

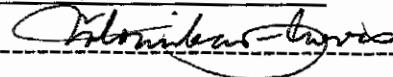
EN BANC

G.R. No. 196359 – ROSANNA L. TAN-ANDAL, *Petitioner* v. MARIO VICTOR M. ANDAL, *Respondent*.

Promulgated:

May 11, 2021

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SEPARATE CONCURRING OPINION

PERLAS-BERNABE, J.:

I concur. The petition should be granted. Thus, the marriage between petitioner Rosanna L. Tan-Andal (petitioner) and respondent Mario Victor M. Andal (respondent) should be declared null and void on the ground of psychological incapacity under Article 36 of the Family Code (Article 36).¹

Prefatorily, it should be pointed out that, throughout the course of these proceedings, the Court was impelled to revisit the existing legal framework pertaining to the application of Article 36. As a result, the *ponencia* had aptly modified the guidelines laid down in *Republic v. Molina (Molina)*,² which is the landmark ruling on psychological cases.

For my part, I tender this Concurring Opinion to explain my own views on the *Molina* guidelines as well as the various legal nuances attendant to the subject. Among others, it will be herein discussed that, contrary to the concept of psychological incapacity under Canon 1095³ of the New Code of Canon Law from which Article 36 was lifted by its framers — the *Molina* guidelines

¹ As amended by Executive Order No. 227, entitled “AMENDING EXECUTIVE ORDER NO. 209, OTHERWISE KNOWN AS THE ‘FAMILY CODE OF THE PHILIPPINES’” (July 17, 1987).

² 335 Phil. 664 (1997).

³ Canon 1095 of the New Code of Canon Law (1983) reads:

Canon 1095. They are incapable of contracting marriage:

1. who lack the sufficient use of reason;
2. who suffer from grave lack of discretion of judgment concerning essential matrimonial rights and duties which are to be mutually given and accepted;
3. who are not capable of assuming the essential obligations of matrimony due to causes of a psychic nature. (emphasis supplied)

(See *Riga*, Peter J. [1992] The Catholic View of Marriage in the New Code of Canon Law of 1983 and the Nullity of Marriage in Canon 1095, *Journal of Law and Religion*, Vol. 9, No. 2, p. 516. See also <[/archive/cod-iuris-canonici/cic_index_en.html](http://archive/cod-iuris-canonici/cic_index_en.html)> [last visited February 22, 2021]).

In *Santos v. CA* (310 Phil. 21 [1995]), citing Marriage in Canon Law, Delaware: Michael Glazier, Inc., (1986), pp. 129-130 (see footnote 9 therein), Canon 1095 was translated in English *viz.:*

Canon 1095. They are incapable of contracting marriage:

1. who lack sufficient use of reason;
2. who suffer from a grave defect 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. (emphasis supplied)

had inaccurately characterized “psychological incapacity” as a mental illness or a serious personality disorder. In the same vein, *Molina* further constrained Article 36’s application by requiring that it be “medically or clinically identified,”⁴ “sufficiently proven by experts,”⁵ and “medically or clinically permanent or incurable,”⁶ which requirements go above and beyond the intent of the said framers. Accordingly, the legal understanding of gravity, juridical antecedence, and incurability, which are the jurisprudential requisites that determine psychological incapacity, should be refined.

I. The Roots of Article 36 in Canon Law.

Psychological incapacity is not an original civil law concept but rather, one which was lifted by the Family Law and Civil Code Revision Committee (Code Committee) from the New Code of Canon Law.

In the landmark case of *Santos v. Court of Appeals*⁷ (*Santos*) — where the term “psychological incapacity” was first interpreted — the Court, citing the Code Committee’s deliberations, traced the origins of Article 36 to Canon 1095 of the New Code of Canon Law, specifically paragraph 3, *i.e.*, “who for causes of psychological nature are unable to assume the essential obligations of marriage:”⁸

The Family Code did not define the term “psychological incapacity.” The deliberations during the sessions of the Family Code Revision Committee, which has drafted the Code, can, however, provide an insight on the import of the provision.

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

x x x x

Article 36. — x x x

(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 or mentally incapacitated to discharge the essential marital obligations, even if such lack of incapacity is made manifest after the celebration.

On subparagraph (7), which [was] lifted from the Canon Law,

x x x

x x x x

A part of the provision is similar to Canon 1095 of the New Code of Canon Law, which reads:

⁴ *Molina*, *supra* at 677.

⁵ *Id.*

⁶ *Id.*

⁷ *Santos*, *supra*.

⁸ *Id.* at 37; emphasis and underscoring supplied.

Canon 1095. They are incapable of contracting marriage:

1. who lack sufficient use of reason;
2. who suffer from a grave defect 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.⁹ (emphases and underscoring supplied)

At this juncture, it is apt to clarify that the integration of Canon 1095 into civil law does not violate the principle of separation of Church and State. As pointed out by the Office of the Solicitor General (OSG) in its Memorandum,¹⁰ it should be borne in mind that the sacrament of marriage itself is rooted in religious practice and beliefs but has now attained secular status by being integrated in the laws of the land.¹¹ Given the marriage's inherent religious historical roots, it is thus natural for the Code Committee to have lifted a part of Article 36 from the New Code of Canon Law.¹²

Besides, Article 36 does not violate the non-establishment and free exercise clauses of the Constitution, which clauses mainly implement the principle of separation of Church and State. In *Re: Letter of Valenciano, Holding of Religious Rituals at the Hall of Justice Bldg. in QC*,¹³ the Court illuminated that “[t]he non-establishment clause reinforces the wall of separation between Church and State. It simply means that the State cannot set up a Church; nor pass laws which aid one religion, aid all religion, or prefer one religion over another nor force nor influence a person to go to or remain away from church against his will or force him to profess a belief or disbelief in any religion x x x.”¹⁴ Meanwhile, with respect to the free exercise clause, it was held that “the State adopts a policy of accommodation. Accommodation is a recognition of the reality that some governmental measures may not be imposed on a certain portion of the population for the reason that these measures are contrary to their religious beliefs.”¹⁵

Indeed, adopting into a civil law a concept that is duly recognized by the Catholic Church does not in itself amount to the State’s official endorsement of the Catholic religion nor a compulsion to follow the Catholic faith with respect to non-believers. As the OSG correctly stated, Article 36 is merely an accommodation which does not force non-Catholics to avail of such ground to dissolve their marital bonds, nor is its application meant to prejudice other religions.¹⁶

⁹ Id. at 30-37.

¹⁰ See Memorandum dated January 22, 2020; *rollo*, pp. 591-681.

¹¹ Id. at 605.

¹² Id. at 606.

¹³ 806 Phil. 822 (2017).

¹⁴ Id. at 850.

¹⁵ Id. at 847.

¹⁶ See *rollo*, p. 612.

Moreover, Article 36 was passed based on a legitimate secular purpose — that is “to defend against marriages ill-equipped to promote family life” and to help the State in strengthening the solidarity of family and promoting its total development.¹⁷ In fact, as the deliberations behind Article 36 evince, the Code Committee did not intend to decree as civilly void marriages which were already decreed canonically invalid:

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

Prof. Romero raised the question: With this common provision in Civil Law and in Canon Law, are they going to have a provision in the Family Code to the effect that marriages annulled or declared void by the church on the ground of psychological incapacity is automatically annulled in Civil Law? **The other members replied negatively.**¹⁸ (emphasis supplied)

Ultimately, Article 36 has its own unique civil law application; as such, the separation of Church and State is preserved.

This notwithstanding, the historically predominant influence of the Catholic faith in this country is one of the prime political motivations behind the adoption of psychological incapacity into the Family Code. In a Letter dated April 15, 1985 of then Judge Alicia V. Sempio-Diy (Judge Diy), written on behalf of the Code Committee, it was disclosed that psychological incapacity was intended to be an “**acceptable alternative to divorce,**”¹⁹ considering the fact that divorce was not acceptable in Filipino culture which is deeply rooted in Catholic values. Furthermore, Article 36 was intended as a sort of bridging mechanism to “**solve the nagging problem of church annulments of marriages on grounds not recognized by the civil law of the State.**”²⁰ To quote Judge Diy’s letter:

With the above definition, and considering the Christian traditional concept of marriage of the Filipino people as a permanent, inviolable, indissoluble social institution upon which the family and society are founded, and also realizing the strong opposition that any provision on absolute divorce would encounter from the Catholic Church and the Catholic sector of our citizenry to whom the great majority of our people belong, **the two Committees in their joint meetings did not pursue the idea of absolute divorce and instead opted for an action for judicial declaration of invalidity of marriage based on grounds available in the Canon law. It was thought that such an action would not only be an acceptable alternative to divorce but would also solve the nagging**

¹⁷ See Sections 1 and 2, Article XV of the 1987 Constitution of the Philippines. See also *Antonio v. Reyes*, 519 Phil. 337, 354 (2006).

¹⁸ Minutes of the Joint Meeting of the Civil Code Revision Committee and Family Law Committee dated August 9, 1986, p. 10.

¹⁹ See Letter dated April 15, 1985 of then Judge Alicia V. Sempio-Diy, written in behalf of the Code Committee, to then Assemblywoman Mercedes Cojuangco-Teodoro, p. 2; emphasis supplied.

²⁰ Id.; emphasis supplied.

problems of church annulments of marriage on grounds not recognized by the civil law of the State. Justice Reyes was thus requested to again prepare a draft of provisions on such action for declaration of invalidity of marriage. Still later, to avoid the overlapping of provisions on void marriages as found in the present Civil Code and those proposed by Justice Reyes on judicial declaration of invalidity of marriage on grounds similar to the Canon Law, the two Committees now working as a Joint Committee in the preparation of a New Family Code decided to consolidate the present provisions on void marriages with the proposals of Justice Reyes. **The result was the inclusion of an additional kind of void marriage in the enumeration of void marriages in the present Civil Code**, to wit:

(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 or mentally incapacitated to discharge the essential marital obligations, even if such lack or incapacity is made manifest after the celebration.²¹ (emphases supplied)

However, despite the Code Committee's resolve to establish an "acceptable alternative to divorce," as well as a bridging mechanism to reconcile church annulments with civil law, the Court's guidelines in *Molina* unduly restricted Article 36's application by not only prescribing additional requirements which were not intended by its framers, but more significantly, propagated an inaccurate understanding of psychological incapacity as a mental illness or serious personality disorder.

II. The *Santos* and *Molina* rulings.

The term psychological incapacity was first interpreted in the 1995 case of *Santos*, where the Court described Article 36 as "a highly, if not indeed **the most likely, controversial provision introduced by the Family Code.**"²² In *Santos*, the Court observed that "[t]he Family Code did not define the term 'psychological incapacity,'"²³ and thus, resorted to the "deliberations during the sessions of the Family Code Revision Committee, which has drafted the Code," to "provide an insight on the import of the provision."²⁴

Most significantly, *Santos* was the first case to mention the three (3) commonly cited requisites for psychological incapacity, namely: (a) gravity; (b) juridical antecedence; and (c) incurability:

[Judge Diy] cites with approval the work of Dr. Gerardo Veloso, a former Presiding Judge of the Metropolitan Marriage Tribunal of the Catholic Archdiocese of Manila (Branch I), who opines that psychological incapacity must be characterized by (a) gravity, (b) juridical antecedence, and (c) incurability. The incapacity must be grave or serious such that the party would be incapable of carrying out the ordinary

²¹ Id. at 1-2.

²² *Santos*, supra note 3, at 27; emphasis supplied.

²³ Id. at 30.

²⁴ Id.

duties required in marriage; it must be rooted in the history of the party antedating the marriage, although the overt manifestations may emerge only after the marriage; and it must be incurable or, even if it were otherwise, the cure would be beyond the means of the party involved.²⁵

However, proceeding from these requisites, the Court, in *Santos*, went on to equate psychological incapacity to “no less than a mental incapacity” or “the most serious cases of personality disorders:”

“[P]sychological 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 Article 68 of the Family Code, include their mutual obligations to live together, observe love, respect and fidelity and render help and support. There is hardly any doubt that the intendment 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. x x x²⁶ (emphases supplied)

This characterization of psychological incapacity as a mental illness or serious personality disorder is the controlling perception of psychological incapacity up until today. This perception is, however, inaccurate as will be discussed later in this discourse.

Going back to *Santos*, it is apparent that the Court’s understanding of psychological incapacity as a mental illness or serious personality disorder was based on: (a) “the deliberations of the Family Code Revision Committee itself”; and (b) scholarly articles on Canon Law, which — considering the historical roots of Article 36 in Canon 1095 of the New Code of Canon Law — “cannot be dismissed as impertinent for its value as an aid, at least, to the interpretation or construction of the codal provision.”²⁷

Nonetheless, it should be highlighted that a portion from the same deliberations quoted in *Santos* reveals that **the word “mental” was deleted from the proposed provision “precisely to devoid it of vice of consent:”**

Justice [Eduardo] 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.²⁸

Meanwhile, **none of the cited canon law articles in *Santos* limited the concept of psychological incapacity to mental illness or serious**

²⁵ Id. at 39.

²⁶ Id. at 40.

²⁷ Id. at 37.

²⁸ Minutes of the Joint Meeting of the Civil Code Revision Committee and Family Law Committee dated August 9, 1986, p. 10.

personality disorder. In fact, in these articles, it was even recognized that “psychological causes can be of an infinite variety”²⁹ and that “[s]ome [and not all] psychosexual disorders and other disorders of personality can be the psychic cause of this defect x x x.”³⁰

At this point, it deserves mentioning that Justice Teodoro R. Padilla tendered a Dissenting Opinion³¹ in *Santos*, lamenting the “great injustice” behind the majority’s “**too restrictive interpretation of the law.**”³² For her part, Justice Flerida Ruth P. Romero (Justice Romero) issued a Separate Concurring Opinion³³ in *Santos*, conveying her observations as “a member of both the Family Law Revision Committee of the Integrated Bar of the Philippines and the Civil Code Committee of the UP Law Center.”³⁴ Among others, Justice Romero disclosed that “by incorporating what is now Article 36 into the Family Code, the [Code Committee] x x x intended to add another ground to those already listed in the Civil Code as grounds for nullifying a marriage, **thus expanding or liberalizing the same.**”³⁵ She also noted that “the judge, in interpreting the provision on a case-to-case basis, must be 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 provisions was taken from Canon Law.”³⁶

Two (2) years after the promulgation of *Santos*, the Court decided *Molina*.³⁷ Notably, in the opening paragraph of *Molina*, the Court readily expressed the OSG’s frustration over Article 36 being labelled as “**the most liberal divorce procedure in the world.**”³⁸ It also voiced its concern over the fact that “courts [at that time] have been swamped with various petitions to declare marriages void based on [psychological incapacity].”³⁹

The Family Code of the Philippines provides an entirely new ground (in addition to those enumerated in the Civil Code) to assail the validity of a marriage, namely, “psychological incapacity.” Since the Code’s effectiveness, **our courts have been swamped with various petitions to declare marriages void based on this ground.** Although this Court had interpreted the meaning of psychological incapacity in the recent case of [*Santos*], still many judges and lawyers find difficulty in applying said novel provision in specific cases. In the present case and in the context of the herein assailed Decision of the Court of Appeals, the Solicitor General has labelled — exaggerated to be sure but nonetheless expressive of his frustration — **Article 36 as the “most liberal divorce procedure in the world.”** Hence, this Court[,] in addition to resolving the present case, finds

²⁹ *Santos*, supra note 3, at 38.

³⁰ Id.

³¹ Id. at 46-48.

³² Id. at 48; emphasis supplied.

³³ Id. at 42-46.

³⁴ Id. at 42.

³⁵ Id. at 45; emphasis supplied.

³⁶ Id. at 45-46; emphasis supplied.

³⁷ Supra note 2.

³⁸ Id. at 668; emphasis supplied.

³⁹ Id.; emphasis supplied.

the need to lay down specific guidelines in the interpretation and application of Article 36 of the Family Code.⁴⁰

Proceeding from this context, among others, the Court deemed it fit “to lay down specific guidelines in the interpretation and application of Article 36.”

Among the eight (8) guidelines laid down in *Molina*, the **second *Molina* guideline** primarily carries over *Santos*’s characterization of psychological incapacity as a mental illness or serious personality disorder. But more than this, the second guideline even further required that **the root cause of psychological incapacity be “medically or clinically identified,” and “sufficiently proven by experts,”⁴¹ viz.:**

(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 psychiatrically 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.⁴² (emphases supplied)

Complementary thereto, the fourth *Molina* guideline prescribes that “[s]uch incapacity must also be shown to be **medically or clinically permanent or incurable,**”⁴³ while the fifth *Molina* guideline mandates that the “illness must be grave enough” such that “**there is a natal or supervening disabling factor in the person, an adverse integral element in the personality structure,**”⁴⁴ viz.:

(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.

⁴⁰ Id. at 668-669; emphases supplied.

⁴¹ Id. at 677; emphases and underscoring supplied.

⁴² Id.

⁴³ Id. at 677; emphasis supplied.

⁴⁴ Id. at 678; emphases supplied.

(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.⁴⁵ (emphases and underscoring supplied)

It should be mentioned that the second *Molina* guideline would be later relaxed by the Court insofar as the requirement that psychological incapacity must be proven by experts. In *Marcos v. Marcos*,⁴⁶ it was held that "[p]sychological incapacity, as a ground for declaring the nullity of a marriage, may be established by the totality of evidence presented x x x [and to this end] [t]here is no requirement x x x that the respondent should be examined by a physician or a psychologist as a *conditio sine qua non* for such declaration."⁴⁷

Nevertheless, *Molina*'s emphasis on the medical/clinical nature of psychological incapacity, proceeding from *Santos*'s interpretation of the same as a mental illness or serious personality disorder, still remains the jurisprudential trend today. Consequently, the *Molina* guidelines would eventually set a stringent jurisprudential attitude against granting psychological incapacity petitions, which is oftentimes justified for the sake of maintaining the sanctity of marriage as an "inviolable social institution."⁴⁸ Whether the stringent approach to psychological incapacity was more of a practical policy response by the Court instead of a framework that is based on purely legal considerations, *Molina*'s limiting effects in jurisprudence is hardly undeniable. As the OSG aptly pointed out, since *Molina*'s promulgation in 1997 until 2009, only one case⁴⁹ was found to have satisfied all of the requirements of *Molina*.⁵⁰ Thereafter, only a few cases were found to have satisfied *Molina*.⁵¹

The more recent cases decided after *Molina*, however, now demonstrate a trend towards "liberalizing" the rule. Among others, in the 2009 case of *Ngo Te v. Yu-Te (Ngo Te)*,⁵² the Court called the *Molina* guidelines a "strait-jacket" that was "[f]ar from what was intended by the Court."⁵³ In fact, in *Ngo Te*, the Court itself admitted that Molina's rigid set of rules was borne from then-prevailing policy considerations, namely, "the deluge of

⁴⁵ Id. at 677-678.

⁴⁶ 397 Phil. 840 (2000).

⁴⁷ Id. at 842.

⁴⁸ CONSTITUTION, Article XV, Section 2.

⁴⁹ *Antonio v. Reyes*, supra note 17.

⁵⁰ *Rollo*, p. 624.

⁵¹ See cited jurisprudence in the OSG Memorandum; id. at 626.

⁵² 598 Phil. 666 (2009).

⁵³ Id. at 696: emphasis supplied.

petitions for the dissolution of marital bonds” as well as “the OSG’s [view] of Article 36 as the ‘most liberal divorce procedure in the world.’”⁵⁴

In hindsight, it may have been inappropriate for the Court to impose a rigid set of rules, as the one in *Molina*, in resolving all cases of psychological incapacity. **Understandably, the Court was then alarmed by the deluge of petitions for the dissolution of marital bonds, and was sensitive to the OSG’s exaggeration of Article 36 as the “most liberal divorce procedure in the world.”** The unintended consequences of *Molina*, however, has taken its toll on people who have to live with deviant behavior, moral insanity and sociopathic personality anomaly, which, like termites, consume little by little the very foundation of their families, our basic social institutions. **Far from what was intended by the Court, *Molina* has become a strait-jacket, forcing all sizes to fit into and be bound by it.** Wittingly or unwittingly, the Court, in conveniently applying *Molina*, has allowed diagnosed sociopaths, schizophrenics, nymphomaniacs, narcissists and the like, to continuously debase and pervert the sanctity of marriage. Ironically, the Roman Rota has annulled marriages on account of the personality disorders of the said individuals.⁵⁵ (emphases supplied)

The criticism of *Molina*’s rigidity notwithstanding, the Court, in *Ngo Te*, clarified that “we are not suggesting the abandonment of *Molina* in this case.”⁵⁶ The Court “simply declare[d] that x x x there is [a] need to emphasize other perspectives as well which should govern the disposition of petitions for declaration of nullity under Article 36.”⁵⁷ Accordingly, the Court “reiterate[d] x x x the principle that each case must be judged, not on the basis of *a priori* assumptions, predilections or generalizations but according to its own facts.”⁵⁸ “[C]ourts should 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.”⁵⁹

In the spirit of *Ngo Te*, the latest cases⁶⁰ on the subject would focus on the “case-to-case basis” approach to psychological incapacity. In the 2020 case of *Republic v. Calingo*,⁶¹ the Court held that:

As the nomenclature suggests, the *Molina* guidelines only serve as a guide in determining the existence of psychological incapacity. The *Molina* guidelines are *not* meant to “straightjacket all petitions for declaration of nullity of marriage.” To stress, **actions for declaration of nullity filed under Article 36 should be resolved “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**

⁵⁴ Id. at 695-696.

⁵⁵ Id.

⁵⁶ Id. at 699.

⁵⁷ Id.

⁵⁸ Id.

⁵⁹ Id. at 695; emphasis supplied.

⁶⁰ See *Santos-Gantan v. Gantan*, G.R. No. 225193, October 14, 2020. See also *Republic v. Mola Cruz*, G.R. No. 236629, July 23, 2018 and *Espina-Dan v. Dan*, G.R. No. 209031, April 16, 2018.

⁶¹ See G.R. No. 212717, March 11, 2020.

persuasive effect since [Article 36] was taken from Canon Law.”⁶²
(emphasis and underscoring in the original)

In this regard, the Court would often emphasize the fact that the framers were “not unanimous on the meaning [of psychological incapacity],” and “in the end x x x decided to adopt the provision ‘with less specificity than expected’ in order to have the law ‘allow some resiliency in its application.’” As observed in the 2015 case of *Kalaw v. Fernandez*:⁶³

Psychological incapacity as a ground for the nullity of marriage under Article 36 of the Family Code refers to a **serious psychological illness** afflicting a party even prior to the celebration of the marriage that is permanent as to deprive the party of the awareness of the duties and responsibilities of the matrimonial bond he or she was about to assume. Although the Family Code has not defined the term psychological incapacity, the Court has usually looked up its meaning by reviewing the deliberations of the sessions of the Family Code Revision Committee that had drafted the Family Code in order to gain an insight on the provision. **It appeared that the members of the Family Code Revision Committee were not unanimous on the meaning, and in the end they decided to adopt the provision “with less specificity than expected” in order to have the law “allow some resiliency in its application.”** Illustrative of the “less specificity than expected” has been the omission by the Family Code Revision Committee to give any examples of psychological incapacity that would have limited the applicability of the provision conformably with the principle of *ejusdem generis*, because the Committee desired that the courts should interpret the provision on a case-to-case basis, guided by experience, the findings of experts and researchers in psychological disciplines, and the decisions of church tribunals that had persuasive effect by virtue of the provision itself having been taken from the Canon Law.⁶⁴ (emphases and underscoring supplied)

In my humble opinion, however, an overemphasis on the “resiliency” of Article 36’s application leaves much to be desired in terms of establishing jurisprudential uniformity and consistency when applying such an **inherently vague legal term**. This may even perhaps, provide an unwarranted license for a largely *ad hoc*, and even subjective, approach to psychological incapacity, oftentimes resorted to in order to liberalize its application. Indeed, it is observed that while the Court, in *Molina*, conservatively carved out strict conditions to rein in Article 36’s application back when it was still a novel codal provision, the Court’s mindset now has shifted towards a more libertarian posture. Notably, the OSG in this case has drastically shifted its tone towards Article 36’s liberalization in the name of preserving personal autonomy, which is a far cry from its comment in *Molina* where it called Article 36 as the “most liberal divorce procedure in the world.”

While the State has a legitimate interest in marriages, the *Molina* guidelines and their rigid application in all nullity cases under Article 36 have limited the chance of couples to sever their marital bond by forcing

⁶² Id.

⁶³ 750 Phil. 482 (2015).

⁶⁴ Id. at 495-496.

them to stay in hopeless and problematic marriages. Thus, said guidelines restrict the liberty and personal autonomy of married persons to be free from a marriage where one is psychologically incapacitated to assume marital obligations.

x x x It is for these above reasons that the *Molina* guidelines should be revisited such that its application violates the right to liberty, personal autonomy and human dignity of Filipinos as it imposes a burden that unreasonably interferes with individual choices of intimate arrangements. It condemns those who may have made very human errors in choosing those with whom they should be intimate to a life of pain and suffering. For the courts to enforce this cruelty is the very antithesis of the freedoms embodied in the many provisions of our Constitution.⁶⁵

While the Court should remain ever-cognizant of practical realities with respect to prevailing social conditions, it must remain faithful to the intent of the lawmakers, else it treads the dangerous waters of judicial legislation. The predicament, however, is that even the lawmakers' intent behind Article 36 is largely shrouded in ambiguity, and sometimes even inconsistency. This notwithstanding, the Court must strive towards a fair and reasonable interpretation of the law, guided by the bedrock principles found in the Civil Code that "[n]o judge or court shall decline to render judgment by reason of the silence, obscurity or insufficiency of the laws"⁶⁶ and that "[i]n case of doubt in the interpretation or application of laws, it is presumed that the lawmaking body intended right and justice to prevail."⁶⁷

As preliminarily mentioned, Article 36 was lifted from Canon 1095 of the New Code of Canon Law. As Justice Romero, in her Separate Opinion in *Molina*, puts it: "[w]ith the revision of Book I of the Civil Code, particularly the provisions on Marriage, the drafters, **now open to fresh winds of change in keeping with the more permissive mores and practices of the time, took a leaf from the relatively liberal provisions of Canon Law.**"⁶⁸ Hence, examining Canon 1095's normative framework becomes vital in deciphering the meaning of psychological incapacity, albeit with a prudent awareness that its application must not be ecclesiastical but rather, secular in nature.

To be sure, Canon Law is an indelible part of Article 36's legislative history and thus, remains highly instructive in its proper interpretation. Indeed, as Associate Justice Ramon Paul L. Hernando incisively opined, "[w]hen the intent of the law is not apparent as worded, or when the application of the law would lead to absurdity or injustice, legislative history is all important. In such cases, courts may take judicial notice of the origin and history of the law, the deliberations during the enactment, as well as prior laws on the same subject matter to ascertain the true intent or spirit of the

⁶⁵ *Rollo*, pp. 623-624.

⁶⁶ CIVIL CODE, Article 9.

⁶⁷ CIVIL CODE, Article 10.

⁶⁸ *Molina*, supra note 2, at 683-684; emphasis supplied.

law.⁶⁹ In fact, consulting canonical jurisprudence and treatises may even be necessary since **psychological incapacity is, by nature, not a civil law concept but rather one that originated from canon law.** This is not to say, however, that canonical interpretations are controlling; they only remain persuasive if only to aid the Court in its momentous task of shedding better light to such a vague legal term.

III. The grounds under Canon 1095 of the New Code of Canon Law.

At the core of Canon 1095 is the concept of marital or **matrimonial consent** (as distinguished by mere contractual consent), which involves “an act of the will by which a man and a woman mutually give and accept each other through an irrevocable covenant in order to establish marriage.”⁷⁰ **For the act of the will to be considered marital or matrimonial, it must be interpersonal or that exchanged between two distinct persons, which entails the total self-giving on the part of both persons.**⁷¹ This interpersonal aspect of marriage means that the spouses give and accept each other mutually in their persons, for the good of their persons and not just for the common good of children. Since in marriage, the spouses are considered no longer two but one flesh, both of the spouses must help and sustain each other mutually by the intimate union of their whole persons and activities.⁷² Thus, as insightfully stated in one treatise, **unlike in a regular contract, the object of marriage is “not a thing,” “but rather that of two persons in their reciprocity.”**

Marriage is a covenant where a man and a woman, no longer two but one flesh help and sustain each other mutually by the intimate union of their whole persons and activities; as they become progressively more conscious of their unity, their human growth will become continuously more profound. Even if essential, the *ius in corpus* alone no longer constitutes the whole object of matrimonial consent; it is included in a total relationship which encompasses the person in the concrete living out of his existence. **The personal character of the conjugal commitment results in the fact that its object is not a “thing” like a regular contract but rather that of two persons in their reciprocity: each partner commits himself to the other in his person and receives the other in all of his otherness in order to establish a community which respects the singularity and autonomy of each spouse.** x x x.⁷³ (emphasis supplied)

⁶⁹ See Justice Ramon Paul L. Hernando's Separate Concurring Opinion, p. 4; citing *Commissioner of Internal Revenue v. SM Prime Holdings*, 627 Phil. 581 (2010); underscoring supplied.

⁷⁰ New Code of Canon Law, Canon 1057, Section 2.

⁷¹ See Persons Incompetent to Contract Marriage According to Canon 1095 by Fr. Augustine Mendonca <<http://www.canonlawsocietyofindia.org/research/persons-incompetent-to-contract-marriage/>> (last visited February 23, 2021).

⁷² See Riga, Peter J. (1992) The Catholic View of Marriage in the New Code of Canon Law of 1983 and the Nullity of Marriage in Canon 1095, *Journal of Law and Religion*, Vol. 9, No. 2, pp. 518-519.

⁷³ Id. at 519.

In contrast to mere contractual consent, the act of consent in marriage involves not just the intellect and will of the spouses, but their whole personalities as well.⁷⁴ Accordingly, since the interpersonal relationship between the spouses in the pursuit of the good of their persons is considered in Canon Law as essential to the validity of matrimonial consent, the inability or incapacity of a spouse to mutually give and accept the other for the purpose of being in a “partnership of the whole life,” becomes a ground to declare the marriage null and void.⁷⁵

Under Canon 1095 of the New Code of Canon Law, there are three (3) grounds to annul a marriage, *viz.:*

Canon 1095. They are incapable of contracting marriage:

1. who lack sufficient use of reason;
2. who suffer from a grave defect 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.⁷⁶

Par. 1, Canon 1095: Lack of sufficient use of reason.

Lack of sufficient use of reason pertains to an unsound mind tainting the consent of the party at the time of entering into the marriage contract. In this regard, it is associated with the impairment of a person's mental faculties, which results in the inability of a person to elicit a human act proportionate to matrimonial consent.⁷⁷ Consequently, because one's mental faculties are impaired, the person is **precluded from the possibility of performing any responsible human act at the time of consent.**⁷⁸

⁷⁴ See Persons Incompetent to Contract Marriage According to Canon 1095 by Fr. Augustine Mendonca <<http://www.canonlawsocietyofindia.org/research/persons-incompetent-to-contract-marriage/>> (last visited February 23, 2021).

⁷⁵ See Dizon, Michael Anthony C. (2000) Psychological Incapacity and the Canon Law on Marriage: An Exegesis on the Psychological Element of Matrimonial Consent, *Philippine Law Journal*, Vol. 75, No. 2, p. 371.

⁷⁶ As cited in *Santos* (supra note 3, at 37). To note, however, there are some sources that cited Canon 1095 as follows:

Canon 1095. They are incapable of contracting marriage:

1. who lack the sufficient use of reason;
2. who suffer from grave lack of discretion of judgment concerning essential matrimonial rights and duties which are to be mutually given and accepted;
3. who are not capable of assuming the essential obligations of matrimony due to causes of a psychic nature.

(See *Riga*, Peter J. [1992] The Catholic View of Marriage in the New Code of Canon Law of 1983 and the Nullity of Marriage in Canon 1095, *Journal of Law and Religion*, Vol. 9, No. 2, p. 516. See also <[/archive/cod-iuris-canonici/cic_index_en.html](http://archive/cod-iuris-canonici/cic_index_en.html)> [last visited February 22, 2021]).

⁷⁷ See Persons Incompetent to Contract Marriage According to Canon 1095 by Fr. Augustine Mendonca <<http://www.canonlawsocietyofindia.org/research/persons-incompetent-to-contract-marriage/>> (last visited February 23, 2021).

⁷⁸ See Dizon, Michael Anthony C. (2000) Psychological Incapacity and the Canon Law on Marriage: An Exegesis on the Psychological Element of Matrimonial Consent, *Philippine Law Journal*, Vol. 75, No. 2, p. 374.

Notably, among the disorders and illnesses considered by the Roman Rota (the Catholic Church's highest judicial court) that may result in the invalidity of matrimonial consent are: psychotic disorders, psychopathies, personality or character trait disorders or psychoneuroses, severe mental handicap, a psychotic mental illness or brain damage, or a temporary deprivation of intellectual function caused by drug abuse.⁷⁹ As I see it, these examples square closer to the *Santos* interpretation of psychological incapacity as a mental illness or serious personality disorder. Ultimately, however, it has been remarked that “[w]hatever the disturbance, it must be so severe as to impede the use of reason [(i.e., the soundness of mind)] at the time the consent is given.”⁸⁰

Par. 2, Canon 1095: Lack of due discretion.

Separate and distinct from the first ground under Canon 1095 is the ground of lack of due discretion of judgment concerning the essential matrimonial rights and duties. Scholars of canon law insightfully explain that this ground should not be simply equated to a medical or clinical disorder or illness because lack of due discretion is not so much the lack of capacity to contract (as in contractual consent), but rather the lack of capacity to bind oneself to the rights and obligations of marriage.⁸¹ In fact, a person may possess sufficient use of reason to have a rudimentary and abstract understanding of marriage and its obligations and to intend marriage so understood but still be incapable of validly contracting marriage if the person lacks the ability to deliberate critically about this choice.⁸²

According to canonical jurisprudence, **lack of due discretion** entails **critical knowledge**. This means “an objective evaluation of the nature of marriage and of the object of consent[,]”⁸³ wherein a person realizes that he or she does not only consent to a wedding, but more importantly makes a decision about his or her life and the life of the marriage partner. The person must be capable of knowing what is at stake and of evaluating the elements, properties, rights, and obligations of marriage, as well as his or her own capacity to fulfill these obligations.⁸⁴ Thus:

Lack of due discretion, under paragraph 2 of Canon 1095, is not so much the lack of capacity to contract, but rather the lack of capacity to bind oneself to the rights and obligations of marriage. **The situation contemplated is one in which human acts in general are possible, but**

⁷⁹ See id.

⁸⁰ Id.

⁸¹ Id.

⁸² See New Commentary on the Code of Canon Law, Commissioned by The Canon Law Society of America, Edited by John P. Beal, James A. Coriden, and Thomas J. Green (2000), p. 1299.

⁸³ See Riga, Peter J. (1992) The Catholic View of Marriage in the New Code of Canon Law of 1983 and the Nullity of Marriage in Canon 1095, *Journal of Law and Religion*, Vol. 9, No. 2, p. 525; citing Graeca-Segovien, 13.11, #4, 105 Monitor Ecclesiasticus 31 (1979) (Judge Raad).

⁸⁴ See Dizon, Michael Anthony C. (2000) Psychological Incapacity and the Canon Law on Marriage: An Exegesis on the Psychological Element of Matrimonial Consent, *Philippine Law Journal*, Vol. 75, No. 2, p. 375.



the special human act of binding oneself "maritally" is not possible because of some distortion of judgment or diminution of freedom relative to the particular act of marital consent. A person may give the appearance of enjoying the full use of his faculties, but is entirely conceivable that **by reason of some psychic defect he may not be capable of assuming the obligations of marriage, even if he may have a notational conceptual understanding of them.** **The act of consenting to marriage must proceed by sufficient deliberation or critical judgment about the implications of such act.** The person must realize that he does not only consent to a wedding, but more importantly makes a decision about his or her life and the life of the marriage partner. If there is a serious inability to evaluate critically the decision to marry in light of the consequent obligations and responsibilities, then the consent may well be invalid. This evaluation is governed by the person's "critical faculty" which is different from the mere intellectual apprehension of the situation. **The critical faculty depends on the mature ability to grasp what the marital relationship entails.** The person must be able to relate marriage as an abstract reality, i.e., what it theoretically involves, to his or her concrete situation. The critical faculty involves existential judgments. It depends on a person's emotional and psychological state and an appreciation of the lessons learned from life experiences. It also presupposes freedom from mental confusion, undue pressure, or fear in contemplating marriage. Matrimonial consent is derived from a combined action of cognitive, deliberative or critical and volitional faculties. One must know what is at stake; one must be capable of considering and evaluating the elements, properties, rights and obligations of marriage as well as one's own capacity to fulfill these obligations; and one must be free to want and choose this way of life with this or that particular person. **Lack of due discretion of judgment does not deal too much with the cognitive powers of a person, but with his evaluative faculty, with his faculty to deliberate and judge.**

x x x⁸⁵ (emphases and underscoring supplied; citations omitted)

In this relation, it must be clarified that the knowledge or discernment of marriage, including its nature, rights, and obligations, goes beyond simple intellectual knowledge. **The evaluation is actually governed by the person's critical faculty and not just mere intellectual apprehension of the situation.** Hence, even if the intelligence is or appears to be intact, the will can be deficient in its own right, in the sense that the person may give the appearance of enjoying the full use of his faculties, but does not have the mature ability to grasp what the marital relationship entails.⁸⁶

Nonetheless, it should be underscored that "[a] person may decide to marry another **for other reasons than just authentic love of the partner;** for that reason, the [matrimonial] consent is valid **because the substance of marriage is realized.** In such a situation, there still is a community of conjugal life and love. **This additional motive does not destroy discernment nor maturity of judgment, just as long as the additional motive is not the exclusive reason for the marriage** (e.g., to marry for

⁸⁵ Id. at 374-375.

⁸⁶ See Riga, Peter J. (1992) The Catholic View of Marriage in the New Code of Canon Law of 1983 and the Nullity of Marriage in Canon 1095, *Journal of Law and Religion*, Vol. 9, No. 2, pp. 525-526. See also Dizon, Michael Anthony C. (2000) Psychological Incapacity and the Canon Law on Marriage: An Exegesis on the Psychological Element of Matrimonial Consent, *Philippine Law Journal*, Vol. 75, No. 2, p. 374.

money). An adequate motivation does not necessarily suppress other emotions just as long as these collateral emotions are subordinated to a concrete and positive life project.”⁸⁷

Par. 3, Canon 1095: Inability to assume the essential obligations for causes that are psychological in nature.

The final ground under Canon 1095 is the **inability to assume the essential obligations of marriage for causes that are psychological in nature**. This ground consists in the **defect of the object of matrimonial consent** insofar as the person is incapable of giving and receiving the essential rights and obligations of marriage.⁸⁸ *To stress, this ground pertains to a defect in the object of consent, and not a defect in consent which is a separate ground found in paragraph 1 of Canon 1095.*

To expound, scholars of Canon Law clarify that the psychological inability to assume the essential obligations of marriage pertains to the **incapacity to posit the object of the consent, rather than the incapacity to posit the consent itself**. A person may be capable of eliciting an intelligent and free consent, but experiences difficulty in delivering the object of consent.⁸⁹ Hence, the **incapacity to assume conjugal duties does not affect the formal elements of the act of consent (contractual consent), but is related to the object of consent, viz.:**

This incapacity consists in the **defect of the object of matrimonial consent insofar as the contractant is incapable of giving and receiving the essential rights and obligations of marriage**. In other words, it is connected to the **impossibility of fulfilling that is, putting into effect the essential obligations of marriage**, “because an obligation cannot be contracted by a person who is incapable of honoring it unless what is vowed or promised can be given through another person, which is not allowed in marriage.” For the rule of law rooted in natural law itself clearly states the principle: “**There is no obligation to the impossible**” or “**Nobody can be obliged to [do] the impossible.**”⁹⁰ (emphases supplied)

As above mentioned, considering the character of marriage as a special contract of personal union, the spouses are considered to be not only the subject of such contract but its object as well.⁹¹ This means that *unlike in a regular contract*, where the object is a tangible thing or service that is distinct

⁸⁷ Id. at 530; emphases supplied.

⁸⁸ See Persons Incompetent to Contract Marriage According to Canon 1095 by Fr. Augustine Mendonca <<http://www.canonlawsocietyofindia.org/research/persons-incompetent-to-contract-marriage/>> (last visited February 23, 2021).

⁸⁹ See Dizon, Michael Anthony C. (2000) Psychological Incapacity and the Canon Law on Marriage: An Exegesis on the Psychological Element of Matrimonial Consent, *Philippine Law Journal*, Vol. 75, No. 2, p. 377.

⁹⁰ See Persons Incompetent to Contract Marriage According to Canon 1095 by Fr. Augustine Mendonca <<http://www.canonlawsocietyofindia.org/research/persons-incompetent-to-contract-marriage/>> (last visited February 23, 2021).

⁹¹ Riga, Peter J. (1992) The Catholic View of Marriage in the New Code of Canon Law of 1983 and the Nullity of Marriage in Canon 1095, *Journal of Law and Religion*, Vol. 9, No. 2, p. 520.

from its subject, in a matrimonial contract, the subject is also the object because it is the spouses' giving and accepting of each other that establishes a marriage, which encompasses the whole complex of marital rights and obligations that arise from the conjugal partnership.⁹² Thus:

[I]f the will is inefficient in marriage, it does not produce the effects, namely it cannot establish the conjugal state.⁹³ (emphasis supplied)

In other words, the capacity to assume the essential obligations of marriage implies that each partner can accept the other, his or her presence and his or her lived reality as factors in a personal, ongoing evolution of growth and maturity.⁹⁴ *Thus, applying the foregoing precepts in terms of civil law, when a spouse is incapable of assuming the essential marital obligations, there is no viable object in a matrimonial contract, thereby making the marriage null and void. In contrast, when a spouse is mentally incapacitated, thereby precluding him or her from the possibility of performing any responsible human act at the time of consent (i.e., celebration), the defect lies in the consent of the subject, making only the marriage voidable.*

Relevantly, the term "psychological nature" or "of a psychic nature" as found under paragraph 3 of Canon 1095 pertains to something intrinsic to the person: the psyche or the psychic constitution (as opposed to physical) of a person which impedes his or her capacity to assume the obligations of marriage.⁹⁵ In this respect, some canonists relate paragraph 3 to paragraph 2 (lack of due discretion), arguing that "[d]iscretion of judgment that is proportionate to marriage demands that capacity *firstly of understanding the essential obligations of marriage*, at least in substance, and *secondly, freely choosing to assume those obligations.*"⁹⁶ Consequently, it is possible for lack of due discretion and lack of capacity to assume the essential marital obligations to coexist in a situation.⁹⁷

IV. Article 36 based on the deliberations.

Tracing the evolution of the present Article 36 would show that the first draft of the provision substantially incorporated all three (3) grounds in Canon 1095. The original version reads:

⁹² See New Commentary on the Code of Canon Law, Commissioned by The Canon Law Society of America, Edited by John P. Beal, James A. Coriden, and Thomas J. Green (2000), p. 1252.

⁹³ Persons Incompetent to Contract Marriage According to Canon 1095 by Fr. Augustine Mendonca <(http://www.canonlawsocietyofindia.org/research/persons-incompetent-to-contract-marriage/) > (last visited February 23, 2021).

⁹⁴ Riga, Peter J. (1992) The Catholic View of Marriage in the New Code of Canon Law of 1983 and the Nullity of Marriage in Canon 1095, *Journal of Law and Religion*, Vol. 9, No. 2, p. 536.

⁹⁵ Dizon, Michael Anthony C. (2000) Psychological Incapacity and the Canon Law on Marriage: An Exegesis on the Psychological Element of Matrimonial Consent, *Philippine Law Journal*, Vol. 75, No. 2, p. 377.

⁹⁶ New Commentary on the Code of Canon Law, Commissioned by The Canon Law Society of America, Edited by John P. Beal, James A. Coriden, and Thomas J. Green (2000), p. 1300; emphases supplied.

⁹⁷ See Persons Incompetent to Contract Marriage According to Canon 1095 by Fr. Augustine Mendonca <(http://www.canonlawsocietyofindia.org/research/persons-incompetent-to-contract-marriage/) > (last visited February 23, 2021).

E. Article 35. –

The following marriages shall be void from the beginning:

x x x x

(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 [(pars. 1 and 2 of Canon 1095)] or was psychologically [(par. 3 of Canon 1095)] or mentally [(par. 1 of Canon 1095)] incapacitated to discharge the essential marital obligations, even if such lack or incapacity is made manifest after the celebration.⁹⁸ (emphases and underscoring supplied)

The framers eventually dropped the concept of psychological incapacity being mental in nature and emphasized that psychological incapacity under Article 36 does not encompass the defects of the mental faculties vitiating consent. Thus, Justice Eduardo Caguioa clarified that “mental and physical incapacities are vices of consent while psychological incapacity is not a specie of vice of consent.” The renowned Justice further expressed that “psychological incapacity” refers to a lack of understanding of the effects of the marriage such that it is possible for one to give his consent validly to the marriage albeit without fully comprehending the responsibilities and obligations that are attendant to it, *viz.*:

On subparagraph (7), which was lifted from the Canon Law, Justice [Jose J.B.L.] Reyes suggested that they say “wanting in sufficient use” instead of “wanting in the sufficient use,” but Justice 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 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:

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.

Judge Diy raised the question: Since “insanity” is also a psychological or mental incapacity why is “insanity” only a ground for annulment and not for declaration of nullity? In reply, **Justice Caguioa**

⁹⁸ Minutes of the Joint Meeting of the Civil Code Revision Committee and Family Law Committee dated July 26, 1986, pp. 5-6.

explained that in insanity, there is the appearance of consent, which is the reason why it is a ground for voidable marriages, while subparagraph (7) does not refer to consent but to the very essence of marital obligations.

Prof. Baviera suggested that, in subparagraph (7), the word "mentally" be deleted, with which Justice Caguioa concurred. Judge Diy, however, preferred to retain the word "mentally."

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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.⁹⁹ (emphases supplied)

Further:

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 should 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.**¹⁰⁰ (emphasis supplied)

Furthermore:

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.**

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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.¹⁰¹ (emphases supplied)

Although there are commentaries¹⁰² which mention that Article 36 was understood by some of the framers to be a fusion between paragraphs 2 (lack

⁹⁹ Minutes of the Joint Meeting of the Civil Code Revision Committee and Family Law Committee dated July 26, 1986, pp. 8-9.

¹⁰⁰ Id. at 10.

¹⁰¹ Minutes of the Joint Meeting of the Civil Code Revision Committee and Family Law Committee dated August 9, 1986, pp. 9-10.

¹⁰² See Re-Examining the Concept of Psychological Incapacity: Towards a More Accurate Reflection of Legislative Intent by Maria Sophia Editha Cruz-Abrenica (Ateneo Law Journal, p. 627). See also Dizon, Michael Anthony C. (2000) Psychological Incapacity and the Canon Law on Marriage: An Exegesis on the Psychological Element of Matrimonial Consent, *Philippine Law Journal*, Vol. 75, No. 2, pp. 380-381.

of due discretion) and 3 (psychological incapacity to assume the essential obligations of marriage), the prevailing understanding is that **paragraph 3 is where Article 36 was lifted from**. While Justice Eduardo Caguioa spoke of lack of understanding of the effects of the marriage (which closely resembles lack of due discretion under paragraph 2, Canon 1095), still, Article 36, as presented in its final form, remains faithful to the wording of paragraph 3 of Canon 1095:

Canon 1095, paragraph 3	Final form of Article 36
<p>Canon 1095. They are incapable of contracting marriage:</p> <p>3. who for causes of psychological nature are unable to assume the essential obligations of marriage.</p>	<p>Article 36. 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. (emphases supplied)</p>

At any rate, as opined by other canonists, paragraphs 2 and 3 of Canon 1095 are not completely incompatible. Lack of due discretion by failing to critically appreciate the essential marital obligations may therefore result into one's failure to assume the essential marital obligations for psychological reasons. However, it is the result, as demonstrated by the actual experiences between the spouses, (rather than critical knowledge which is harder to determine as it is a state of mind), that reveal the true attendance of psychological incapacity in a particular situation. **Ultimately, whether or not a person lacks or possesses due discretion, what remains significant is his or her ability to assume the essential marital obligations.**

Nonetheless, the crucial point is that **the concept of psychological incapacity was not exclusively confined to mental illnesses or serious personality disorders, as inaccurately held in Santos, and later carried over in Molina**. At the risk of belaboring the point, it is misnomer to equate the concept of psychological incapacity to a mental illness or a serious personality disorder; instead, the term entails a holistic assessment of the psychological makeup of a person, to the end of ascertaining that, in all reasonable likelihood, there is indeed an anomaly or incongruity in the person's psychological makeup that results in his or her failure to actualize the relational self-giving of himself or herself to his or her specific partner.

In this regard, concrete indications of such incapacity to assume the essential marital obligations can only be determined by looking into the living conjugal life of the couple after the celebration of marriage as it is the living conjugal life where the anterior roots of the marriage emerge, as well as an individual's personality is revealed.¹⁰³ As such, a finding of psychological incapacity must entail **an assiduous, holistic assessment of the interpersonal dynamics of the couple, showing their behavior and**

¹⁰³ See Riga, Peter J. (1992) The Catholic View of Marriage in the New Code of Canon Law of 1983 and the Nullity of Marriage in Canon 1095, *Journal of Law and Religion*, Vol. 9, No. 2, p. 523.

circumstances before, and most importantly, after the celebration of marriage. While evidence of some serious personality disorders or mental illnesses based on clinical diagnosis or expert opinion may be submitted, the same is **not indispensable** to a finding of psychological incapacity but instead, just one of many factors that the court should consider in its assessment. **Ultimately, the petitioner has the burden of proving, by clear and convincing evidence, an undeniable pattern of behavior demonstrating the psychologically incapacitated spouse's persisting failure to fulfill his or her duty as a present, loving, respectful, faithful, and supportive spouse to the other.** Establishing this unmistakable pattern of behavior thus leads to the reasonable conclusion that he or she was truly incapable of assuming the essential marital obligations at the time the marriage was celebrated. This understanding consistently squares with the language of Article 36 which provides that “[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.**”¹⁰⁴

V. Psychological incapacity is a legal, not a medical term.

As the *ponencia* explained, psychological incapacity is not a mental disorder “recognized by the scientific community” but is **purely a legal concept.**¹⁰⁵ To this, *Amicus Curiae* Dean Sylvia Estrada-Claudio (Dean Estrada-Claudio), pointed out that **psychological incapacity need not even be rooted on a specific psychiatric disorder**, since while certain psychological disorders can produce global deficits in mental and emotional functioning that affects the capacity for healthy intimate relationship, **it is also possible that it is the incompatibility of the psychological makeup of both spouses that produces the same result.**¹⁰⁶

Furthermore, there is **no exact clinical equivalent of psychological incapacity** in the way that the law defines it. In fact, according to some psychiatrists, in conceptualizing psychological incapacity, **they become forced to assign a medical or clinical concept to a legal concept.**¹⁰⁷ On this score, Associate Justice Amy C. Lazaro-Javier, in her opinion, aptly illustrates that **there must be specific conditions** to be met before one may be diagnosed with a personality disorder, which is defined as “a mental disorder in which one has a rigid and unhealthy pattern of thinking, functioning, and behaving.”¹⁰⁸

¹⁰⁴ Emphases and underscoring supplied.

¹⁰⁵ *Ponencia*, p. 31.

¹⁰⁶ See *Amicus Curiae* Brief of Dean Estrada-Claudio dated October 23, 2020, p. 4 (unpaginated in the *rollo*).

¹⁰⁷ See opinion of Dr. Luz Casimiro-Querubin, Psychiatrist and Residents' Training Officer at the Medical City in the Re-Examining the Concept of Psychological Incapacity: Towards a More Accurate Reflection of Legislative Intent by Maria Sophia Editha Cruz-Abrenica, *Ateneo Law Journal*, p. 625.

¹⁰⁸ Justice Lazaro-Javier's Concurring Opinion, p. 5.

To be sure, **psychology** is a broad field of science that goes more than the treatment of mental illnesses and personality disorders. Under the American Psychological Association's definition, "[p]sychology is the study of the mind and behavior. The discipline embraces all aspects of the **human experience** — from the functions of the brain to the actions of nations, from child development to care for the aged. In every conceivable setting from scientific research centers to mental healthcare services, '**the understanding of behavior**' is the enterprise of psychologists."¹⁰⁹

Meanwhile, **psychiatry** is a specific "branch of medicine focused on the **diagnosis, treatment and prevention of mental, emotional and behavioral disorders.**"¹¹⁰ Under the Diagnostic and Statistical Manual of Mental Disorders, now in its 5th edition (DSM-V), personality disorders comprise but one among several categories of mental disorders.¹¹¹ To be diagnosed with a personality disorder, at least four (4) or five (5) symptoms or medical conditions must be present in one's behavioral manifestations.¹¹²

It is interesting to note, however, that the deliberations of the framers are bereft of any showing that psychological incapacity should be equated to a serious personality disorder. It was only in *Santos* where it was stated that "the intendment 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."¹¹³ Thus, the Court must veer away from this inaccurate understanding, and instead realize that psychological incapacity is based on the interpersonal dynamics of the couple. As explained by Dean Estrada-Claudio:

Psychological incapacity [can] be caused by the interpersonal dynamics of the couple rather by a specific partner's psychiatric disorder. As I have noted, psychological incapacity is not merely a personal predisposition or failing but one that is brought to the fore by a confluence of an individual's psychology as acted upon by environmental such as his or her partner[']s individual traits, experiences in the life of his or her family while growing up and the social and cultural context in which the couple are living their lives, the absence or presence of children and the choices of both the person and their partner make in life as a couple. **In short,**

¹⁰⁹ <<https://www.apa.org/support/about-apa#:~:text=How%20does%20the%20APA%20define,to%20care%20for%20the%20aged>>> (last visited February 23, 2021); emphasis supplied.

¹¹⁰ <<https://www.psychiatry.org/patients-families/what-is-psychiatry-menu>> (last visited February 23, 2021); emphasis supplied.

¹¹¹ In particular, personality disorders are grouped into three (3) clusters: Cluster A is composed of the paranoid, the schizoid, and the schizotypal personality disorders; Cluster B is composed of the antisocial, the borderline, the histrionic and the narcissistic personality disorders; and Cluster C is composed of the avoidant, dependent, and the obsessive-compulsive personality disorders, as well as a category called personality disorders not otherwise specified such as passive-aggressive personality disorder, and depressive personality disorder. See Re-Examining the Concept of Psychological Incapacity: Towards a More Accurate Reflection of Legislative Intent by Maria Sophia Editha Cruz-Abrenica, Ateneo Law Journal, pp. 627-629.

¹¹² See Justice Lazaro-Javier's Concurring Opinion, p. 6.

¹¹³ *Santos*, supra note 3, at 40.

interlinked relationship variables such as compatibility, conviviality, companionship and mutual cooperation which are necessary to the capacity to fulfill spousal and familial obligations can be enhanced or completely abrogated by the subsequent actions and events of married life.¹¹⁴ (emphases supplied)

The foregoing observations reinforce the Court's ruling in *Marcos*, which already held that the expert witness requirement (found in *Molina*'s second guideline) need not be an indispensable condition for the determination of psychological incapacity. In fact, during the deliberations, Justice Eduardo Caguioa clarified 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.**"¹¹⁵

Nevertheless, a person's mental illness or personality disorder may be considered as a contributing factor or manifestation of psychological incapacity and hence, proof thereof may be received as corroborative evidence. In the end, the illness or disorder will be brought under the legal contemplation of psychological incapacity only when there is clear and convincing evidence showing that the same truly incapacitates the person, at the celebration of marriage, to assume the essential marital obligations.

The foregoing notwithstanding, not all the precepts laid down in *Santos*, and as later adopted in *Molina*, are completely incorrect. To this end, I deem it proper to elucidate on certain legal nuances held in said cases and express my views on the same.

VI. Legal Nuances in the application of psychological incapacity to future cases.

As held in *Santos*, there are three (3) requisites attending psychological incapacity. These are: (a) gravity; (b) juridical antecedence; and (c) incurability. Notably, the OSG's position in this case is to revert back to these standards as held in *Santos*, and abandon the "strait-jacket guidelines laid down in *Molina*.¹¹⁶ However, in my view, these concepts should be further refined. Thus, I discuss the first and third requisites as they are more closely intertwined, and thereafter, the second requisite.

Gravity and incurability

While *Santos* did not explicitly speak of gravity in a medical or clinical sense, still, there was an implicit association of the said requisite to a mental illness or serious personality disorder based on its characterization of psychological incapacity as discussed above. Later, the Court, in *Molina*,

¹¹⁴ *Amicus Curiae* Brief of Dean Estrada-Claudio, p. 2 (unpaginated in the *rollo*).

¹¹⁵ Minutes of the Joint Meeting of the Civil Code Revision Committee and Family Law Committee dated July 26, 1986, p. 13; emphasis supplied.

¹¹⁶ See *rollo*, pp. 677-678.



expressed that the illness must be “grave enough” such that “**there is a natal or supervening disabling factor in the person, an adverse integral element in the personality structure.**”¹¹⁷

However, considering that psychological incapacity should not be exclusively equated to a mental illness or serious personality disorder, the requisite of gravity must not always be understood in a medical or clinical sense. Rather, emphasis should be made on the “genuineness” of the alleged psychological incapacity such that “mild characterological peculiarities, mood changes, occasional emotional outbursts”¹¹⁸ cannot be accepted as root causes. Accordingly, “[t]he illness must be shown as downright incapacity or inability, not a refusal, neglect, or difficulty, much less ill will.”¹¹⁹

In other words, gravity must be understood in its legal sense in that the said requisite only refers to the fact that the alleged incapacity does not merely constitute a spouse’s “difficulty,” “neglect,” “refusal,” or “ill will” just so to escape the marital bond. A deeper and fuller assessment of the alleged incapacity must be done such that it is clearly and convincingly shown that the fulfillment of the essential marital obligations is **not merely feigned or cumbersome** but rather, practically impossible because of the distinct psychological makeup of the person relative to his or her spouse.

Necessarily then, the same considerations should obtain with respect to the requisite of incurability. At this juncture, it is apt to note that some members of the Code Committee suggested that psychological incapacity is incurable:

Justice Puno remarked that, in Canon Law, the defects in marriage cannot be cured.

Justice Reyes pointed out that the problem is: Why is “insanity” a ground for voidable marriages, while “psychological or mental incapacity” is a ground for void *ab initio* marriages? In reply, **Justice Caguioa explained that insanity is curable and there are lucid intervals, while psychological incapacity is not.**¹²⁰ (emphasis supplied)

On the other hand, some members posited that psychological incapacity is actually curable, stating that “**even if the incapacity itself later becomes cured, the marriage still remains void:**”

Justice Puno observed that under the present draft provision, it is enough to show that at the time of the celebration of the marriage, one was psychologically incapacitated so that **later on if already he can comply with the essential marital obligations, the marriage is still void ab initio.** Justice Caguioa explained that since in divorce, the psychological incapacity may occur after the marriage, in void marriages, it has to be at

¹¹⁷ *Molina*, supra note 2, at 678; emphasis supplied.

¹¹⁸ *Molina*, supra note 2.

¹¹⁹ *Id.*

¹²⁰ Minutes of the Joint Meeting of the Civil Code Revision Committee and Family Law Committee dated July 26, 1986, p. 9.

the time of the celebration of the marriage. He, however, stressed that the idea in the provision is that at the time of the celebration of marriage, one is psychologically incapacitated to comply with the essential marital obligations, which incapacity continues and later becomes manifest.

Justice Puno and Judge Diy, however, pointed out that it is possible that after the marriage, one's psychological incapacity becomes manifest but later on he is cured. Justice Reyes and Justice Caguioa opined that the remedy in this case is to allow him to remarry.¹²¹ (emphases supplied)

Despite these seemingly conflicting views, what remains clear is that the requirement of incurability was intended by the Code Committee to have a meaning that is **different from its medical or clinical attribution:**

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 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.**¹²² (emphasis supplied)

This runs in stark contrast to the fourth *Molina* guideline which prescribes that "[s]uch incapacity must also be shown to be **medically or clinically permanent or incurable.**"¹²³

Thus, moving forward, courts ought to interpret incurability in its legal — not medical or clinical — sense; that is, that psychological incapacity is deemed to be legally incurable when it is clearly and convincingly shown that the spouse persistently fails to fulfill his or her duty as a present, loving, faithful, respectful, and supportive spouse to his or her specific partner. An undeniable pattern of such persisting failure must be established so as to demonstrate that there is indeed a psychological anomaly or incongruity in the spouse relative to the other.

On this note, it must be underscored that incurability can **either be absolute or relative** depending on the interpersonal dynamics of the couple. Thus, the fourth *Molina* guideline is correct insofar as it states that "[s]uch incurability may be absolute or even relative only in regard to the other spouse, not necessarily absolutely against everyone of the same sex."¹²⁴ Verily, psychological incapacity may be relative in the sense that anomalous behavior may manifest only towards his or her specific partner, but not necessarily, with another. This is but a realization that not all persons are the same, and consequently, not all relationships are the same in view of the unique individuality (experiences, upbringing, and values, etc.) of two people who are called to forge a life of mutual love, respect, and fidelity together. As

¹²¹ Minutes of the Joint Meeting of the Civil Code Revision Committee and Family Law Committee dated August 2, 1986, p. 4.

¹²² Id.

¹²³ *Molina*, supra note 2, at 677; emphasis supplied.

¹²⁴ Id. at 677-678.

such, it is therefore possible that when the psychologically incapacitated spouse decides to remarry, the incapacity may not resurface given the change of circumstances in his or her marriage to a different person.

Juridical antecedence

While it is true that it is indeed difficult — if not scientifically impossible — to determine the existence of psychological incapacity at the exact point in time that the couple exchanged their “I dos”, the Court cannot simply do away with juridical antecedence due to the fact that such requisite is embedded in the clear language of the law. As Article 36 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.**”¹²⁵ Perceptibly, the peculiar operative phrase in Article 36 that “**even if such incapacity becomes manifest only after its solemnization**” is the key in harmonizing the juridical antecedence requisite of the law.

The fact that psychological incapacity is a ground to nullify the marriage based on the lack of object confirms the requirement of juridical antecedence. This requirement is what separates psychological incapacity from legal separation and divorce.

To expound, while it is true that the most vivid indicator of psychological incapacity is the dynamic relationship of the couple during the marriage, psychological incapacity remains a defect in the **object of consent**. Psychological incapacity relates to a process of self-realization albeit a condition that must retroact to the date of celebration. To illustrate, it is a situation wherein the psychologically incapacitated spouse later on realizes during the marriage that he is not actually fit to become a viable object to the marriage to his or her specific partner based on his or her own distinct upbringing, personality, and values. This is – to my mind – the most cogent explanation as to why a marriage falling under Article 36 is treated as void, not voidable. **Otherwise, if the Court were to treat psychological incapacity as a condition that arises only after the marriage's celebration, then the concept would not be any different from divorce or legal separation which connotes post-marital conduct/grounds only attending after the marriage is entered into.**

As earlier mentioned, concrete indications of one’s psychological incapacity to assume the essential marital obligations may be determined by looking into the living conjugal life of the couple after the celebration of marriage. This is considering that it is the living conjugal life where the anterior roots of the marriage emerge, as well as the anomaly of an

¹²⁵ Emphases supplied.

individual's personality is truly revealed.¹²⁶ In this sense, the experience of marriage itself is the litmus test of self-realization, reflecting one's true psychological make-up as to whether or not he or she was indeed capable of assuming the essential marital obligations to his or her spouse at the time the marriage was entered into.

It cannot be overemphasized that it is the law itself which requires that the psychological incapacity be present at the time of the celebration of marriage. Naturally, external factors (e.g., attraction, influence of family and friends) or just even the usual intense feelings during the early "honeymoon stage" of a relationship may mask the true persona or capability of an individual, which may hide the truth that he or she was, in all actuality, incapable of assuming the essential marital obligations at least **insofar as they are demanded to be performed to his or her partner**. In fact, during this time, spouses may early on believe that they are a perfect match, but are not actually so once they experience life together. Indeed, as pointed out in one scholarly treatise interpreting paragraph 3 of Canon 1095, there are "methods of proof which would illuminate the state of mind at the moment of matrimonial consent" and that it is "the lived conjugal life [that] **provided a confirmation** of the original consent or its absence [at the time of the marriage's celebration]," *viz.*:

It is often in the actual living of the conjugal life that the degree of insufficiency of reason becomes clear and manifests itself. It is, therefore, both logical and legitimate to back to the moment of commitment and characterize it by the evidence of the lived conjugal life which manifests itself in the immaturity of personality. **The daily living out of marriage is only the progressive realization of the relationship and commitment given in the original consent.** By examining the concrete actions of a person toward the other person, we can measure and appreciate his self-presence and maturity of himself at the moment he or she originally gave matrimonial consent. In fact, only the experience of conjugal life of a person permits us to appreciate what his original matrimonial capacity at the moment of consent actually was.¹²⁷

x x x x (emphases supplied)

It is common jurisprudence to evaluate the constraint which weighs on the decision to marry. In analogous manner, **we can measure the lack of personal motivation and internal freedom in a decision to marry, starting from the lack of commitment in daily conjugal life through a sort of indifference toward the other and a rejection of his person.** These concrete elements show, in certain cases, that the matrimonial consent was the result of circumstances and external factors or the result of uncontrollable impulse which invalidate the consent at the time it was made. "**From their fruits you will know them.**"

On the other hand, the **authenticity of a motivation can be seen by the transformation which it causes in the person** by the personal interest

¹²⁶ Riga, Peter J. (1992) The Catholic View of Marriage in the New Code of Canon Law of 1983 and the Nullity of Marriage in Canon 1095, *Journal of Law and Religion*, Vol. 9, No. 2, p. 523.

¹²⁷ Id.

which he or she takes in its realization, by the clear and firm effort he/she puts forward in the marriage by his/her action and conduct, by a serene joy which he/she experiences, by his or her discipline and renouncement of his/her own egoism for the sake of the beloved when that is necessary for the other party to grow and develop.

x x x x

In declaring that there is a third source of incapacity for validly contracting marriage, that is, the inability to assume an essential obligation, canonical jurisprudence and the new Code aim at those elements of proof which only the actual lived conjugal life can show. This is the novelty of the new Code.

This should be clearly understood. **From the moment of consent, the marriage exists or it does not.** It is consent and consent alone which makes a marriage. Nothing that finds its origin after marriage can in any way invalidate a valid marriage nor render it valid if it was invalid. But from the jurisprudence of the new Code, the attention of canonists has been brought to bear on the interpersonal relationship which the exchange of consent establishes and which, in one sense, ought to already be found in this exchange. **It should be admitted that the actual living of conjugal life should be considered as the place where the anterior roots of the marriage emerge as well as the place where an anomaly of the personality is revealed because it is only in the lived conditions of marriage that such defect becomes evident. From there, signs can be recognized in their nature and importance.** The inability to assume essential matrimonial obligations constitutes an incapacity to contract marriage validly: it impedes someone from being the adequate object of marriage and, in that sense, it reveals the impediment which results in an incapacity for giving consent.

This new attention to the “lived conjugal life” in order to discover the initial incapacity to consent to the marriage is not new. Canonists always had to **investigate conjugal life** to discover evidence of insanity, simulation, a forced consent, impotency, etc. **These were all methods of proof which would illuminate the state of mind at the moment of consent: the lived conjugal life provided a confirmation of the original consent or its absence.**¹²⁸ (emphases supplied)

That being said, the parameters of discovering psychological incapacity “**at the time of the celebration, x x x even if such incapacity becomes manifest only after its solemnization**”¹²⁹ ought to be refined. Accordingly, in handling cases of declaration of nullity of marriage on the ground of psychological incapacity, judges must reconstruct the marital decision-making process of an individual, just like inquisitive investigators. In particular, the judge must trace back and examine all the manifestations before and during the marriage to find out if such non-fulfillment relates to the intrinsic psychological makeup of the person relative to his or her specific partner, and not just some mere difficulty that ordinary spouses, at some point in time, are bound to go through. Accordingly, the judge must confirm that the non-fulfillment was not caused **solely** by any factor that emerged only

¹²⁸ Id. at 533-535.

¹²⁹ FAMILY COURT, Article 36; emphasis supplied.

during the marriage (*e.g.*, a financial crisis or accident which altered the personality of the spouse only during the marriage and not merely reflective of his or her true psychological makeup at the time of celebration) but one which, in all reasonable likelihood, existed at the time the marriage was entered into. **Overall, there must be recognition that psychological incapacity is not legal separation or divorce, but a defect in the object of consent at the time of celebration which makes the marriage null and void *ab initio*.**

As final points of discourse, I further take this opportunity to express my views on the following: (a) the scope of the essential marital obligations relative to the application of Article 36; and (b) the most appropriate threshold of evidence in resolving Article 36 petitions.

Essential marital obligations

The sixth *Molina* guideline states that:

(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.¹³⁰ (emphasis and underscoring supplied)

Based on the guideline above, it has been expressed that the essential marital obligations do not only pertain to that between the husband and wife, but further include “Articles 220, 221, and 225 of the same Code in regard to parents and their children.” For reference, Article 68 to 71 read as follows:

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

Article 69. The husband and wife shall fix the family domicile. In case of disagreement, the court shall decide.

The court may exempt one spouse from living with the other if the latter should live abroad or there are other valid and compelling reasons for the exemption. However, such exemption shall not apply if the same is not compatible with the solidarity of the family.

Article 70. The spouses are jointly responsible for the support of the family. The expenses for such support and other conjugal obligations shall be paid from the community property and, in the absence thereof, from the income or fruits of their separate properties. In case of insufficiency or absence of said income or fruits, such obligations shall be satisfied from the separate properties.

¹³⁰ *Molina*, supra note 2, at 678.

Article 71. The management of the household shall be the right and duty of both spouses. The expenses for such management shall be paid in accordance with the provisions of Article 70.

As may be gleaned from the foregoing, Article 68 is the overarching provision which generally articulates the essential marital obligations of the spouses “**to live together, observe mutual love, respect and fidelity, and render mutual help and support.**”¹³¹ Meanwhile, related to the obligation to live together is Article 69 which states the exemptions thereto (*i.e.*, if the spouse should live abroad or there are other valid and compelling reasons for the exemption as determined by the court), provided that the exemptions are not compatible with the solidarity of the family. Finally, Articles 70 and 71 relate to the obligation to render mutual help and support by mandating that the spouses shall be jointly responsible for the family’s support and that they shall manage the household together.

On the other hand, Articles 220,¹³² 221,¹³³ and 225¹³⁴ pertain to parental authority over the spouses’ children, if they have so. However, while parental authority and duties to their children are significant to family life, **Articles 68 to 71 should be deemed as the controlling focal point of the essential**

¹³¹ Emphasis supplied.

¹³² Article 220. The parents and those exercising parental authority shall have with respect to their unemancipated children or wards the following rights and duties:

- (1) To keep them in their company, to support, educate, and instruct them by right precept and good example, and to provide for their upbringing in keeping with their means;
- (2) To give them love and affection, advice and counsel, companionship and understanding;
- (3) To provide them with moral and spiritual guidance, inculcate in them honesty, integrity, self-discipline, self-reliance, industry and thrift, stimulate their interest in civic affairs, and inspire in them compliance with the duties of citizenship;
- (4) To furnish them with good and wholesome educational materials, supervise their activities, recreation and association with others, protect them from bad company, and prevent them from acquiring habits detrimental to their health, studies and morals;
- (5) To represent them in all matters affecting their interests;
- (6) To demand from them respect and obedience;
- (7) To impose discipline on them as may be required under the circumstances; and
- (8) To perform such other duties as are imposed by law upon parents and guardians.

¹³³ Article 221. Parents and other persons exercising parental authority shall be civilly liable for the injuries and damages caused by the acts or omissions of their unemancipated children living in their company and under their parental authority subject to the appropriate defenses provided by law.

¹³⁴ Article 225. The father and the mother shall jointly exercise legal guardianship over the property of the unemancipated common child without the necessity of a court appointment. In case of disagreement, the father’s decision shall prevail, unless there is a judicial order to the contrary.

Where the market value of the property or the annual income of the child exceeds ₱50,000, the parent concerned shall be required to furnish a bond in such amount as the court may determine, but not less than ten *per centum* (10%) of the value of the property or annual income, to guarantee the performance of the obligations prescribed for general guardians.

A verified petition for approval of the bond shall be filed in the proper court of the place where the child resides, or, if the child resides in a foreign country, in the proper court of the place where the property or any part thereof is situated.

The petition shall be docketed as a summary special proceeding in which all incidents and issues regarding the performance of the obligations referred to in the second paragraph of this Article shall be heard and resolved.

The ordinary rules on guardianship shall be merely suppletory except when the child is under substitute parental authority, or the guardian is a stranger, or a parent has remarried, in which case the ordinary rules on guardianship shall apply.

marital obligations relevant to the finding of a spouse's psychological incapacity to his or her specific partner.

As defined by law, marriage is a special contract of permanent union between **a man and a woman**.¹³⁵ Thus, in declaring marriages void from the beginning, the requirements pertaining to the spouses are those considered by law, e.g., Article 35, absence of the essential or formal requisites of marriage; Article 37, relationship of the spouses; Article 38, relationship of the spouses by reasons of public policy.

In the same vein, **declaring a marriage void under Article 36 should primarily pertain to the failure to assume the essential marital obligations as a spouse, and only incidentally, as a father or mother.** To reiterate, psychological incapacity is determined based on the distinct interpersonal relationship between the spouses, making the incapacity a barrier to the relational self-giving between husband and wife. However, **a person's relationship between his or her spouse is not necessarily the same as his or her relationship to his or her children.** As mentioned, the law accounts for relative psychological incapacity, accounting for the unique individuality of each person. Thus, a person's psychological incapacity to fulfill his or her obligation to become a loving, faithful, or supportive husband or wife does not necessarily mean that he or she is unable to fully assume his or her role as loving father or mother. Conversely, not because a person fails to become a loving and supporting father or mother, he or she is psychologically incapacitated to assume the essential marital obligations as regards his or her partner. To note, in a long line of cases,¹³⁶ psychological incapacity cases were based on the failure to assume the essential marital obligations not with respect to one's children, but towards the other spouse. In some instances, the children would get involved but it is usually only with respect to the obligation to support the family.

As such, considering the complexity of the different relationships, the Court must discern that psychological incapacity cannot *solely* pertain to the parental authority and obligations of a parent to his or her child under Articles 220, 221, and 225 as stated in *Molina*, without showing their relation to the essential marital obligations between spouses under Articles 68 to 71 of the Family Code. **This is because, as discussed, psychological incapacity**

¹³⁵ FAMILY CODE, Article I.

¹³⁶ See *Republic v. Mola Cruz*, G.R. No. 236629, July 23, 2018; *Republic v. Javier*, G.R. No. 210518, April 18, 2018, 861 SCRA 682; *Tani-De La Fuente v. De La Fuente, Jr.*, 807 Phil 31 (2017); *Aurelio v. Aurelio*, 665 Phil. 693 (2011); *Camacho-Reyes v. Reyes*, 642 Phil. 602 (2010); *Azcueta v. Republic*, 606 Phil. 177 (2009); *Ngo Te*, supra note 52; and *Antonio v. Reyes*, supra note 17.

ultimately relates to the essential marital obligations between spouses under Articles 68 to 71 of the Family Code. Incidentally, however, the alleged psychologically incapacitated spouse's behavior to his or her children may be indicative of his or her failure to meet the essential marital obligations to his or her partner. After all, a determination of psychological incapacity requires a holistic examination of all relevant factors to the end of determining the legal gravity, incurability, and juridical antecedence as discussed herein.

Threshold of evidence should be clear and convincing evidence.

While a petition to declare a marriage null and void under Article 36 is considered a civil suit, the quantum of proof must not only be preponderance of evidence but instead, **clear and convincing evidence**, which is defined as "more than mere preponderance, but not to extent of such certainty as is required beyond reasonable doubt as in criminal cases."¹³⁷ This requirement should supersede *Antonio v. Reyes*¹³⁸ insofar as the Court's implication that preponderance of evidence should be the threshold for Article 36 cases, "[a]s in all civil matters."¹³⁹

To expound, in our jurisdiction, there is an inherent presumption of the validity of marriage not only because it is preserved and protected by the Constitution but also because it is the "common order of society." In *Adong v. Cheong Seng Gee*,¹⁴⁰ this Court has elucidated on the rationale behind the presumption of validity of marriages:

The basis of human society throughout the civilized world is that of marriage. Marriage in this jurisdiction is not only a civil contract, but it is a new relation, an institution in the maintenance of which the public is deeply interested. **Consequently, every intendment of the law leans toward legalizing matrimony.** Persons dwelling together in apparent matrimony are presumed, in the absence of any counter-presumption or evidence special to the case, to be in fact married. **The reason is that such is the common order of society,** and if the parties were not what they thus hold themselves out as being, they would be living in the constant violation of decency and of law. A presumption established by our Code of Civil Procedure is "that a man and a woman deporting themselves as husband and wife have entered into a lawful contract of marriage." (Sec. 334, No. 28) **Semper – praesumitur pro matrimonio – Always presume marriage.**¹⁴¹ (emphases and underscoring supplied)

Indeed, it is settled that "[t]he presumption is always in favor of the validity of the marriage. Every intendment of the law or fact leans toward the validity of the marriage bonds. The Courts look upon this presumption with

¹³⁷ *Spouses Manalo v. Roldan-Confesor*, 290 Phil. 311, 323 (1992).

¹³⁸ Supra note 17.

¹³⁹ *Id.* at 359.

¹⁴⁰ 43 Phil. 43 (1922).

¹⁴¹ *Id.* at 56.

great favor. It is not to be lightly repelled; on the contrary, the presumption is of great weight.”¹⁴²

Relevantly, our jurisprudence is replete with cases holding that to overthrow presumptions, clear and convincing evidence must be presented. Absent such evidence, the presumption must be upheld.¹⁴³ For instance, in *Alcantara-Daus v. Spouses De Leon*,¹⁴⁴ the Court held that to contradict the presumption of regularity in the issuance of public documents, the evidence must be clear, convincing, and more than merely preponderant. Similarly, in *Yap v. Lagtapon*,¹⁴⁵ the Court ruled that to overcome the presumption of regularity in the performance of official duties, case law demands that the evidence against it must be clear and convincing. Meanwhile, in *Spouses Espinoza v. Spouses Mayandoc*,¹⁴⁶ the Court stated that since the law always presumes good faith, bad faith should be established by clear and convincing evidence. And finally, in *Sepe v. Heirs of Kilang*,¹⁴⁷ the Court decreed that the presumption of sufficient consideration can be overcome only by the required quantum of proof of clear and convincing evidence.

With the foregoing examples in mind, there is thus no cogent reason why the same threshold evidence should not likewise apply in resolving petitions seeking to declare marriages null and void. **The validity of the marriage itself is the crux of an Article 36 case and not merely a specific matter that is subsumed within the general subject matter of litigation.** Thus, it should be henceforth clarified that **in order to successfully overcome the presumption of validity of the marriage and accordingly grant an Article 36 petition, the petitioner has the burden of proving psychological incapacity based on clear and convincing evidence.**

Further, it should be remembered that, as per Article 48 of the Family Code, “[i]n 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.**”¹⁴⁸ This duty is fleshed out under A.M. No. 02-11-10-SC, entitled “*Re: Proposed Rule on Declaration of Absolute Nullity Of Void Marriages and Annulment of Voidable Marriages*”:¹⁴⁹

Section 9. *Investigation Report of Public Prosecutor.* – (1) Within one month after receipt of the court order mentioned in paragraph (3) of Section 8 above, the public prosecutor shall submit a report to the court

¹⁴² *Alcantara v. Alcantara*, 558 Phil. 192, 208 (2007).

¹⁴³ See *Sepe v. Heirs of Kilang*, G.R. No. 199766, April 10, 2019, citing *Spouses Santos v. Spouses Lumbao*, 548 Phil. 332, 349 (2007).

¹⁴⁴ 452 Phil. 92 (2003).

¹⁴⁵ 803 Phil. 652 (2017).

¹⁴⁶ 812 Phil. 95 (2017).

¹⁴⁷ Supra.

¹⁴⁸ Emphasis supplied.

¹⁴⁹ Issued March 15, 2003.

stating whether the parties are in collusion and serve copies thereof on the parties and their respective counsels, if any.

(2) If the public prosecutor finds that collusion exists, he shall state the basis thereof in his report. The parties shall file their respective comments on the finding of collusion within ten days from receipt of a copy of the report. The court shall set the report for hearing and if convinced that the parties are in collusion, it shall dismiss the petition.

(3) If the public prosecutor reports that no collusion exists, the court shall set the case for pre-trial. It shall be the duty of the public prosecutor to appear for the State at the pre-trial.

In requiring clear and convincing evidence, and by recognizing the prosecuting attorney/fiscal's mandated role "to prevent collusion between the parties and to take care that evidence is not fabricated or suppressed," there are safeguards in place to ensure that marriages are not loosely and injudiciously declared null and void but rather, pronounced as such based on Article 36's true legal contemplation.

Thus, impelled by the necessity to establish a more uniform and statutorily consistent framework in the application of Article 36 of the Family Code henceforth, the points and clarifications herein made may be summed up as follows:

1. Psychological incapacity under Article 36 of the Family Code is a person's intrinsic (not physical) incapacity to assume one or more of the essential marital obligations primarily embraced under Articles 68 to 71 of the Family Code that should be given and accepted by a spouse for purposes of establishing a conjugal life of relational self-giving to one another. It is not a vice of consent but rather the lack of the object of the consent. In particular, when a spouse is psychologically incapacitated there is a lack of a viable object in the marriage, which hence renders the special contract null and void. In contrast, when there is a vice of contractual consent at the time of celebration (*i.e.*, the grounds under Article 45 of the Family Code), the special contract is only annulable.

2. The term "psychological incapacity" is not exclusively confined – and thus should not be equated – to mental illnesses or serious personality disorders based on a clinical/medical diagnosis; rather, it refers to an anomaly or incongruity in one's psychological makeup, in light of the person's own unique individuality, which renders him or her genuinely incapable of assuming the essential marital obligations, either absolutely or relatively to his or her specific partner. However, such disorder or illness may be a contributing factor to or a manifestation of one's psychological incapacity and hence, may be considered as corroborative evidence which should be assessed together with all other attending factors relative to the interpersonal dynamics of the couple.

3. In order to grant a petition to declare a marriage null and void pursuant to Article 36 of the Family Code, the petitioner has the burden of showing, by clear and convincing evidence, that the alleged psychological incapacity of the spouse is **grave, incurable, and juridically antecedent** in its legal – not medical – contemplation. All of these requisites are correlated and intertwined. In particular:

3.1. The requisite of gravity means that the alleged incapacity does not merely constitute a spouse's difficulty, neglect, refusal, or ill-will to escape the marital bonds. Rather, there must be a genuine anomaly or incongruity in one's psychological makeup which renders him or her truly incapable of performing the essential marital obligations.

3.2. The requisite of incurability means that there is an undeniable pattern of persisting failure of one to fulfill his or her duty as a present, loving, respectful, faithful, and supportive spouse whether absolutely or relatively to his or her specific partner.

3.3. The requisite of juridical antecedence, which is explicitly required by the phrase "at the time of the celebration of the marriage" under Article 36 of the Family Code, means that the incapacity is determined to exist during the time of celebration. In order to prove juridical antecedence, it is not required to prove that the alleged incapacity exists at the precise moment that the couple exchanged their "I dos"; rather, it is sufficient that the petitioner demonstrates, by clear and convincing evidence, that the incapacity, in all reasonable likelihood, already exists at the time of the marriage's celebration.

3.4. Accordingly, the judge must reconstruct the marital decision-making process of an individual by considering the totality of factors before and during the marriage, and their interpersonal dynamics with each other. In this regard, the judge should: (a) trace back and examine all the manifestations before and during the marriage to find out if such non-fulfillment relates to the intrinsic psychological makeup of the person relative to his or her specific partner, and not just some mere difficulty that ordinary spouses, at some point in time, are bound to go through; and (b) confirm that the non-fulfillment was not caused solely by any factor that emerged only during the marriage but one which, in all reasonable likelihood, existed at the time the marriage was entered into.

4. The burden of proof to show the nullity of the marriage on the ground of psychological incapacity belongs to the petitioner, who is required to establish his or her case by clear and convincing evidence.

5. To safeguard against possible abuses of Article 36 of the Family Code, Article 48 of the same Code mandates the prosecuting attorney or fiscal 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. The judge should determine that the prosecuting attorney or fiscal's role was dutifully discharged in accordance with prevailing procedural rules issued by the Supreme Court.

VII. Application.

In this case, the marriage between the parties should be declared null and void *ab initio* on the ground of psychological incapacity.

Prefatorily, it must be pointed out that there was no evidence of collusion or fabrication or suppression of evidence in this case. In a Report¹⁵⁰ dated February 18, 2004, the prosecuting attorney found no signs of collusion between herein respondent and petitioner. In fact, respondent vigorously participated and opposed the petition.

On the merits, **petitioner had sufficiently overcome the burden to prove the nullity of the marriage on the ground of respondent's psychological incapacity by clear and convincing evidence.** During trial, petitioner presented herself as a witness, and even used the help of an expert-witness, who interviewed her, her sister, and her daughter with respondent. Data on her family, educational and employment history were also gathered, and even her mental status was examined.¹⁵¹ Moreover, the personal history handwritten by respondent while he was staying at the drug rehabilitation center was likewise evaluated.¹⁵² All of these demonstrated how respondent developed traits exhibiting chronic, irresponsibility, impulsivity, lack of genuine remorse, lack of empathy and sense of entitlement even before marrying petitioner.¹⁵³ In fact, as explained by the expert-witness, “[respondent’s] psychopathology has its root causes. There were childhood and adolescent precursors which had led to the development of his psychological deficits. x x x. [As such, he] does not have enough ego strength to effectively self-regulate and face the marital x x x tasks and relational stressors. Indeed, there was substrates in his development which made him feel inadequate and bitter; thus the need to have power over others to save face.”¹⁵⁴

Further, it was also shown that while the parties were still boyfriend-girlfriend (*i.e.*, before the marriage), respondent would be unaccounted for a whole night or an entire day.¹⁵⁵ He would also postpone his trip back to Italy for work.¹⁵⁶ When he eventually went back to work, he quit his job after only two (2) months.¹⁵⁷ When he returned, he would always go out at night and

¹⁵⁰ See *rollo*, p. 596

¹⁵¹ See *ponencia*, pp. 10-11.

¹⁵² See *id.* at 49.

¹⁵³ See *id.* at 40.

¹⁵⁴ *Id.* at 41; emphasis supplied. See also *rollo*, pp. 315-316.

¹⁵⁵ See *ponencia*, p. 3.

¹⁵⁶ See *id.*

¹⁵⁷ See *id.* at 4.

would come back home at dawn, either alone or with friends.¹⁵⁸ He was also extremely irritable and moody.¹⁵⁹

Likewise, respondent's behaviors also manifested during his marriage to petitioner. In particular, respondent would leave their house for several days without informing petitioner of his whereabouts.¹⁶⁰ He also refused to go out and he slept for days.¹⁶¹ He failed to find gainful employment.¹⁶² He failed to assist petitioner when she gave birth.¹⁶³ He failed to take care of their child when she had dengue fever and when she had to be rushed to the hospital for frequent vomiting.¹⁶⁴

More significantly, respondent's predisposition to not fulfill his duties was intensified by his use of drugs, such as marijuana and *shabu*, during the marriage.¹⁶⁵ As shown during trial, respondent was committed to a drug rehabilitation program for years for his drug use.¹⁶⁶ He also drove to bankruptcy the construction firm founded by petitioner by siphoning its funds for his drug use.¹⁶⁷ He even brought danger to their child when he brought her inside the four-square-meter room at the back of their duplex while he was smoking marijuana.¹⁶⁸

Notably, his failure to support the family and drug use were manifestations of his narcissistic-antisocial personality disorder and substance abuse disorder with psychiatric features. As explained by the expert-witness:

In summary, there is a Partner Relational Problem (code V61.1), which is secondary to the psychopathology of [respondent] who gravely failed in providing his family the love, support, dignity, understanding and respect. He has the essential features of a personality disorder as per criteria set in the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition (DSM IV).

x x x x

x x x [Respondent] has narcissistic-antisocial personality disorder. He exhibits chronic irresponsibility, impulsivity and lack of genuine remorse, lack of empathy and a sense of entitlement. x x x¹⁶⁹

¹⁵⁸ See id.

¹⁵⁹ See id.

¹⁶⁰ See id. at 5.

¹⁶¹ See id.

¹⁶² See id.

¹⁶³ See id.

¹⁶⁴ See id. at 6.

¹⁶⁵ See id. at 5-6.

¹⁶⁶ See id. at 8-10.

¹⁶⁷ See id. at 5-7.

¹⁶⁸ See id. at 8.

¹⁶⁹ Id. at 40-41.

Clearly, there is an undeniable pattern of persisting failure on the part of respondent to fulfill his duty as a present, loving, respectful, faithful, and supportive spouse to petitioner. His failure to comply with his essential marital obligations, as primarily embraced under Articles 68 to 71 of the Family Code, is not merely a product of some difficulty, neglect, refusal, or ill-will to escape the marital bonds. Rather, as can be seen from their interpersonal dynamics before and during the marriage, such failure is rooted in a genuine anomaly in respondent's psychological makeup that renders him truly incapable of performing the essential marital obligations to petitioner. Based on the foregoing, respondent is psychologically incapacitated, and accordingly, the parties' marriage should be declared null and void under Article 36 of the Family Code. On this score, I therefore agree with the *ponencia's* consequent disposition on the subject lot and custody of their children, which I find no need to explain further.

In closing, I would like to underscore that while the State recognizes the validity of marriage and the unity of the family as enshrined in our Constitution, the family as the basic autonomous social institution should be protected, regardless of its structure. As the *ponencia* expounded, in as much as the Constitution regards marriage as an inviolable social institution and the foundation of the family, courts must not hesitate to void marriages that are patently ill-equipped due to psychic causes inherent in the person of the spouses.¹⁷⁰

Corollarily, Article 36 should be deemed as "an implement of the constitutional protection of marriage" as "there is a corresponding interest of the State to defend against marriages ill-equipped to promote family life."¹⁷¹ Thus, as previously held by the Court, in declaring marriages void *ab initio* on the ground of psychological incapacity, the Court is not demolishing the foundation of families, but is actually protecting its true purpose.¹⁷² Indeed, in removing a psychologically incapacitated spouse from the union, the State is actually protecting the family, which should still be regarded as the foundation of the nation regardless of this eventual disposition. Truly, while the Constitution depicts marriage as an inviolable social institution,¹⁷³ its inviolability should not mean an absolutist resistance to sever the marital bonds. Both prudence and fairness dictate that the inviolability envisioned by the Constitution should pertain to marriages which are valid and not those which are null and void. Since there is no marriage at all when there is psychological incapacity, the inviolability of marriage does not attach. In the final analysis, the Constitution is a bastion for liberty inasmuch as it is a blueprint for social order. Hence, while the Constitution renders inviolable marriages that are valid, it also frees the chains of those trapped in one which is actually null and void.

¹⁷⁰ See *id.* at 28-29.

¹⁷¹ See *Antonio v. Reyes*, supra note 17, 355.

¹⁷² See *Ngo Te*, supra note 52, at 698.

¹⁷³ CONSTITUTION, Article XV, Section 2.

WHEREFORE, based on these reasons, I vote to **GRANT** the petition.

W. M. Perlas-Bernabe
ESTELA M. PERLAS-BERNABE
Senior Associate Justice