldo subsists and remains valid. Justice Panganiban explained:

[T]here is no clear showing to us that the psychological defect spoken of is an incapacity. It appears to us to be more of a "difficulty," if not outright "refusal" or "neglect" in the performance of some marital obligations. Mere showing of "irreconcilable differences" and "conflicting personalities" in no wise constitutes psychological incapacity. It is not enough to prove that the parties failed to meet their responsibilities and duties as married persons; it is essential that they must be shown to be incapable of doing so, due to some psychological (not physical) illness.³⁶

³³ *Id.* at 12–18 (footnotes omitted).

³⁴ *Id.* at 6 n.5.

³⁵ *Id.* at 6–7.

³⁶ *Id.* at 10.

In the aforementioned cases, particularly *Santos* and *Molina*, the Supreme Court explained the nature of "psychological incapacity" in a manner different from that of the Code Committee. It is plain from these decisions that:

(1) "Psychological incapacity" is rooted in a mental³⁷ or psychological illness — "The evidence must convince the court that the parties, or one of them, was mentally or psychically ill...;" and

(2) The psychologically incapacitated party is "truly incognitive of the basic marital covenants that concomitantly must be assumed and discharged..." or "could not have known the obligations he was assuming, or knowing them, could not have given valid assumption thereof."

ARTICLE 36 AND THE MOLINA GUIDELINES

Although the guidelines for the interpretation and application of Article 36 laid down by the Supreme Court in *Molina* are very instructive and facilitate a better understanding of "psychological incapacity," some points need to be emphasized and others clarified.

"Incapacity" is defined as the lack of capacity, or incapability³⁸ while to "incapacitate" is to deprive of capacity or to disable.³⁹ *Molina*, as earlier stated, identified the "root cause" of "psychological incapacity" as a mental or psychological illness. This recognition is the first, if not the crucial, step in the quest to determine the real nature of "psychological incapacity." It is proposed however that a slight modification in the Court's formulation be made. It would be clearer if it is said that "psychological incapacity" is an incapacity which is due to a mental or psychological illness. In like manner, physical incapacity is an incapacity which is due to a physical illness. Article 36 deals with

³⁷ *Contra, Id.* at 27 (Romero, J., separate opinion) ("I would add that neither should the incapacity be the result of mental illness. For if it were due to insanity or defects in the mental faculties short of insanity, there is a resultant defect or vice of consent, thus rendering the marriage annulable under Art. 45 of the Family Code.")

³⁸ 1 WEBSTER COMPREHENSIVE DICTIONARY 638 (international ed. 1984).

³⁹ *Id.*

the former — “the incapacity must be psychological — not physical, although its manifestations and/or symptoms may be physical.”⁴⁰

As regards the mental or psychological illness adverted to, it is submitted that it should be given a strict and technical construction since the Court requires that it must be “medically or clinically identified.”⁴¹ Mental illness, by definition,⁴² is broader than, and includes, psychological illness. The medical term however is “mental disorder.” Thus, “psychological incapacity” is an incapacity which is due to a mental disorder and a person “psychologically incapacitated” is one who is deprived of capacity because of a mental disorder.

According to the fourth edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM-IV), the latest and most up-to-date classification of mental disorders:

[E]ach of the mental disorders is conceptualized as a clinically significant behavioral or psychological syndrome or pattern that occurs in an individual and that is associated with present distress (e.g., a painful symptom) or disability (i.e., impairment in one or more important areas of functioning) or with a significantly increased risk of suffering death, pain, disability, or an important loss of freedom. In addition, this syndrome or pattern must not be merely an expectable and culturally sanctioned response to a particular event, for example, the death of a loved one. Whatever its original cause, it must be currently considered a manifestation of a behavioral, psychological, or biological dysfunction in the individual. Neither deviant behavior (e.g., political, religious, or sexual), nor conflicts that are primarily between the individual and society are mental disorders unless the deviance or conflict is a symptom of a dysfunction in the individual, as described above...⁴³

⁴⁰ Republic v. Court of Appeals, *supra* at 14.

⁴¹ *Id.*

⁴² HAROLD I. KAPLAN, M.D. ET AL., KAPLAN AND SADOCK'S SYNOPSIS OF PSYCHIATRY, BEHAVIORAL SCIENCES, CLINICAL PSYCHIATRY 304 (7th ed. 1994).

Mental disorder: clinically significant behavioral or psychological syndrome associated with distress or disability, not just an expected response to a particular event or limited to relations between the person and society.

⁴³ *Id.* at 324.

The major diagnostic categories of mental disorders under the DSM-IV system of psychiatric classification are:⁴⁴

- (1) Disorders usually first diagnosed in infancy, childhood, or adolescence;
- (2) Delirium, dementia, and amnestic and other cognitive disorders;
- (3) Mental disorders due to a general medical condition not elsewhere classified;
- (4) Substance-related disorders;
- (5) Schizophrenia and other psychotic disorders;
- (6) Mood disorders;
- (7) Anxiety disorders;
- (8) Somatoform disorders;
- (9) Factitious disorders;
- (10) Dissociative disorders;
- (11) Sexual and gender identity disorders;
- (12) Eating disorders;
- (13) Sleep disorders;
- (14) Impulse-control disorders not elsewhere classified;
- (15) Adjustment disorders;
- (16) Personality disorders;
- (17) Other conditions that may be a focus of clinical attention.

Over 300 specific disorders are organized and classified by DSM-IV generally on the basis of their shared phenomenological features.⁴⁵

The implication of giving a strict and technical construction to the “root cause” in “psychological incapacity” is that in an action under Article 36, the intervention of a psychiatrist would be mandatory and not merely directory.⁴⁶ Psychiatry is the branch of medicine that is concerned with the diagnosis, treatment, and prevention of mental disorders.⁴⁷ The party invoking Article 36 must present the report of a psychiatrist who made a diagnosis⁴⁸ of the person alleged to be “psychologically incapacitated,” showing that the latter is suffering from a mental disorder.

⁴⁴ *Id.* at 315.

⁴⁵ *Id.*

⁴⁶ See *Republic v. Court of Appeals*, *supra* at 14 (“Expert evidence may be given by qualified psychiatrists and clinical psychologists”).

⁴⁷ 9 *The New Encyclopædia Britannica Micropædia* 761 (15th ed. 1992).

⁴⁸ See KAPLAN, *op. cit. supra* note 42 at 267–80 (explaining how to conduct a psychiatric interview, history, and mental status examination).

The *Molina* guidelines perhaps may be clarified if a distinction is made between the mental disorder and the incapacity it effectuates in the individual, giving rise to a "psychological incapacity." The guidelines require that "[t]he incapacity must be proven to be existing at 'the time of the celebration' of the marriage."⁴⁹ It is believed that here the Court is referring to the mental disorder and not the incapacity it causes. The incapacity to "comply with the essential marital obligations of marriage" is the effect of the disorder and such effect will only come about when there are the obligations to be complied with. Thus, what must be proved is that the person alleged to be "psychologically incapacitated" was suffering from a mental disorder before or at the time of the marriage celebration. The psychiatric report must again be presented and it must contain a psychiatric history⁵⁰ which details the onset of the present illness and the immediate precipitating factors, events or triggers.

The Court also requires that "such incapacity . . . be shown to be medically or clinically permanent or *incurable*."⁵¹ "Permanent" is construed as conveying the same meaning as "incurable," i.e., not capable of being cured.⁵² Besides, it was to the latter that the Court added emphasis. The matter of curability was discussed by the Code Committee:

Judge Diy proposed that they include physical incapacity to copulate among the grounds for void marriages. Justice Reyes commented that in some instances the impotence is only temporary and only with respect to a particular person. Judge Diy stated that they can specify that it is incurable. Justice Caguioa remarked that the term "incurable" has a different meaning in law and in medicine. Judge Diy stated that "psychological incapacity" can also be cured. Justice Caguioa, however, pointed out that "psychological incapacity" is incurable.

....

⁴⁹ Republic v. Court of Appeals, *supra* at 14.

⁵⁰ See KAPLAN, *op. cit. supra* note 42 at 271-76.

⁵¹ Republic v. Court of Appeals, *supra* at 15.

⁵² 1 WEBSTER COMPREHENSIVE DICTIONARY 316 (international ed. 1984).

Prof. [Araceli T.] Baviera suggested that the phrase "and is incurable" be added at the end of subparagraph (7). Prof. Baustista commented that this will give rise to the question of how they will determine curability. Justice Caguioa agreed that it will be more problematic.⁵³

It is clear therefore that the "psychological incapacity" must be "incurable" so as to render a marriage void *ab initio*. It is posited however that it is not the incapacity of the individual to carry out the obligations which should be "incurable." Treatment, if any, is aimed at the mental disorder and not the incapacity it causes. Thus, it should be the mental disorder which must be shown to be "medically or clinically permanent or incurable." But even then, it is believed that it is not a *medical or clinical* incurability which must be proved. The psychiatrist will rarely, if at all, describe the patient's condition in terms of curability. In the psychiatric report, the psychiatrist gives a prognosis — an opinion about the probable immediate and future course, extent and outcome of the disorder,⁵⁴ and a set of management recommendations, noting whether the patient requires psychiatric treatment at the time, and, if so, which problems and target symptoms the treatment is aimed, what kind of treatment or combination of treatments the patient should receive, and what treatment seems most appropriate.⁵⁵ It is believed that what is required to be proved is that the mental disorder is *juridically* incurable or that the "treatment required exceeds the ordinary means of the [party], or involve time and expense beyond the reach of the [party]."⁵⁶

The diagnosis of a mental disorder is not, in itself, sufficient to warrant a finding of "psychological incapacity."⁵⁷ According to *Molina*, the "illness must be *grave* enough to bring about the disability of the party to assume the essential obligations of marriage." In other words, the mental disorder must actually give rise to the individual's lack of capacity to comply with the essential marital obligations. But before it

⁵³ 149TH MEETING, see note 17, *supra* at 4–5.

⁵⁴ KAPLAN, *op. cit. supra* note 42, at 280.

⁵⁵ *Id.*

⁵⁶ A. SEMPIO-DIY, *op. cit. supra* note 5 at 40 (citing Dr. Gerardo Ty Veloso on the general characteristics of "psychological incapacity"); see *Santos v. Court of Appeals*, *supra* at 33–34.

⁵⁷ *Cf. KAPLAN, op. cit. supra* note 42 at 1179.

may be said that a person is incapacitated, it must be known and understood what constitutes the "essential marital obligations of marriage."

The use of the phrase "essential obligations of marriage" may be traced to Canon 1095⁵⁸ of the New Code of Canon Law, on which Article 36 was based. Unfortunately, neither the Family Law Committee nor the Code Committee specified what these obligations are. Justice Vitug however explained that these obligations, "as so expressed by Article 68 of the Family Code, include [the] mutual obligations to live together, observe love, respect and fidelity and render help and support."⁵⁹ In *Molina*, it was held that "[t]he essential marital obligations must be those embraced by Articles 68 to 71 of the Family Code as regards the husband and wife as well as Articles 220, 221, and 225 of the same Code as regards to parents and their children."⁶⁰

Although the "essential marital obligations of marriage" have been identified, it is believed that proving non-compliance with the obligations contained in Article 68⁶¹ may be problematic. "Love," "respect," "help" and "support" are subjective terms, i.e., they relate to a feeling, attitude, or cognition that is recognized as a construct within the mind of the perceiver, even though it takes the external object as its point of departure.⁶² The use of these terms in the statement of the obligations in the said provision leads to a diversity in the understanding of these obligations from person to person. And because A understands the obligation to "observe mutual love" differently from B, each would have a different idea of what constitutes compliance therewith. It is suggested, therefore, that the judge should be very judicious in evaluating the evidence adduced to show non-compliance. Additionally, it must be noted that Article 68 and the other cited provisions are contained in Title III of the Family Code which is entitled "Rights and Obligations *between* Husband and Wife." The obligations expressed in these provisions are thus owed to the other

⁵⁸ See text accompanying note 13, *supra*.

⁵⁹ Santos v. Court of Appeals, *supra* at 34.

⁶⁰ Republic v. Court of Appeals, *supra* at 16.

⁶¹ Article 68 provides: "The husband and wife are obliged to live together, observe mutual love, respect and fidelity, and render mutual help and support."

⁶² 2 WEBSTER COMPREHENSIVE DICTIONARY 1248 (international ed. 1984).

spouse, and not to third persons.⁶³ It is proposed that major consideration be given to the spouses' view of the marital relationship and the appurtenant obligations, which, in turn, must be reasonable and justified.

The non-compliance with the "essential marital obligations" should be the result of an incapacity caused by a mental disorder. It should not be due to "a refusal, neglect or difficulty, much less ill will."⁶⁴ In other words, the case must be that the spouse alleged to be "psychologically incapacitated" did not fulfill the marital obligations because he or she could not have done so, and not because he or she did not want to do so. But when is there an incapacity? If the distress or disability⁶⁵ associated with the mental disorder is such that the spouse was, and continues to be, prevented from complying with his or her marital obligations, then there is an incapacity. The judge should examine the diagnosis and prognosis made by the psychiatrist to ascertain the distress or disability of the spouse, and relating such to the unfulfilled obligations, determine if a finding of "psychological incapacity" is warranted.

Since the incapacity is determined in relation to the unfulfilled marital obligations, the nature and extent of which may vary from person to person because of subjectivity, it is submitted that the incapacity may be relative. Thus, while the court may determine that *A* is incapacitated to comply with his marital obligation(s) to *B* due to his (*A*'s) mental disorder, he (*A*) may not be incapacitated with *C*.⁶⁶ It is believed that this is what Justice Panganiban meant when he wrote that, "[s]uch incurability may be absolute or even relative in regard to the other spouse, not necessarily absolutely against everyone of the same sex."⁶⁷

⁶³ CIVIL CODE AND FAMILY LAW COMMITTEES, MINUTES OF THE 160TH MEETING 2 (held on 26 October 1986) (unpublished, available in the U.P. College of Law Library).

⁶⁴ Republic v. Court of Appeals, *supra* at 15.

⁶⁵ See note 42.

⁶⁶ Cf. A. SEMPIO-DIY, *op. cit. supra* note 5, at 38 (citing Fr. Gerard Healy, S.J.) ("He says that a person with psychological incapacity may be all right for *B* but not for *C* because the former relationship compensates while the latter aggravates the problem.").

⁶⁷ Republic v. Court of Appeals, *supra* at 15.

It must be recalled that "psychological incapacity" is not a specie of vice of consent. A mental disorder which has resulted in the incapacity of the spouse to comply with the marital obligations may or may not have also caused a defect in that spouse's consent to the marriage depending on whether or not he or she was able to comprehend the nature and effect of the act of giving consent.⁶⁸ In case the spouse was also unable to understand the act of consent, the marriage is, at the same time, voidable under paragraph (2) of Article 45⁶⁹ of the Family Code. But in a proper case under Article 36, the spouse understood the nature and effect of the act of consent and gave a valid consent but is incapacitated to fulfill his or her obligations to the other spouse.

In sum, "psychological incapacity" as a ground for the declaration of nullity of a marriage should be understood to be the incapacity of a spouse to fulfill or comply with his or her marital obligations because of a mental disorder as comprehended in psychiatry. Thus, a marriage should only be declared void from the beginning provided that: (1) the spouse is suffering from a mental disorder sufficiently proved by a psychiatrist; (2) the mental disorder results in the inability of that spouse to meet his or her obligations under the marriage; (3) the mental disorder existed at the time of the celebration of the marriage and not after; and (4) the treatment of the mental disorder exceeds the ordinary means of the party or involves time and expense beyond the reach of the party such that it is

⁶⁸ See KAPLAN, *supra* note 42 at 1179-80.

The marital contract is subject to the same standards and, thus, can be voided if either party did not understand the nature, duties, obligations,...and other characteristics entailed at the time they were married...whether the competence is related to wills, contracts, or the making or breaking of marriages, the fundamental concern is the persons's state of awareness and capacity to comprehend the significance of the particular commitment made.

⁶⁹ Article 45 provides:

A marriage may be annulled for any of the following causes, existing at the time of the marriage:

....

(2) That either party was of unsound mind, unless such party, after coming to reason, freely cohabited with the other as husband and wife;....

juridically incurable. The foregoing requirements should be met before the marriage is avoided if abuse of the ground under Article 36 is to be minimized.

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