

REVISITING SUPREME COURT DECISIONS ON MARRIAGE AND PROPERTY*

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“The Court, as the highest court of the land, may be guided but is not controlled by precedent. Thus, the Court . . . is not obliged to follow blindly a particular

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decision that it determines, after re-examination, to call
for a rectification.”

—Justice Ricardo J. Francisco¹

INTRODUCTION

This article seeks to examine certain decisions of the Supreme Court, which due to some “mutancy,”¹ adversely impact on the marital and property relations of spouses. First case for discussion is *Mallion v. Alcantara*.²

Wanting to get out from his marriage, Oscar Mallion filed a petition for the declaration of nullity of his marriage under Article 36 of the Family Code³—the inimitable psychological incapacity to comply with the essential marital obligations. His petition was denied. About a year later, Mallion filed another petition seeking the nullity of his marriage on the ground that it was performed without a valid marriage license. Editha Alcantara countered with a motion to dismiss on the grounds of *res judicata* and forum shopping. Both the Regional Trial Court and the Court of Appeals denied Mallion’s appeal, prompting Mallion to seek recourse before the Supreme Court. Extraordinarily, the Supreme Court denied Mallion’s petition, opining that *res judicata*⁴, barred Mallion’s second petition.

Res judicata refers to the rule that a final judgment or decree on the merits by a court of competent jurisdiction is conclusive of the rights of the parties or their privies in all later suits on points and matters determined in the

¹ De Castro v. JBC, 618 SCRA 639 (2010), *citing* Limketkai v. CA, 261 SCRA 464 (1996). Thank you Professor Ben Balane.

² 506 SCRA 336 (2006).

³ FAMILY CODE, art. 36 provides: “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.” (As amended by Executive Order 227)

⁴ RULES OF COURT, Rule 39, § 47 (b).

former suit.⁵ This rule, founded on the precepts of common law, is based on public policy and necessity, as well as the hardship imposed on individuals that they be vexed twice for the same cause.⁶

As a bar by prior judgment, *res judicata* requires the concurrence of the following requisites: (a) The former judgment is final; (b) The judgment is rendered by a court having jurisdiction over the subject matter and the parties; (c) It is a judgment or an order on the merits; and (d) There is—between the first and second actions—identity of parties, of subject matter, and of causes of action.⁷ The test to determine whether the causes of action are identical is to ascertain whether the same evidence will sustain both actions.⁸ If the evidence would sustain both, the two actions are considered the same. A judgment in the first case is then a bar to the subsequent action.⁹

The Supreme Court ruled that *Mallion* simply invoked different grounds on the same cause of action—that is, the declaration of nullity of his marriage to Alcantara. However, a closer look shows that the Supreme Court failed to differentiate **right of action** (the nullity of a marriage) from **cause of action** (the grounds for nullity).

Unfortunately, because of the alleged technicality of *res judicata*, the Supreme Court validated a void marriage on the basis of a procedural rule. This despite the Supreme Court's own pronouncement in *Sy v. CA*¹⁰, where it said:

We have relaxed observance of procedural rules, noting that technicalities are not ends in themselves but exist to protect and promote substantive rights of litigants. We said that certain rules ought not to be applied with severity and rigidity if by so doing, the very reason for their existence would be defeated. Hence, when substantial justice plainly requires, exempting

⁵ *Dela Cruz v. Joaquin*, 464 SCRA 576 (2005), *citing* *Taganas v. Emuslan*, 410 SCRA 237, 241, (2003); *Bardillon v. Barangay Masili of Calamba*, 402 SCRA 440, 446, (2003); *Oropeza Marketing Corp. v. Allied Banking Corp.*, 441 Phil. 551, 563 (2002).

⁶ *Supra* note 3 at 342, *citing* *Cruz v. CA*, 482 SCRA 379 (2006); *Heirs of the Late Faustina Adalid v. CA*, 459 SCRA 27 (2005).

⁷ *Supra* note 3 at 344, *citing* *Luzon Development Bank v. Conquilla*, 470 SCRA 533 (2005).

⁸ *Id.*

⁹ *Id.*, *citing* *Sangalang v. Caparas*, 151 SCRA 53 (1987).

¹⁰ 330 SCRA 550 (2000).

a particular case from the operation of technicalities should not be subject to cavil.¹¹ (Emphasis supplied)

In another case, the Supreme Court said that “the stringent rules of procedures may be relaxed to serve the demands of substantial justice and in the Court's exercise of equity jurisdiction”¹²

Mallion is just one of the many cases on marriage that not only need to be re-examined, but also rectified. The doctrines established by the cases examined here could erode the foundations of the Philippine legal system.

BACK TO BASICS: VOID VIS-À-VIS VOIDABLE MARRIAGES

For context, a discussion on the distinction between void and voidable marriages and the elements that comprise a valid marriage is apt.

The Family Code states three **essential requisites** for a valid marriage: (1) legal capacity of the contracting parties; (2) who must be a male and a female; and (3) consent freely given in the presence of a solemnizing officer¹³. In addition, **formal requisites** are required, which include: (1) a solemnizing officer who has authority, (2) a valid marriage license, except in special cases¹⁴, and (3) a marriage ceremony¹⁵.

Except as provided for in Article 35 (2) of the Family Code, the *absence* of any of the essential or formal requisites makes the marriage **void**. On the other hand, a *defect* in any of the essential requisites makes the marriage **voidable**.¹⁶ The defect in an essential requisite can only be a defect in consent as Article 4 states that the voidable marriages are those indicated in Article 45 of the Family Code.¹⁷ For fairly obvious reasons, there can be no irregularity in any of the *essential* requisites. However, in the case of an irregularity in any of the *formal* requisites—though the marriage is still valid—

¹¹ *Id.* at 556 (2000), citing *GSIS v. CA*, 266 SCRA 187, 198 (1997); *Mauna v. CA*, 232 SCRA 388, 398 (1994); *Aguilar v. CA*, 250 SCRA 371 (1995).

¹² *Almelor v. RTC*, 563 SCRA 447, 457 (2008).

¹³ FAMILY CODE, art. 2.

¹⁴ FAMILY CODE, art. 27-34.

¹⁵ FAMILY CODE, art. 3.

¹⁶ FAMILY CODE, art. 4

¹⁷ *Id.*

the party causing the irregularity may be civilly, criminally, and administratively liable.¹⁸

Pertinently, in *Niñal v. Bayadog*¹⁹, the Supreme Court held that void and voidable marriages are not identical, thus:

A marriage that is annulable is valid until otherwise declared by court; whereas a marriage that is void *ab initio* is considered as having never to have taken place and cannot be the source of rights. The first can be generally ratified or confirmed by free cohabitation or prescription while the other can never be ratified. A voidable marriage cannot be assailed collaterally except in a direct proceeding while a void marriage can be attacked collaterally. Consequently, void marriages can be questioned even after the death of either party but voidable marriage can be assailed only during the lifetime of the parties and not after [the] death of either, in which case the parties and their offspring will be left as if the marriage had been perfectly valid. That is why the action or defense for nullity is imprescriptible, unlike voidable marriages where the action prescribes. Only the parties to a voidable marriage can assail it but any proper interested party may attack a void marriage. Void marriages have no legal effects except those declared by law concerning the properties of the alleged spouses, regarding co-ownership or ownership through actual joint contribution, and its effect on the children born to such void marriages as provided in Article 50 in relation to Article 43 and 44 as well as Article 51, 53, and 54 of the Family Code. On the contrary, the property regime governing voidable marriages is generally conjugal partnership and the children conceived before it annulment are legitimate.²⁰

Article 39 of the Family Code specifically mandates that **the action or defense for the declaration of absolute nullity of a marriage shall not prescribe.**²¹

These specific provisions in the Family Code are relevant to bigamy and discussion will be had on present jurisprudence that affects the rights, if not liberty, of people.

¹⁸ *Id.*

¹⁹ 328 SCRA 122 (1995).

²⁰ *Id.* at 134.

²¹ FAMILY CODE, art. 39.

CONSTRUING BIGAMY AND ARTICLES 40 AND 41: WHAT WENT WRONG?

Bigamy will be discussed from three points of view: (1) where both marriages are valid in all aspects; (2) where the second marriage is void for reasons other than the existence of the first marriage; and (3) where the first marriage is void.

First, when both first and second marriages are valid—in the sense that all requisites are present and the first marriage has not ended in some manner—without any argument and clearly, there is bigamy.

Anent the second and third points of view, Section 29 of Marriage Law of 1929,²² Article 83 of the New Civil Code,²³ and Article 41 of the Family Code²⁴ are very similar and relevant for discussion of the situation where the

²² Act No. 3613, § 29 (1929) *provides*

Any marriage subsequently contracted by any person during the lifetime of the first spouse of such person with any person other than such first spouse shall be illegal and void from its performance, unless:

(a) The first marriage was annulled or dissolved;

(b) The first spouse had been absent for seven consecutive years at the time of the second marriage without the spouse present having news of the absentee being alive, or the absentee being generally considered as dead and believed to be so by the spouse present at the time of contracting such subsequent marriage, the marriage so contracted being valid in either case until declared null and void by a competent court.

²³ CIVIL CODE, art. 83 *states*,

Any marriage subsequently contracted by any person during the lifetime of the first spouse of such person with any person other than such first spouse shall be illegal and void from its performance, unless:

(1) The first marriage was annulled or dissolved; or

(2) The first spouse had been absent for seven consecutive years at the time of the second marriage without the spouse present having news of the absentee being alive, or if the absentee, though he has been absent for less than seven years, is generally considered as dead and believed to be so by the spouse present at the time of contracting such subsequent marriage, or if the absentee is presumed dead according to Arts. 390 and 391. The marriage so contracted shall be valid in any of the three cases until declared null and void by a competent court.”

²⁴ FAMILY CODE, art. 41 *states*,

A marriage contracted by any person during subsistence of a previous marriage shall be null and void, unless before the celebration of the subsequent marriage, the prior spouse had been absent for four

second marriage is void for reasons other than the existence of the first marriage. Based on this, the Supreme Court enumerated the elements of bigamy in *Mercado v. Tan*:²⁵

1. The offender has been legally married;
2. The marriage has not been legally dissolved or, in case his or her spouse is absent, the absent spouse could not yet be presumed dead according to the Civil Code;
3. He contracts a second or subsequent marriage; and
4. The second or subsequent marriage has all the essential requisites for validity.²⁶

According to Justice Carpio²⁷, the first three elements merely enumerate what has been provided for by the Revised Penal Code²⁸; the last element necessarily follows from the language of the law that the offender contracts a “second or subsequent marriage.”²⁹ Otherwise stated, it is essential that, for a person to have committed the crime of bigamy, he must have contracted a second marriage that would have been valid (i.e., possessed all the essential requisites of a marriage) had the first (also valid) marriage not existed.

Article 35 of the Family Code provides in part that void marriages are those bigamous or polygamous marriages not falling under Article 41 of the Family Code.³⁰ What this means is that if the person who contracted the

consecutive years and the spouse present has a well-founded belief that the absent spouse was already dead. In case of disappearance where there is danger of death under the circumstances set forth in the provisions of Article 391 of the Civil Code, an absence of only two years shall be sufficient.

For the purpose of contracting the subsequent marriage under the preceding paragraph the spouse present must institute a summary proceeding as provided in this Code for the declaration of presumptive death of the absentee, without prejudice to the effect of reappearance of the absent spouse.

²⁵ 337 SCRA 122, 127 (2000).

²⁶ *Supra* at 127, citing II LUIS B. REYES, THE REVISED PENAL CODE 828 (13th ed. 1993).

²⁷ *Tenebro v. CA*, 423 SCRA 272, 298, Feb. 18, 2004 (Carpio, J., *dissenting*)

²⁸ REV. PEN. CODE., art. 349 states “The penalty of *prision mayor* shall be imposed upon any person who shall contract a second or subsequent marriage before the former marriage has been legally dissolved, or before the absent spouse has been declared presumptively dead by means of a judgment rendered in the proper proceedings.”

²⁹ *Id.*

³⁰ FAMILY CODE, art. 35 (4).

second marriage did not institute a summary proceeding for the declaration of presumptive death of his first spouse, then the second marriage would be void for being bigamous. Under Article 41 of the Family Code, the presumption is that the first marriage is valid.

These principles of bigamous marriages, as embodied in our civil and criminal laws, have been muddled by the Supreme Court in various cases, including *Tenebro v. CA*³¹. In this case, Veronico Tenebro married Leticia Ancajas in 1990. Soon after, Tenebro left Ancajas after he told her that in 1986 he was previously married to one Hilda Villareyes. Afterwards, Tenebro contracted a third marriage with a certain Nilda Villegas in 1993. Furious, Ancajas filed a complaint for bigamy against Tenebro. Both the lower court and the Court of Appeals found Tenebro guilty of the crime of bigamy.

On appeal to the Supreme Court, Tenebro alleged that a civil court had declared his marriage to Hilda Villareyes void *ab initio* due to the absence of a marriage ceremony and that the judicial declaration of the nullity of his marriage to Ancajas retroacted to the date on which it had been celebrated.

The Supreme Court held that Article 349 of the Revised Penal Code criminalizes any person who shall contract a second or subsequent marriage before the former marriage has been legally dissolved, or before the absent spouse has been declared presumptively dead by means of a judgment rendered in the proper proceedings. It further held that the Revised Penal Code penalizes the mere act of contracting a second or subsequent marriage during the subsistence of a valid marriage. The Supreme Court also ruled that a declaration of the nullity of the second marriage on the ground of psychological incapacity “is of absolutely no moment insofar as the State’s penal laws are concerned.”³² Thus, the subsequent judicial declaration of the nullity of Tenebro’s second marriage is not a defense in avoiding criminal liability for bigamy.

And the question thus arises: Is psychological incapacity an element of legal capacity or of consent to marry? If it is neither, then the Supreme Court should have said that a marriage under Article 36 of the Family Code is more in the nature of a voidable marriage and thus, not a defense to bigamy.

³¹ 423 SCRA 272 (2004).

³² *Id.* at 282.

Unfortunately, the Supreme Court did not utilize Article 41 of the Family Code in convicting Tenebro of bigamy. Instead, the Supreme Court based its bigamy conviction on Article 40 of the Family Code which states:

Art. 40. The absolute nullity of a previous marriage may be invoked for purposes of remarriage on the basis solely of a final judgment declaring such previous marriage void.³³

Why was Article 40 of the Family Code applied when the Supreme Court merely considers it as a rule of procedure?³⁴

What are the implications of the *Tenebro* ruling? As Justice Carpio pointed out in his dissenting opinion in *Tenebro*:

1. The mere act of entering into a second marriage contract while the first marriage subsists consummates the crime of bigamy, even if the second marriage were void *ab initio* on grounds other than the mere existence of the first marriage.³⁵
2. A marriage declared by law void *ab initio* and judicially confirmed void from the beginning, is deemed valid for the purpose of a criminal prosecution for bigamy.³⁶

According to Justice Carpio, in so ruling, the majority opinion simply brushed aside the law and overturned 75 years of consistent rulings that if the second marriage were void on grounds other than the existence of the first marriage, there is no crime of bigamy. Justice Carpio reminded that, “It is an essential element of the crime of bigamy that the alleged second marriage, having all the essential requisites, would be valid were it not for the subsistence of the first marriage.”³⁷

Article 41 of the Family Code, *not* Article 40, should have been the basis for convicting Tenebro. It should be reiterated that Article 40 of the Family Code is merely a rule of procedure.³⁸ It contemplates a situation of two

³³ *Id.*; FAMILY CODE, art. 40.

³⁴ *Atienza v. Brillantes*, 243 SCRA 32, 35 (1995); *Jarillo v. People*, 622 SCRA 25 (2010).

³⁵ *Supra* note 38 at 302-303.

³⁶ *Id.*

³⁷ *Supra* note 38 at 293.

³⁸ *Supra* note 44.

void marriages: a prior existing void marriage and a second marriage that would have been valid had there not been a prior void marriage.

To illustrate Article 40 of the Family Code, the Supreme Court consistently cites the case of *Wiegel v. Sempio-Diy*.³⁹ Here, Karl Wiegel sought the declaration of nullity of his marriage to Lilia Wiegel, which was celebrated in 1978, on the ground of Lilia's previous existing marriage to a certain Eduardo Maxion, which was celebrated in 1972. While admitting that her marriage to Maxion existed, Lilia claimed it to be null and void because they were allegedly forced to enter the marital union. Contesting the validity of the pre-trial court order, Lilia asked that she be able to present evidence before the court not only that the first marriage was vitiated by force, but also to prove that Maxion was already married to somebody else at the time she married him. Judge Sempio-Diy did not allow the presentation of evidence since the existence of force exerted on both parties of the first marriage had already been agreed upon at pre-trial. On a side note, the question also begs itself: is it really possible under Article 48 of the Family Code⁴⁰ and its predecessors to stipulate on the ground for nullity of a marriage?

In upholding Sempio-Diy's order, the Supreme Court held that, first, Lilia does not have to present evidence that her first marriage has been vitiated by force. A marriage vitiated by force is merely voidable—that is, valid until annulled. Since no annulment had yet been made, it is clear that when Lilia married Wiegel, she is still validly married to Maxion. Consequently, her marriage to Wiegel is void.. Second, Lilia does not have to present evidence as to her husband's alleged marriage at the time they married. While Lilia and Maxion's marriage is void, it still needs to be declared void by a court.⁴¹ Thus, the Supreme Court said that since the first marriage had not been annulled or declared void, then Lilia was considered a married woman at the time she

³⁹ 143 SCRA 499 (1986).

⁴⁰ FAMILY CODE, art. 48 *provides*,

In all cases of annulment or declaration of absolute nullity of marriage, the Court shall order the prosecuting attorney or fiscal assigned to it to appear on behalf of the State to take steps to prevent collusion between the parties and to take care that evidence is not fabricated or suppressed.

In the cases referred to in the preceding paragraph, no judgment shall be based upon a stipulation of facts or confession of judgment.

⁴¹ *Supra* note 48, *citing* Vda. de Consuegra v. GSIS, 37 SCRA 315 (1971).

married Karl, consequently, her marriage with Karl is void. This is a proper application of Article 40, and the author agrees to the various aforementioned conclusions. However, *Wiegel* is not a case involving bigamy.

It is shocking therefore that the Supreme Court ruled, without qualification, in *Terre v. Terre*⁴² that the second marriage entered into by Atty. Jordan Terre was “bigamous and criminal in nature.” In this case, Dorothy Terre accused Atty. Jordan Terre of grossly immoral conduct for contracting a second marriage and living with another woman, while his prior marriage with Dorothy remained subsisting. It turned out that Dorothy had a previous marriage with one Merlito Berceñilla, her first cousin. Jordan thus believed that his marriage to Dorothy was void *ab initio*, and that he could contract a second marriage with Helen Malicdem.

The Supreme Court disbarred Jordan for grossly immoral conduct under Rule 138, Sec. 27 of the Rules of Court.⁴³ The Court held that even if Jordan had entered into his first marriage in good faith, a judicial declaration of the nullity of the same is still required before remarriage. The Supreme Court then held his marriage to Dorothy was valid and his marriage to Helen was “bigamous and criminal” in nature.

But, why was there a need to qualify Jordan’s second marriage as “bigamous and criminal in nature”? Surely, for the criminal liability for bigamy to attach, both the first and second marriages must be valid?

*Mercado*⁴⁴ is yet another “difficult” ruling. Here, at the time of the celebration of the marriage of Vincent Mercado and Consuelo Tan, Mercado was already married to a certain Thelma Oliva. Consequently, Consuelo Tan

⁴² 211 SCRA 6 (1992).

⁴³ RULES OF COURT, Rule 138, § 27 states that

A member of the bar may be removed or suspended from his office as attorney by the Supreme Court for any deceit, malpractice, or other gross misconduct in such office, grossly immoral conduct, or by reason of his conviction of a crime involving moral turpitude, or for any violation of the oath which he is required to take before the admission to practice, or for a willful disobedience of any lawful order of a superior court, or for corruptly or willful appearing as an attorney for a party to a case without authority so to do. The practice of soliciting cases at law for the purpose of gain, either personally or through paid agents or brokers, constitutes malpractice.

⁴⁴ *Supra* note 36.

filed a complaint for bigamy against Mercado. More than a month after the bigamy case was filed, Mercado filed an action for the declaration of nullity of his marriage to Thelma Oliva with the RTC, which judicially declared the marriage between Mercado and Oliva to be null and void on the basis of Article 36 of the Family Code. Mercado was still convicted of bigamy by the lower court and thus, appealed to the Supreme Court.

The Supreme Court ruled that Article 40 of the Family Code (again, a rule of procedure)⁴⁵ effectively sets aside the conflicting jurisprudence on whether a judicial declaration of nullity of marriage is necessary before one can contract a subsequent marriage. **The fact that the first marriage is void from the beginning cannot now be a defense against a bigamy charge.** As with a voidable marriage, there must be a judicial declaration of the nullity of a marriage before contracting a second marriage.⁴⁶ That Mercado subsequently obtained a judicial declaration of the nullity of his first marriage was immaterial as the “crime” had already been consummated.

Another Supreme Court decision that has confused the application of the Article 40 of the Family Code is that of *Marbella-Bobis v. Bobis*.⁴⁷ In this case, Isagani Bobis first married a certain Dulce Javier in 1985. Without annulling, nullifying, or terminating his first marriage, Isagani married a second time, to petitioner Imelda Marbella-Bobis in 1996. Then, Isagani married a third time, to one Julia Hernandez. After an information for bigamy was filed against Isagani by Imelda, he initiated a civil action for the judicial declaration of absolute nullity of his first marriage on the ground that it had been celebrated without a marriage license. He then moved to have the proceedings in the criminal case suspended invoking the pending civil case for the nullity of his first marriage as a prejudicial question.

The Supreme Court held that the subsequent filing of a civil action for declaration of nullity of a previous marriage does not constitute a prejudicial question to a criminal case for bigamy. Article 40 of the Family Code requires a prior judicial declaration of nullity of a previous marriage before a party may remarry and that it is not for the parties, particularly the accused, to determine the validity or invalidity of the marriage.⁴⁸

⁴⁵ *Supra* note 44.

⁴⁶ *Supra* note 53.

⁴⁷ 336 SCRA 747 (2000).

⁴⁸ *Id.*, citing *Niñal v. Badayog*, 243 SCRA 32 (1995).

Surely, *reductio ad absurdum*, if a person is married to a sibling, there is no need for a prior declaration of nullity. The law itself tells us that the complete absence of a valid marriage license makes a marriage absolutely void.⁴⁹ Article 39 of the Family Code is very clear: The action or defense for the declaration of absolute nullity of a marriage shall not prescribe.

While Isagani Bobis should not have married three times, should the Supreme Court really have ruled on passion against the “adventurous bigamist”? And which of the three marriages was actually bigamous? Yes, the second marriage in *Bobis* is void. However, it cannot be considered bigamous through Article 40 of the Family Code. It is the third marriage that is void, illegal, and bigamous under Article 41 of the Family Code.

Either *Bobis* is right and *Morigo v. People*⁵⁰ is wrong, or vice-versa.

In the case of *Morigo*, Lucio Morigo married Lucia Barrete, who then reported back to her work in Canada eight days after their marriage. A year later, Barrete filed a petition for divorce against Morigo before the Ontario Court, which petition was granted. Morigo married Maria Lumbago and eventually filed a complaint for judicial declaration of nullity of his marriage to Barrete with the Family Court on the ground that no marriage ceremony had taken place. Soon after, a charge of bigamy was filed against Morigo by Lumbago. Morigo moved for suspension of the arraignment on the ground that the civil case for judicial nullification of his first marriage posed a prejudicial question in the bigamy case. His motion was denied and he was convicted. While the case was on review in the Court of Appeals, the Family Court judicially declared Morigo’s first marriage void for absence of a marriage ceremony. The Court of Appeals, however, affirmed the bigamy conviction on the ground that the subsequent declaration of Morigo and Lucia’s marriage could not acquit Morigo as what is sought to be punished by the Revised Penal Code is the act of contracting a second marriage before the first marriage has been dissolved.

The Supreme Court overturned Morigo’s conviction since the first element of bigamy—that is, that the offender had been legally married—was not present. Morigo and Lucia’s marriage is void *ab initio* and as such, following

⁴⁹ *Supra* note 14.

⁵⁰ 422 SCRA 376 (2004).

the principle of retroactivity of a marriage being declared void *ab initio*, the two were never married from the beginning.

But was not Morigo still married when he married a second time? Did not the Supreme Court say that a person cannot judge for himself whether his marriage is valid or not? And did not the Supreme Court also tell us that the subsequent filing of a civil action for declaration of nullity of a previous marriage does not constitute a prejudicial question to a criminal case for bigamy; that Article 40 of the Family Code requires a prior judicial declaration of nullity of a previous marriage before a party may remarry; and that it is not for the parties, particularly the accused, to determine the validity or invalidity of the marriage? And finally, unlike Isagani Bobis, both of Morigo's marriages took place when the Family Code was already in effect, so why was Article 40 not applied?

Interestingly, the Supreme Court distinguished *Morigo* from *Mercado* in the *Bobis* case. The Supreme Court said that in *Mercado*, while the judicial declaration of nullity of the first marriage was likewise obtained after the second marriage was already celebrated,⁵¹ unlike *Morigo*, the marriage in *Mercado* was celebrated on two occasions: "Ostensibly, at least, the first marriage appeared to have transpired, although later declared void *ab initio*."⁵²

Please note, however: In *Morigo*, there was no marriage ceremony performed by a duly authorized solemnizing officer. In *Mercado*, the marriage was declared void on the basis of Article 36 of the Family Code—not on the absence of either an essential or a formal requisite. The two cases should not have been compared. Again, I raise the question: Is psychological incapacity an element of legal capacity or of consent to enter into a marriage?

Based on the case of *Morigo* and present jurisprudence, is it safe to say that:

1. If one wanted to get out of a criminal conviction, the defense is not psychological incapacity or the lack of a marriage license, but the lack of a marriage ceremony?

⁵¹ *Id.*, citing *Mercado v. Tan*, 337 SCRA 122, 124 (2000).

⁵² *Id.*

2. If both marriage ceremony and marriage license are elements of formal requisites, then the absence of a marriage license does not have the same effect as the absence of a marriage ceremony? [Please note: A marriage ceremony does not have a particular form, but a marriage license does.]
3. If the defense were psychological incapacity, it will not acquit one of bigamy? Therefore, psychological incapacity does not render a marriage void? Is the Supreme Court, therefore, ready to say that the presence of psychological incapacity merely makes a marriage voidable? If so, then *Mercado* is correct?
4. One will always be a bigamist even if both marriages were void and one did not seek the nullity of the first marriage before subsequently marrying?
5. No one can ever file a petition based on newly-discovered evidence and a void marriage can be ratified on the basis of *res judicata*, specifically because of *Mallion*?
6. The existence of a judicial declaration of a void marriage is not a defense to bigamy if the ground is any other than the absence of a marriage ceremony?

EQUALLY BOTHERSOME: THE SUPREME COURT DECISIONS ON PROPERTY RELATIONS

The Supreme Court's decisions on property relations relating to marriage also deserve an in-depth critique and discussion, beginning with *Valdes v. RTC*.⁵³

Antonio Valdes and Consuelo Gomez-Valdes were married in 1971. In 1992, however, Antonio sought the declaration of the nullity of his marriage to Consuelo on the ground of Article 36 of the Family Code. The petition was granted. The lower court directed Antonio and Consuelo to start proceedings

⁵³ 260 SCRA 221 (1996).

on the liquidation of their common properties under Article 147 of the Family Code, and to comply with the provisions of Articles 50, 51, and 52 of the same Code. Consuelo sought a clarification of the portion of the decision directing compliance with Articles 50, 51, and 52, asserting that the Family Code contained no provisions on the procedure for the liquidation of common property in “unions without marriage.” The trial court clarified that the property regime of Antonio and Consuelo shall be governed by the rules on co-ownership pursuant to Article 147 of the Family Code as Article 102 on liquidation of the absolute community and Art. 129 on liquidation of the conjugal partnership have no application in Article 36 cases.

The Supreme Court agreed and held that in a void marriage, regardless of the cause thereof, the property relations of the parties during the period of cohabitation is governed by the provisions of Articles 147 or 148 of the Family Code.⁵⁴ The Supreme Court ruled that if the parties had no legal impediment to marry each other, the property acquired by both spouses through their work and industry shall be governed by the rules on co-ownership wherein the property they acquired during their union is presumed to have been obtained through their joint efforts. However, the fruits of the couple’s separate property are not included in the co-ownership.⁵⁵ On the other hand, if the common-law spouses suffered a legal impediment to marry or they did not live exclusively with each other, only the property acquired by both of them through their actual joint contribution of money property, or industry shall be owned in common and in proportion to their respective contribution.⁵⁶ Finally, the first paragraph of Article 50 of the Family Code, applying Article 43 (2), (3), (4) and (5) relates only by explicit terms, to voidable marriages and exceptionally, to void marriages under Article 40 of the Family Code.

Note, however, that *Valdes* considers an Article 36 marriage as void; therefore, the property regime is treated as co-ownership under Article 147. If you recall my discussion earlier, I asked the question: Is psychological incapacity an element of legal capacity or consent to enter into a marriage? In the bigamy cases, the Supreme Court says that psychological incapacity is not a defense to bigamy. It does not, however, say that psychological incapacity is a voidable marriage. So how now can *Valdes* consider such marriage void under Article 147, when in its bigamy decisions, the Supreme Court implies that it is

⁵⁴ *Id.*, citing *Maxey v. CA*, 129 SCRA 187 (1984); *Aznar, et al. v. Garcia*, 102 Phil. 1055 (1958).

⁵⁵ *Id.*, citing the FAMILY CODE, arts. 5, 37, & 38.

⁵⁶ *Id.*, citing the FAMILY CODE, art. 147.

merely voidable? In the bigamy cases, the Supreme Court does not treat psychological incapacity as a defense to bigamy, no matter what. Consequently, it does not treat a psychological incapacity marriage as void because there is no retroactive effect when there is a final judgment declaring the marriage void. How can this be reconciled with *Valdes*, when after the marriage was declared void, as far as property cases are concerned, the property regime should be liquidated under Article 147 and not under Article 102 or 129? Finally, why should the legitimate children⁵⁷ of Article 36 and Article 53 void marriages be deprived of their presumptive legitime, while illegitimate children of the Article 40 marriage are entitled to presumptive legitime?

Why then did the Supreme Court rule the way it did in *Cariño v. Cariño*?⁵⁸

Here, during his lifetime, the late SPO4 Santiago Cariño contracted two marriages—one with petitioner Susan Nicdao in 1969 and the other with respondent Susan Yee in 1992. Before Santiago Cariño passed away, it was Yee who took care of him and shouldered his medical costs and when he died, it was also Yee who covered the burial expenses. Both Susans filed and successfully received claims for monetary benefits and financial assistance from various government agencies. Feeling aggrieved, Yee filed a collection case against Nicdao to recover the death benefits the latter had received. To bolster her action for collection of sum of money, Yee contended that the marriage of Nicdao and Cariño was void *ab initio* because it was solemnized without a marriage license. The RTC ruled in favor of Yee and granted her the right to half of what Nicdao received as death benefits.

The Supreme Court ruled, however, that Nicdao is not only solely entitled to Santiago's death benefits, despite her marriage being void for the absence of a marriage license, but that Yee's marriage was likewise void for not complying with Article 40 of the Family Code. Yee's marriage to Cariño was solemnized without Cariño first obtaining a judicial decree declaring his first marriage void. Article 40 of the Family Code requires the declaration of the absolute nullity of a prior marriage, whether void *ab initio*, for purposes of remarriage. Thus, Santiago and Yee's marriage is bigamous and no property regime exists as between them.

⁵⁷ FAMILY CODE, art. 54.

⁵⁸ 351 SCRA 127 (2001).

The Supreme Court correctly ruled that Santiago and Nicdao's property relations are governed by Article 147 of the Family Code. However, for some reason, the Supreme Court ruled that the property relations of Yee and Santiago are governed by Article 148 of the Family Code. But is it not that, under Article 40 and the *Valdes* case, the property should have been liquidated under Article 50, applying Article 43, paragraphs (2)-(5)?

Another case inconsistent with the *Valdes* ruling is *Metrobank v. Pascual*.⁵⁹ During the marital union of Pascual and Florencia Nevalga, Nevalga bought a lot with a three-door apartment in Makati. The lot was registered in Nevalga's name, "married to Nicholson Pascual." The marriage was later declared void under Article 36 of the Family Code. In the same decision, the lower court ordered the dissolution and liquidation of the ex-spouses' conjugal partnership of gains. But the parties went their separate ways without liquidating their conjugal partnership. Later, Nevalga, with the spouses Oliveros, obtained a loan from Metrobank. To secure the obligation, Nevalga and the spouses Oliveros executed several real estate mortgages on their properties, including the lot with the three-door apartment. Nevalga and the spouses Oliveros failed to pay their loan, prompting Metrobank to initiate foreclosure proceedings. The land with the three-door apartment was then auctioned and sold to Metrobank, being the highest bidder. Getting wind of the foreclosure proceedings, Pascual filed with the lower court a complaint to declare the nullity of the mortgage of the subject property. According to him, it was still conjugal property and that it had been mortgaged without his consent. Metrobank countered that it was paraphernal property, it being registered in Nevalga's name. The lower court declared void the real estate mortgage on the Makati property, ruling that the property was still conjugal in nature since it had been acquired during Pascual's and Nevalga's marriage.

The Court of Appeals and the Supreme Court ruled that the disputed property was still conjugal in nature despite the dissolution of the marriage. The Supreme Court further ruled that the termination of the conjugal property regime does not *ipso facto* end the nature of the conjugal ownership and that the character of the properties acquired before the declaration of nullity continued to subsist as conjugal properties until and after the liquidation and partition of the partnership. In the end, however, the Supreme Court ruled that pending its liquidation following its dissolution, the conjugal partnership of gains is converted into an implied ordinary co-ownership among the surviving spouse

⁵⁹ *Metrobank v. Pascual*, 547 SCRA 247 (2008)

and the other heirs of the deceased.⁶⁰ And as provided in the Civil Code, each co-owner shall have the full ownership of his part and of the fruits and benefits pertaining thereto, and he may therefore alienate, assign, or mortgage it, and even substitute another person in its enjoyment, except when personal rights are involved. But the effect of the alienation or the mortgage, with respect to the co-owners, shall be limited to the portion which may be allotted to him in the division upon the termination of the co-ownership.

The discussion of the Court seemingly ignored its ruling in *Valdes*.

The ruling in *Ravina v. Villa Abrille*⁶¹ is more acceptable. There is a problem too with the Court's interpretation of a particular sentence in Article 124 of the Family Code in *Ravina*.

Spouses Pedro and Mary Ann Villa Abrille acquired a lot and eventually built their family home there. Adjacent to this lot is one bought by Pedro while he was still single. The couple continuously introduced improvements on the lot. In 1991, Pedro had a mistress and neglected the family. To support the family, Mary Ann, the wife of Pedro, was forced to sell or mortgage their movables. Meanwhile, Pedro offered to sell their house and the two lots to the spouses Ravina. Mary Ann objected to the sale, but the sale nevertheless proceeded. After being refused entry to the conjugal home, Mary Ann and her children filed a complaint for the annulment of sale, specific performance, damages, and attorney's fees against Pedro and the spouses Ravina with the lower court. The lower court declared the sale void as to the conjugal portion of the lot; the Court of Appeals voided the entire sale.

The Supreme Court affirmed the lower court's decision and ruled that Article 124 of the Family Code provides that a sale or encumbrance is void if it was done without the consent of both the husband and wife, or in case of one spouse's inability, without the authority of the court. The court, by way of obiter, declared a problematic statement:

"Just like the rule in absolute community property, if the husband, without the knowledge and consent of the wife, sells the conjugal property, such sale is void. *If the sale was with knowledge but without approval of the wife, thereby resulting in a disagreement, such sale is annulable at the instance of the wife who is given five years from the date the contract*

⁶⁰ *Id.*, citing *Dael v. IAC*, 171 SCRA 524, 532-533 (1989).

⁶¹ 604 SCRA 123 (2009).

*implementing the decision of the husband to institute the case.*⁶² (Emphasis supplied)

A disposition without consent is void. If void, the action to question it is imprescriptible. The five-year period in both Article 96⁶³ and Article 124⁶⁴ of the Family Code, which provisions are exactly the same, refers to the administration and enjoyment **only** of the property. This is the ruling in

⁶² *Id.* at 130, *citing* M. STA. MARIA, PERSONS AND FAMILY RELATIONS LAW 511 (4th ed., 2004).

⁶³ FAMILY CODE, art. 96 *provides*

The administration and enjoyment of the community property shall belong to both spouses jointly. In case of disagreement, the husband's decision shall prevail, subject to recourse to the court by the wife for proper remedy, which must be availed of within five years from the date of the contract implementing such decision.

In the event that one spouse is incapacitated or otherwise unable to participate in the administration of the common properties, the other spouse may assume sole powers of administration. These powers do not include disposition or encumbrance without authority of the court or the written consent of the other spouse. In the absence of such authority or consent, the disposition or encumbrance shall be void. However, the transaction shall be construed as a continuing offer on the part of the consenting spouse and the third person, and may be perfected as a binding contract upon the acceptance by the other spouse or authorization by the court before the offer is withdrawn by either or both offerors.

⁶⁴ FAMILY CODE, art. 124, *states*

The administration and enjoyment of the conjugal partnership shall belong to both spouses jointly. In case of disagreement, the husband's decision shall prevail, subject to recourse to the court by the wife for proper remedy, which must be availed of within five years from the date of the contract implementing such decision.

In the event that one spouse is incapacitated or otherwise unable to participate in the administration of the conjugal properties, the other spouse may assume sole powers of administration. These powers do not include disposition or encumbrance without authority of the court or the written consent of the other spouse. In the absence of such authority or consent, the disposition or encumbrance shall be void. However, the transaction shall be construed as a continuing offer on the part of the consenting spouse and the third person, and may be perfected as a binding contract upon the acceptance by the other spouse or authorization by the court before the offer is withdrawn by either or both offerors.

Homeowners Savings and Loan Bank v. Dailo,⁶⁵ where the Supreme Court said that the sale of conjugal property requires the consent of both the husband and wife and the absence of the consent of one renders the entire sale null and void, including the portion of the conjugal property pertaining to the husband who has contracted the sale.⁶⁶

The same principle was applied by the Court in *Siochi v. Gozon*,⁶⁷ where the Supreme Court explained that the law provides that the administration and enjoyment of the conjugal partnership property shall belong to both spouses jointly and these powers **do not include** the powers of disposition or encumbrance which must have the authority of the court or the written consent of the other spouse. However, the transaction shall be construed as a continuing offer on the part of the consenting spouse and the third person, and may be perfected as a binding contract upon the acceptance by the other spouse or authorization by the court before the offer is withdrawn by either or both offerors.

More recently, the Supreme Court in *Flores v. Lindo*,⁶⁸ restating the *Homeowners* and *Siochi* rulings, ruled that the execution of a Special Power of Attorney in favor of one spouse is the acceptance by the other spouse that perfected the continuing offer as a binding contract between the parties, making the questioned Deed of Real Estate Mortgage a valid contract.

However, despite *Valdes*, many Family Courts are still unsure of what provision to apply to property regimes of void marriages under Article 36 of the Family Code. Table 1 tracks what provisions the Court have applied to property regimes falling under Article 36 of the Family Code from the start of the *Valdes* ruling until recent jurisprudence in 2011.

⁶⁵ 453 SCRA 283 (2005).

⁶⁶ *Id.* at 289, citing *Guiang v. CA*, 353 Phil. 578 (1998).

⁶⁷ 616 SCRA 87 (2010).

⁶⁸ G.R. No. 183984, Apr. 13, 2011.

Table 1: A survey of property regimes applied to Article 36 of the Family Code

CASES APPLYING ARTICLE 147	CASES APPLYING ARTICLES 50-52	COMMENTS
Valdes v. RTC G.R. No. 122749, July 31, 1996 (Vitug, J., 1 st Division)		Article 147 or 148 is applicable to property regimes of void marriages regardless of the cause thereof.
	Marcos v. Marcos G.R. No. 136490, October 19, 2000 (Panganiban, J., 3 rd Division)	The Supreme Court denied nullity but did not correct the Regional Trial Court when it ruled that the conjugal partnership of gains is to be dissolved according to Articles 126 and 129 in relation to Articles 50-52 of the Family Code.
	Dedel v. CA G.R. No. 151867, January 29, 2004 (Ynares-Santiago, J., 1 st Division)	The Supreme Court denied nullity but did not affirm separation of properties ruled by the Regional Trial Court nor corrected it that properties be registered in accordance with Article 52 of the Family Code.
Buenaventura v. CA G.R. No. 127358, March 31, 2005 (Azcuna, J., 1 st Division)		Correct.
Gonzales v. Gonzales G.R. No. 159521, December 16, 2005 (Sandoval-Gutierrez, J., 3 rd Division)		Correct.

CASES APPLYING ARTICLE 147	CASES APPLYING ARTICLES 50-52	COMMENTS
	Yu v. Yu G.R. No. 164915, March 10, 2006 (Carpio-Morales, J., 3 rd Division)	Although this is a case of forum-shopping, the Supreme Court ruled that Articles 50-52 of the Family Code and Section 21 of the Supreme Court Rule governs petitions under Article 36 of the Family Code.
	Navarro v. Navarro G.R. No. 162049, April 13, 2007 (Quisumbing, J., 2 nd Division)	The Supreme Court denied nullity but did not correct Regional Trial Court ruling as if it were a legal separation case and that properties are deemed as advance legitimes of the legitimate children.
	Maquilan v. Maquilan G.R. No. 155409. June 8, 2007 (Austria-Martinez, J., 3 rd Division)	Parties had a compromise Agreement and nullity was yet to be decided, but the Supreme Court said that Article 43 of the Family Code applies in cases falling under Art. 36 of the Family Code.
Bier v. Bier, G.R. No. 173294 (February 27, 2008: Corona, 1 st Division)		The Supreme Court denied nullity but the Regional Trial Court was correct in applying Article 147.
	Metrobank v. Pascual, G.R. No. 163744, February 29, 2008 (Velasco, 2 nd Division)	The Supreme Court ruled that despite the declaration of nullity under Article 36 of the Family Code, the husband could still object to the

CASES APPLYING ARTICLE 147	CASES APPLYING ARTICLES 50-52	COMMENTS
		foreclosure of the conjugal property because termination of the conjugal partnership of gains regime “does not <i>ipso facto</i> end the nature of the conjugal ownership.”
Ugalde v. Ysasi G.R. No. 130623, February 29, 2008 (Carpio, 2 nd Division)		Correct.
Sales v. Sales G.R. No. 174803, July 13, 2009 (Quisumbing, 1 st Division)		The Regional Trial Court was correct. The Supreme Court, on the other hand, just required evidence to prove ownership, etc.
	Cabreza v. Cabreza G.R. No. 171260, September 11, 2009 (Peralta, 3 rd Division)	The Supreme Court denied nullity but did not correct the Regional Trial Court when it ruled that the conjugal partnership of gains is to be dissolved according to Article 129 of the Family Code.
	Camacho-Reyes v. Camacho G.R. No. 185286, August 18, 2010 (Nachura, 2 nd Division)	The Supreme Court granted nullity but did not correct the Regional Trial Court decision requiring observance of Section 21 of the Supreme Court Rule on Nullity (AM 02-11-10-SC) and compliance with Articles 50-52 of the Family Code.
	Baccay v. Baccay G.R. No.	The Supreme Court denied nullity, however, it

CASES APPLYING ARTICLE 147	CASES APPLYING ARTICLES 50-52	COMMENTS
	173138, December 1, 2010 (Villarama, 3 rd Division)	should have affirmed the Regional Trial Court decision to have parties governed by the regime of complete separation of property.
Dino v. Dino G.R. No. 178044, January 19, 201 (Carpio, 2 nd Division)		Correct.
	Yu v. Reyes-Carpio G.R. No. 189207, June 15, 2011 (Velasco, 1 st Division)	The Supreme Court affirmed the Regional Trial Court ruling requiring parties to follow the Supreme Court Rule on Nullity and to comply with Articles 50-51 before issuing decree of absolute nullity.

LOOKING INTO ASPECTS OF THE ABSOLUTE COMMUNITY PROPERTY AND CONJUGAL PARTNERSHIP OF GAINS

In *Buado v. People*,⁶⁹ spouses Buado filed a complaint for damages, against Erlinda Nicol for slander. The lower court ruled in favor of the spouses and upon execution, after finding Erlinda's properties were insufficient to satisfy the judgment, the deputy sheriff issued a notice of levy of real property on the conjugal property of Erlinda. A year later, Romulo Nicol, Erlinda's husband, filed a complaint for annulment of certificate of sale and damages with preliminary injunction against the spouses Buado and the deputy sheriff. Romulo alleged that the parties had connived to levy upon and execute his real property without exhausting Erlinda's personal properties.

⁶⁹ 586 SCRA 397 (2009).

In ruling in favor of the Nicol spouses, the Supreme Court found that that the contested property was conjugal in nature and that Article 122 of the Family Code explicitly provides that payment of personal debts contracted by the husband or the wife before or during the marriage shall not be charged to the conjugal partnership except insofar as they redounded to the benefit of the family. The Court further ruled that the conjugal partnership of gains has no duty to make advance payments for the liability of the debtor-spouse and that “[P]arenthetically, by no stretch of imagination can it be concluded that the civil obligation arising from the crime of slander committed by Erlinda redounded to the benefit of the conjugal partnership.”⁷⁰

Emphasis must be placed on the Supreme Court’s statement that, “The conjugal partnership of gains has no duty to make advance payments for the liability of the debtor-spouse.” The Supreme Court failed to take into account the whole of Article 122 of the Family Code, which provides:

Art. 122. The payment of personal debts contracted by the husband or the wife before or during the marriage shall not be charged to the conjugal properties partnership except insofar as they redounded to the benefit of the family.

Neither shall the fines and pecuniary indemnities imposed upon them be charged to the partnership.

However, the payment of personal debts contracted by either spouse before the marriage, that of fines and indemnities imposed upon them, as well as the support of illegitimate children of either spouse, may be enforced against the partnership assets after the responsibilities enumerated in the preceding Article have been covered, if the spouse who is bound should have no exclusive property or if it should be insufficient; but at the time of the liquidation of the partnership, such spouse shall be charged for what has been paid for the purpose above-mentioned.⁷¹ (Emphasis supplied)

The Supreme Court also ignored its ruling in *People v. Lagrimas*,⁷² where Lagrimas was convicted of murder and the victim’s heirs applied for the issuance of a writ of preliminary attachment on the property of Lagrimas. Levy

⁷⁰ *Id.* at 406.

⁷¹ FAMILY CODE, art. 122.

⁷² 29 SCRA 153 (1969).

was made on certain parcels of land, which Mercedes Lagrimas, the wife of the accused, opposed. According to Mercedes, these parcels belonged to their conjugal partnership and, therefore could not be held liable for her husband's liability for damages.

The Supreme Court ruled that the subject parcels of land may be validly attached as payment for Lagrimas' civil liability:

Fines and indemnities imposed upon either husband or wife "may be enforced against the partnership assets after the responsibilities enumerated in article 161 have been covered, if the spouse who is bound should have no exclusive property or if it should be insufficient; " It is quite plain, therefore, that the period during which such a liability may be enforced presupposes that the conjugal partnership is still existing. The law speaks of "partnership assets." It contemplates that the responsibilities to which enumerated in Article 161, chargeable against such assets, must be complied with first. It is thus obvious that the termination of the conjugal partnership is not contemplated as a prerequisite. Whatever doubt may still remain should be erased by the concluding portion of this article which provides that "at the time of the liquidation of the partnership such spouse shall be charged for what has been paid for the purposes above-mentioned.⁷³

The Court further said that:

In doing justice to the heirs of the murdered victim, no injustice is committed against the family of the offender. It is made a condition under this article of the Civil Code that the responsibilities enumerated in Article 161, covering primarily the maintenance of the family and the education of the children of the spouses or the legitimate children of one of them as well as other obligations of a preferential character, are first satisfied.⁷⁴

More importantly, the Court said:

What other conclusion can there be than that the interpretation placed upon this provision in the challenged order is at war with the plain terms thereof? It cannot elicit our acceptance. Nor is the

⁷³ *Id.* at 157.

⁷⁴ *Id.* at 158.

reason for such a codal provision difficult to discern. It is a fundamental postulate of our law that every person criminally liable for felony is also civilly liable.⁷⁵ (Emphasis supplied)

Why is there the difference in treatment? Is it because the crime in *Buado* was not murder, but only slander? Does this mean today, heirs of a murdered victim can never be indemnified for as long as the accused is under the regime of the conjugal partnership of gains?

CONCLUSION

From the cases examined, there is undoubtedly a sharp conflict among certain decisions of the Supreme Court. These contradicting, if not erroneous, decisions not only confuse our understanding of Philippine jurisprudence, but also greatly affect how justice is served. Clearly, there is a need for our courts to rectify and shed light on these matters. The Supreme Court can do this as it has said that “as the highest court of the land, [it] may be guided but is not controlled by precedent. Thus, the Court . . . is not obliged to follow blindly a particular decision that it determines, after re-examination, to call for a rectification.”⁷⁶

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⁷⁵ *Id.*

⁷⁶ *Supra* note 1.