

ROSANNA L. TAN-ANDAL, PETITIONER, VS. MARIO VICTOR M. ANDAL, RESPONDENT.*G.R. No. 196359. May 11, 2021*

Ponente: LEONEN, J.

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Given the variability and intensity of intimate human relationships, Article 36 of the Family Code on psychological incapacity as a ground for declaration of nullity of marriage was intended to be humane and evolved on a case-to-case basis, but resilient in its application. However, diametrically opposed to this intent, this Court's interpretation of the provision—beginning with *Santos v. Court of Appeals*[1] and *Republic v. Court of Appeals and Molina*[2]—has proven to be restrictive, rigid, and intrusive on our rights to liberty, autonomy, and human dignity.

It is time to restate the current doctrine in light of the evolution of science, subsequent cases, and other contemporary circumstances.

This Court resolves the Petition for Review on Certiorari[3] assailing the Court of Appeals' Decision[4] and Resolution[5]. The Court of Appeals reversed and set aside the Decision[6] of the Regional Trial Court that voided the marriage between Rosanna L. Tan-Andal and Mario Victor M. Andal due to psychological incapacity. The trial court likewise awarded the sole custody of the parties' daughter, Ma. Samantha, to Rosanna.

Mario Victor M. Andal (Mario) and Rosanna L. Tan (Rosanna) married on December 16, 1995 at the Saints Peter and Paul Parish in Poblacion, Makati City.[7] On July 27, 1996, Rosanna gave birth to Ma. Samantha, the only child of the parties.[8] The family lived in a duplex in Parañaque City, with Rosanna's parents living in the other half of the duplex.[9]

After four years of marriage, Mario and Rosanna separated in 2000.[10] Rosanna has since kept the sole custody of Ma. Samantha.[11]

On December 18, 2001, Mario filed a Petition[12] for custody of Ma. Samantha before the Regional Trial Court. Mario argued that he and his wife had equal rights to the custody of Ma. Samantha, thus praying that he be allowed to exercise parental authority over his daughter.[13]

On August 6, 2003, Rosanna filed a Petition[14] for declaration of nullity of her marriage, claiming that Mario was psychologically incapacitated to comply with his essential marital obligations to her.

The Regional Trial Court ordered the prosecutor to report on the parties' possible collusion in filing the Petition.[15] In a February 18, 2004 Report,[16] Prosecutor Gil V. Savedia declared that he found no signs of collusion between Mario and Rosanna.

The cases for custody and declaration of nullity were then consolidated in a September 2, 2004 Order.[17]

According to Rosanna, she first met Mario in 1975 through the Legion of Mary at the Saints Peter and Paul Parish

in Makati.[18] They wrote each other letters until 1978, when they lost contact with each other.[19]

The parties reconnected in 1995 when Mario sought out Rosanna through their childhood friends.[20] When they finally met again, Mario was in the Philippines for a two-month vacation from his work in Italy.[21] He then persisted in asking out Rosanna for a date. As Mario was set to leave in June 1995, Rosanna agreed to have dinner with him.[22]

Mario then courted Rosanna, declaring that he had been in love with her for the past 20 years.[23] Rosanna eventually fell in love with Mario and agreed to be his girlfriend.[24]

Mario did not leave for Italy in June, giving him more time to spend with Rosanna.[25] On June 17, 1995, Mario proposed and Rosanna agreed to marry him in December that year.[26]

While they were together, Rosanna noticed that there were times when Mario "would be unaccounted for a whole night or an entire day[.]"[27] When asked where he went, Mario would allegedly say that he was working.[28]

Mario also kept postponing his trip back to Italy. When asked why, Mario would either say that he was with friends or that he was "preparing for [his and Rosanna's] future." [29] Since Mario was allegedly affectionate whenever they were together, Rosanna believed him.[30]

According to Rosanna, Mario once told her of a plan to blow up a ship to get back at a Taiwanese national who had cheated on his friend in a business deal.[31] Rosanna first thought that Mario had been joking, but when Mario appeared serious about his plan, she said that she did not want to get involved in any of his "shady deals." [32]

In July 1995, Mario finally left for Italy, promising Rosanna that he would be back by November for their December wedding.[33] However, Mario was back by September, barely two months after he had left. It turned out that Mario had quit his job.[34]

After Mario's return, Rosanna noticed that Mario always went out at night and would come back home at dawn, either alone or with his friends.[35] He also had difficulty in managing his finances, with his siblings allegedly calling Rosanna and telling her that their brother was financially incapable of supporting a family.[36] However, Rosanna was already deeply in love with Mario, so she told his sisters that she accepted Mario for who he was.[37]

Nevertheless, there were times when Mario would allegedly be extremely irritable and moody, causing Rosanna to have second thoughts about marrying him.[38] However, by November 1995, Rosanna was already pregnant with their child.[39] When Rosanna told Mario about it, he became more eager to marry her. He even gave Rosanna US\$1,000.00, the only money he had, before their wedding.[40]

Instead of spending the US\$1,000.00 for their wedding, Rosanna returned the money to Mario and encouraged him to open a current account for his personal expenses. Mario accepted the money back.[41] The parties eventually married on December 16, 1995.[42]

Since Mario had no work, Rosanna taught him to run Design and Construction Matrix, the construction firm she had set up before she married Mario. She also introduced Mario to firm clients and brought him with her to client meetings.[43]

Mario, however, continued with his "emotional immaturity, irresponsibility, irritability, and psychological imbalance." [44] He would leave their house for several days without informing Rosanna of his whereabouts. Once he returned home, he would refuse to go out and would sleep for days.[45] Mario was also "hyper-active" [46] late at night.

Rosanna confronted Mario about his behavior. To Rosanna's shock, Mario admitted that he was using marijuana, although he claimed that he was not addicted and that he could stop anytime.[47] He then promised to stop using it.[48]

Not keeping his promise, Mario continued with his drug use.[49]

The day after Rosanna gave birth to Ma. Samantha, Mario allegedly did not assist Rosanna. He left her in the hospital, knowing that she could not move until the effects of the spinal anesthesia had worn off. He only returned to the hospital later that evening to sleep.[50]

When Rosanna and Ma. Samantha were discharged from the hospital, Mario showed symptoms of paranoia. He thought everyone was out to attack him and, at times, would hide Ma. Samantha from those he thought were out to hurt them.[51]

Mario would also take large cash advances from Design and Construction Matrix every week.[52] Rosanna only learned of Mario's numerous cash advances when an accounting personnel informed her that the firm could no longer pay the construction workers' salaries.[53]

Rosanna eventually got tired of Mario. She left him, brought Ma. Samantha with her, and stayed in an inn. She called up Mario to tell him of her and Ma. Samantha's whereabouts. Mario followed them to the inn and pleaded Rosanna to give him another chance. After Mario's pleas, Rosanna returned home with Ma. Samantha.[54]

Later, an employee at the firm handed Rosanna a packet of shabu that the employee allegedly found among Mario's office belongings. When she checked, Rosanna herself found packets of shabu among Mario's possessions.[55]

When Rosanna again confronted Mario about his drug use, he explained that it was the only way he could normally function due to the heavy pressures of work at the firm.[56]

In October 1998, Ma. Samantha had dengue fever and had to be confined at the hospital. Mario was not home and could not be reached. He arrived at the hospital only later that evening. He would then run around the different floors of the hospital, checking the medications prescribed to other dengue fever patients. He would also prevent the nurses from administering the prescribed medications to Ma. Samantha. When Ma. Samantha vomited, Mario, who was just sleeping by his daughter's side, would not clean her up. He would instead ignore the ill child, turn to the other side, and continue sleeping.[57]

Having had enough of Mario, Rosanna drove him out of the house. After several days, Mario returned home and pleaded Rosanna for another chance. Rosanna accepted Mario back, but kept a close eye on him.[58]

Later in November, Mario allegedly asked one of their helpers to prepare some clothes, feeding bottles, and milk for Ma. Samantha. Ma. Samantha's nanny noticed the helper fixing the bag, so she asked Rosanna where they would take the child. Rosanna, who was then working in their home office, rushed to Mario and asked him where he was bringing Ma. Samantha. Mario replied that he would only bring the child to Manila Memorial Park.[59]

Rosanna prohibited Mario from bringing Ma. Samantha out. She then called up Mario's siblings for help. Mario got furious, threatened everyone in the house, and left without returning home.[60]

After he had left, Mario made purchases using his supplementary credit card. Rosanna discovered that Mario used up the P10,000.00 credit limit of his Citibank Mastercard and the P8,000.00 credit limit of his Bank of the Philippine Islands card. Mario also purchased a P11,000.00 necklace at the Landmark Department Store in Makati.[61]

Several days after he had left home, Mario tried to return, but Rosanna turned him away. Mario banged the door, shouting, "Buksan niyo ito kundi sisirain ko ito!"[62] Fearing Mario, Rosanna called her parents and beeped Mario's sisters for help. When Rosanna's parents and Mario's sisters arrived, however, Mario had already left.[63]

Later that day, Mario was found loitering near the house. With him were some travel documents, cash, and a checklist of European countries with the respective visa requirements for entry of a child for each country.[64]

After the door-banging incident, Mario's siblings brought him to the Medical City for detoxification. On November 29, 1998, Mario was committed for treatment at the Medical City for 14 days. After conducting tests on Mario, the doctors found him positive for drug use. Mario's siblings were then advised to commit him to a drug rehabilitation center for treatment. However, defying the doctor's orders, they had him discharged from the hospital without bringing him to a drug rehabilitation facility.[65]

Rosanna eventually closed Design and Construction Matrix due to financial losses. Mario's access to the company funds for his drug use allegedly used up the funds.[66] To sustain her and her family's needs, Rosanna searched for a job and eventually worked as an executive assistant at the Government Service Insurance System Financial Center.[67]

Rosanna decided to have a duplex built on a lot in Parañaque City that her aunt, Rita M. Tan, had donated on August 25, 1998.[68] Rosanna, Mario, and Ma. Samantha would live in one apartment, and Rosanna's parents would live in the other apartment.[69]

To save rent on the Makati apartment where they used to live, Mario, Rosanna, and Ma. Samantha moved into the unfinished Parañaque duplex. At first, Mario hesitated to move in, but he eventually agreed and asked that a four-square meter room at the back of the duplex be constructed. The small room would allegedly be Ma. Samantha's playroom. Rosanna opposed Mario as the room would be too small to be a playroom, but Mario insisted on its construction.[70]

The four-square meter room was eventually constructed, and Mario had an air conditioning unit installed inside. He also brought in a television set, a computer table, and some personal belongings into the room. He would then spend days in the room alone and, at times, would even bring Ma. Samantha with him. He even tinkered with the electrical wires of the duplex.[71]

In July 1999, an electrician working on the wires of the house opened the door to the small room. He found Mario and Ma. Samantha inside, with the room filled with smoke that did not quite smell of cigarettes. The electrician informed Rosanna of what he saw, and Rosanna knew that Mario relapsed into his drug use.[72]

Rosanna confronted Mario and pleaded with him to get treated. However, Mario got furious and Ma. Samantha, who saw her parents fighting, started crying. To protect Ma. Samantha, Rosanna brought the child to her parents on the other side of the duplex.[73]

Mario followed them to his parents-in-laws' house, forcing himself in to get Ma. Samantha. Rosanna had to call for police assistance to pacify Mario.[74]

Mario eventually calmed down when the police arrived. The police then searched Mario, finding packets of shabu in his person. They were about to bring Mario to the police station for detention when Rosanna pleaded with them not to take Mario. The police agreed, but they released Mario to his sister, Ma. Socorro.[75]

The next day, Rosanna tried to call Ma. Socorro to ask about Mario, but her calls were unanswered. Rosanna later learned that Mario had escaped from Ma. Socorro's house earlier that morning.[76]

It was after these incidents that Rosanna petitioned[77] the Regional Trial Court to voluntarily commit Mario for

drug rehabilitation at the National Bureau of Investigation Treatment and Rehabilitation Center, and, eventually, at the Seagulls Flight Foundation (Seagulls).[78]

On February 14, 2000, Mario escaped from Seagulls,[79] returning home and pleading with Rosanna to take him in again. Rosanna took her husband in, but Mario would again relapse into his drug use. He was also jobless and could not support his family.[80]

In June 2000, Ma. Samantha had to be rushed to the hospital for frequent vomiting. Mario, who was at home, did nothing, and Rosanna had to absent herself from work to rush the child to the hospital. Rosanna, who had no money with her that time, had to borrow money from Ma. Samantha's nanny. Rosanna's parents and siblings also shared in the child's hospital bills.[81]

In August 2000, Ma. Samantha again had severe upper respiratory tract infection and frequent vomiting. When her nanny was about to give her medicine, Mario prevented the nanny from doing so, saying that mangoes would cure Ma. Samantha.[82]

Two days later, Mario insisted on bringing Ma. Samantha to Makati Medical Center. Rosanna suggested that they instead bring Ma. Samantha together the next day, which was a Saturday. Mario suddenly yelled out, "Magnanakaw!" Rosanna, already exasperated, drove Mario out of the house. Mario, however, dashed to the second floor, still yelling, "Magnanakaw! Magnanakaw!"[83]

Police officers later arrived at their home, having been called by Rosanna and Mario's neighbors who had heard the screams coming from their house. Rosanna explained that it was her husband who was yelling and that he was a drug dependent who failed to complete his rehabilitation program. The police then brought Mario to the police station for questioning.[84]

Ma. Samantha saw her father screaming and the police taking him with them. The child cried and had to be brought to her grandparents' house to be pacified.[85]

Already at a loss with what to do, Rosanna phoned the director of Seagulls, who recommended that Mario be recommitted to the rehabilitation center to complete his rehabilitation program.[86]

Thus, Rosanna informed the trial court of Mario's relapse, causing the trial court to order[87] Mario's recommitment to Seagulls. Mario remained confined there until December 24, 2000, when the rehabilitation center released Mario without completing his rehabilitation program.[88]

Rosanna wrote the trial court as to Mario's premature release from the rehabilitation center.[89] Since Mario's release on December 24, 2000, Rosanna and Mario had separated and had not lived together. Mario also failed to give support to Rosanna and Ma. Samantha.[90]

These events, according to Rosanna, showed Mario's psychological incapacity to comply with his essential marital obligations to her. Rosanna contended that Mario's drug use was the manifestation of a grave personality disorder "deeply rooted within [Mario's] adaptive system." [91] She thus prayed that the trial court nullify their marriage and that she be declared the sole and absolute owner of the parcel of land donated to her by her aunt as well as the duplex built on it.[92]

To prove Mario's psychological incapacity, Rosanna presented Dr. Valentina Del Fonso Garcia (Dr. Garcia), a physician-psychiatrist, as expert witness.

In her Judicial Affidavit,[93] Dr. Garcia declared that she interviewed Rosanna and gathered data on Rosanna's family, educational, and employment history. She likewise conducted mental status examinations on Rosanna.

For data on Mario's social, sexual, and marital history, Dr. Garcia interviewed Rosanna, Ma. Samantha, and Jocelyn Genevieve L. Tan (Jocelyn Genevieve), Rosanna's sister.[94]

After evaluating the data, Dr. Garcia found Rosanna "psychologically capacitated to comply with her essential marital obligations." [95] According to Dr. Garcia, Rosanna "has adequate social, interpersonal and occupational functioning." [96]

As for Mario, Dr. Garcia diagnosed him with narcissistic antisocial personality disorder and substance abuse disorder with psychotic features. Dr. Garcia characterized the disorder as:

... an abnormality in behavior known to have a pervasive pattern of grandiosity in fantasy or behavior, need for admiration, and lack of empathy, beginning by early childhood. People suffering from this disorder may have a grandiose sense of self-importance or may be preoccupied with fantasies of unlimited success and power. They likewise believe that they are special and can be understood or should associate with high-status people. They also require excessive admiration, have a sense of entitlement and are envious of others or believe that others envy them.[97]

Mario's narcissistic antisocial personality disorder, which Dr. Garcia found to be grave, with juridical antecedence, and incurable, allegedly rendered Mario psychologically incapacitated to comply with his essential marital obligations to Rosanna. Dr. Garcia testified that Mario's personality disorder was grave and "deeply rooted" in his character.[98] Dr. Garcia added that persons suffering from personality disorders are "impermeable to any form of psychiatric therapeutic modality" [99] because of "the presence of denial and cognizance on the basic pathology of the person [suffering from the disorder]." [100]

As to the juridical antecedence of Mario's personality disorder, Dr. Garcia said that Mario "does not have enough ego strength to effectively self-regulate and face the marital task and relational stressors" [101] and "there were substrates in [Mario's] development which made him feel inadequate and bitter." [102] Mario allegedly "[needed] to have power over others to save face." [103] Dr. Garcia thus recommended that the trial court void Mario and Rosanna's marriage due to Mario's psychological incapacity.

On cross-examination, Dr. Garcia admitted that the data she gathered all came from Rosanna, Ma. Samantha, and Jocelyn Genevieve. She likewise admitted diagnosing Mario without interviewing him, [104] because, despite several invitations from Dr. Garcia, Mario did not appear for an interview. [105]

Countering Rosanna, Mario contended that it was she who was psychologically incapacitated to comply with her essential marital obligations.

Mario alleged that he had worked in Switzerland, Germany, and Italy before returning to the Philippines in April 1995. In May 1995, he was issued a Canadian visa set to expire in September that year. [106]

While on vacation in the Philippines, he met his childhood friend, Rosanna, whom he had not seen in 17 years. They then frequently went out, dining and drinking in bars, and would go to Rosanna's office afterward to "spend the night and share intimate moments[.]" [107]

In August 1995, Mario went back to Italy to resign from his job as he had already decided to work in Canada. [108]

When Mario returned to the Philippines a month later, Rosanna told him that she was pregnant and was planning to abort their child. Mario believed her, as Rosanna allegedly had an abortion in 1991. To prevent Rosanna from undergoing abortion, he proposed to her. They were married on December 16, 1995. [109]

The spouses then loaned P500,000.00 from the Elena P. Tan Foundation to increase the capital of Design and Construction Matrix, a one--year-old construction firm under Rosanna's name. Part of the loaned amount was used as down payment for a Mitsubishi FB L300 van.[110]

By January 1996, the spouses were already frequently fighting. According to Mario, Rosanna would box and kick him whenever they argued. To avoid any untoward incident, Mario would leave the house to keep his cool.[111]

In 1997, Rosanna allegedly became uncontrollable. She would bang her head on tables, doors, concrete walls, and closets, and would even inflict corporal punishment on Ma. Samantha.[112]

Opposing Rosanna's claim, Mario said that he worked to support the family. He worked as the operations manager of Design and Construction Matrix, and his duties included hiring and supervising firm employees, and procuring construction materials, tools, and equipment. Because of his hard work at the firm, he and Rosanna were able to pay their P500,000.00 loan and save money for the construction of their conjugal home.[113]

Mario claimed that he always went home and never slept out, except that one time in December 1998, when he and Rosanna had a big fight. Mario maintained that he was a good father to Ma. Samantha such that, when the child was confined in the hospital for dengue fever, he took care of her. One time, when the nurse on duty failed to replace Ma. Samantha's empty dextrose bottle, Mario voluntarily asked the nurse to replace it with a new one. He and Ma. Samantha would also spend quality time together, going to malls and visiting relatives.[114]

Sometime in 1998, Mario, Rosanna, and Rosanna's parents jointly loaned P2,500,000.00 from the Elena P. Tan Foundation. They deposited the amount in Metrobank-Legaspi Branch in Makati under the name of Rosanna and her father, Rodolfo M. Tan. The loaned amount would serve as funds for the construction of the duplex house in Parañaque.[115]

In December 1998, Mario and Rosanna fought again and this time, Rosanna drove Mario out of the house. Since he had no cash with him, Mario used up the credit limits of his credit cards totaling P40,000.00. When he returned home, Mario allegedly returned the P40,000.00 to Rosanna.[116]

By 1999, when the duplex was semi-finished, Mario, Rosanna, and Ma. Samantha moved in. Since construction was still ongoing, Mario insisted that a four-square meter room be constructed to protect Ma. Samantha from construction dust and debris.[117]

Mario denied that he was ever a threat to Rosanna and Ma. Samantha. He voluntarily committed himself for detoxification at the Medical City and completed his six-month rehabilitation in Seagulls. When he returned home, however, Rosanna remained violent and would always drive Mario out of the house.[118]

Between him and Rosanna, Mario argued that it was his wife who was psychologically incapacitated to comply with her essential marital obligations to him. Rosanna insisted on living with her parents despite having her own family, resulting in her parents constantly intruding into their marital life.[119]

As to the parcel of land allegedly donated by Rita M. Tan, Mario claimed that the donation was a "manipulative device" to make it appear that Rosanna exclusively owned the lot.[120]

In sum, Mario prayed that the trial court nullify his marriage to Rosanna due to her psychological incapacity, and that the properties they had acquired during their cohabitation be divided equally between them. He, however, prayed that the custody of Ma. Samantha be awarded to him.[121]

In its May 9, 2007 Decision,[122] the Regional Trial Court found that Rosanna discharged the burden of proving Mario's psychological incapacity:

It was clearly shown from [Mario's] actuations that he never really cared about the well-being of his family. He never commiserated with [Rosanna] during her difficult times. Despite [Rosanna's efforts] to keep the marriage intact, [Mario] showed no interest in mending his ways. These acts, to the mind of the Court, manifested [Mario's] total disregard of the basic tenets of marriage.[123]

The trial court thus voided Mario and Rosanna's marriage. It awarded the custody of Ma. Samantha to Rosanna, with Mario having visitation rights. As to the Parañaque duplex, the trial court declared Rosanna as its sole and absolute owner, including the parcel of land on which it was built. The dispositive portion of the May 9, 2007 Decision reads:

WHEREFORE, finding merit to the petition, judgment is hereby rendered:

- Declaring null and void ab initio the marriage between ROSANNA L. TAN-ANDAL and MARIO VICTOR M. ANDAL solemnized on DECEMBER 16, 1995 in Makati City on the ground of psychological incapacity of the respondent;
- Ordering the Local Civil Registrars of Makati City and the National Statistics Office to cancel the marriage between the petitioner and the respondent as appearing in their respective Registry of Marriage;
- Allowing petitioner to resume the use of her maiden name;
- Awarding petitioner the absolute custody of the parties' only child, Ma. Samantha T. Andal, with visitation rights given to the respondent; and
- Declaring the petitioner to be the sole and absolute owner of the parcel of land with improvements covered by TCT No. 139811.

On the matter of suspension of respondent's parental authority over Ma. Samantha T. Andal, the Court holds that there is no sufficient ground in granting the same.

Let copies of this Decision be furnished the Local Civil Registrars of Makati City and Para[ii]aque City, the Office of the Solicitor General, the Office of the Civil Register General (National Statistics Office) and the Office of the City Prosecutor, Para[ñ]aque City.

SO ORDERED.[124] (Emphasis in the original)

Mario moved [125] for reconsideration, which the trial court denied in its August 29, 2007 Order.[126]

Reversing the trial court's ruling, the Court of Appeals found Dr. Garcia's psychiatric evaluation of Mario to be "unscientific and unreliable"[127] since she diagnosed Mario without interviewing him. The Court of Appeals ruled that Dr. Garcia "was working on pure suppositions and second-hand information fed to her by one side." [128]

On the trial court's finding that Rosanna exclusively owned the house and lot in Parañaque, the Court of Appeals held that the trial court violated Article VIII, Section 14 of the Constitution, which states that "[n]o decision shall be rendered by any court without expressing therein clearly and distinctly the facts and the law on which it is based." To the Court of Appeals, the trial court did not state the facts and the law on which it based its ruling that Rosanna solely owned the house and lot.[129]

Thus, the Court of Appeals declared Mario and Rosanna's marriage valid and subsisting. The dispositive portion of its February 25, 2010 Decision[130] reads:

WHEREFORE, the instant appeal is GRANTED. The assailed May 09, 2007 decision is SET ASIDE, and the marriage between Mario Victor M. Andal and Rosanna L. Tan-Andal is hereby declared as VALID and SUBSISTING.

SO ORDERED.[131] (Emphasis in the original)

Rosanna moved[132] for reconsideration, which the Court of Appeals denied in its April 6, 2011 Resolution.[133]

On May 25, 2011, Rosanna filed a Petition for Review on Certiorari[134] before this Court. Mario filed his Comment,[135] to which Rosanna filed her Reply.[136]

In the August 20, 2019 Resolution,[137] this Court resolved to set the case for oral arguments. However, the oral arguments were postponed indefinitely,[138] and the parties were instead ordered to file their respective memoranda.[139] Further, Dean Sylvia Estrada-Claudio, M.D., Ph.D.,[140] Dean Melencio S. Sta. Maria, Jr.,[141] and Fr. Adolfo Dacanay, S.J.,[142] were appointed amici curiae, and they were all required to submit their amicus curiae briefs.[143]

The parties[144] and the Republic of the Philippines, represented by the Office of the Solicitor General,[145] have all filed the required Memoranda. The amici curiae, to whom this Court is grateful for their expertise and invaluable insights on the important issues for resolution here, have each submitted their respective Amicus Curiae Briefs.

The issues for this Court's resolution are:

First, whether or not the marriage between Mario and Rosanna is void due to psychological incapacity. Subsumed in this issue are the following:

- a. Whether or not the guidelines for deciding cases for declaration of nullity of marriage due to psychological incapacity, as laid down in Republic v. Court of Appeals and Molina,[146] violate the right to liberty, personal autonomy, and human dignity of Filipinos;
- b. Whether or not, as characterized in Santos v. Court of Appeals,[147] psychological incapacity has juridical antecedence and its root cause medically or clinically identifiable at the time of the celebration of the marriage. If it is so identifiable, then:
 - i. should it be grounded on a particular psychological illness;
 - ii. may it be established without a psychological assessment or clinical diagnosis;
 - iii. may it be established on the basis of testimonial evidence attesting to the behavioral pattern of the spouse with the psychological incapacity during the marriage;
- c. Whether or not, as characterized in Santos, psychological incapacity is truly incurable. If it is, must it be shown to be medically or clinically permanent or incurable to warrant a declaration of nullity of marriage under Article 36 of the Family Code;
- d. Whether or not Article 36 of the Family Code is violative of the separation of Church and State;
- e. Whether or not the expert opinion on a party's psychological incapacity is competent evidence if it is solely based on collateral information from the other spouse;
- f. Whether or not the existence of grounds for legal separation precludes a finding of psychological incapacity on the part of one or both of the spouses;
- g. Whether or not psychological incapacity may be relative to each couple.

Second, whether or not half of the duplex and the lot on which it is situated are community properties of Mario and Rosanna; and

Third, whether or not Ma. Samantha's custody was rightfully awarded to Rosanna.

Rosanna maintains that the Court of Appeals gravely erred in reversing the trial court's Decision, claiming that the totality of evidence she presented was sufficient to prove Mario's psychological incapacity. With respect to Dr. Garcia's findings, Rosanna claims that they are reliable, having been subjected to cross-examination by Mario's counsel and were based on documents written by Mario himself, among others.[148] Citing *Suazo v. Suazo*,[149] Rosanna adds that the person to be declared psychologically incapacitated need not be personally interviewed by the clinician or psychiatrist for a court to nullify the marriage. So long as the totality of evidence presented proves that the spouse is psychologically incapacitated, as in this case, she insists that a decree of nullity of marriage should be issued.[150]

Rosanna concedes this Court's good intention behind imposing the Molina guidelines, which was to prevent parties from filing frivolous or capricious petitions for declaration of nullity. However, Rosanna argues, the guidelines have unintentionally made "it complicated and burdensome for a party to be released from a marriage that has legitimately broken down." [151] For Rosanna, the State's protection of the institution of marriage "should not be ruthless nor unjustifiably intrude into a person's rights to autonomy and human dignity." [152]

Psychological incapacity need not be grounded on a particular psychological illness, argues Rosanna, as this is allegedly more consistent with psychological incapacity being a "liberal ground" [153] for nullifying marriages. She cites cases [154] where this Court held that competent evidence, not necessarily expert opinion, may establish psychological incapacity, and that what matters is the totality of evidence presented.

Rosanna adds that psychological incapacity is incurable, but not necessarily in a medical or clinical sense. For her, incurability is manifested by ingrained behavior manifested during the marriage by the psychologically incapacitated spouse. [155]

As to whether Article 36 violates the Constitution on the separation of Church and State, Rosanna argues that the provision does not. She cites *Molina*, where this Court explained that the provision is meant to harmonize our civil laws with the religious faith of the majority of Filipinos. [156]

Rosanna submits that even if solely based on collateral information, expert opinion on a spouse's psychological incapacity may be considered as competent evidence. An expert "does not accept the information relayed by a party about his/her spouse 'as is'." [157] A psychological evaluation is only made after a "verification process is conducted by the psychologist/psychiatrist," assuring that the expert opinion is reliable. [158]

Rosanna adds that the existence of grounds for legal separation does not preclude a finding of psychological incapacity on the part of one or both of the spouses. Citing *Republic v. Mola Cruz*, [159] she demonstrates that a ground for legal separation may be considered a symptom or manifestation of psychological incapacity. [160]

With respect to psychological incapacity being relative, Rosanna again cites *Molina*, where this Court said that the "incurability [of the psychological incapacity] may be absolute or even relative only in regard to the other spouse, not necessarily absolutely against every one of the same sex." [161]

On the duplex that served as the family home, Rosanna argues that the house, though it may be considered community property, should still be exclusively retained by Rosanna as Mario made no contribution for its construction. As for the lot on which the duplex was built, Rosanna maintains that it is her exclusive property, having been donated solely to her. [162]

Countering Rosanna, Mario maintains that she failed to prove that his past drug use was a manifestation of a personality disorder which rendered him psychologically incapacitated. [163] Mario argues that his past drug use is, at best, only a ground for legal separation, [164] not for nullity of marriage due to psychological incapacity. [165]

As to whether Article 36 of the Family Code can be violative of the right of Filipinos to liberty, personal autonomy, and human dignity, Mario failed to respond to this specific issue. However, echoing this Court's pronouncement in *Molina*, Mario argues that psychological incapacity is truly incurable, which means it is medically or clinically permanent.[166]

In addition, Mario submits that Article 36 is not violative of the separation of Church and State. For him, Article 36 is "an example of the government pursuing an important state policy, i.e. protection of the family." [167]

Like *Rosanna*, Mario argues that the expert opinion on a party's psychological incapacity may be considered as competent evidence even if based solely on collateral information. Citing *Marcos v. Marcos*[168] and *Rumbaua v. Rumbaua*,[169] Mario submits that in proving psychological incapacity, what is essential is the totality of evidence presented.[170] Similarly, he argues that the existence of a ground for legal separation does not preclude a finding of psychological incapacity if the ground is shown to be a "manifestation of some other serious psychological illness which ... renders the party unable to comply with his [or her] essential marital obligations." [171]

Mario contends that psychological incapacity is absolute, consistent with it being incurable. He submits that "a party's incapacity should relate not only to the present relationship with his [or her] spouse but should also continue to any relationship he [or she] may subsequently enter into." [172]

Considering that the Court of Appeals found his marriage to *Rosanna* valid and subsisting, Mario argues that the house and lot in *Parañaque* is community property, having been acquired during the marriage.[173]

This Petition must be granted. With clear and convincing evidence, *Rosanna* proved that Mario was psychologically incapacitated to comply with his essential marital obligations to her. Their marriage is void ab initio.

I

Psychological incapacity as a ground for voiding marriages is provided in Article 36 of the Family Code:

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.

Article 36 was first interpreted in *Santos v. Court of Appeals*,[174] a case where the wife, after three years of marriage, left for the United States, never to return to her husband and son. Despite the wife's abandonment of the family, this Court in *Santos* refused to void the marriage after outlining the history of the provision and defining the term "psychological incapacity."

This Court initially noted how the Family Code Revision Committee (Code Committee) deliberately refused to define psychological incapacity "to allow some resiliency"[175] in applying the provision. Article 36 provides no examples of psychological incapacity so that "the applicability of the provision [would not be limited] under the principle of *eiusdem generis*." [176]

After reviewing the Code Committee deliberations, this Court determined that psychological incapacity should mean "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." [177] It added that "psychological incapacity" must refer to "the most serious cases of personality disorders clearly demonstrative of an utter insensitivity or inability to give meaning and significance to the marriage." [178]

In reference to the Catholic roots of Article 36, it being derived from the New Canon Law, this Court cited the work of Dr. Gerardo Veloso (Dr. Veloso), a former presiding judge of the Metropolitan Marriage Tribunal of the Catholic Archdiocese of Manila. Dr. Veloso was of the opinion that psychological incapacity "must be characterized by (a) gravity, (b) juridical antecedence, and (c) incurability." [179]

Building on these three criteria, this Court promulgated *Republic v. Court of Appeals and Molina* [180] in 1997. *Molina* involved a wife who, after five years of marriage, filed a case for declaration of its nullity due to her husband's psychological incapacity. In her petition, she alleged that her husband preferred to spend his time and money on his friends, failing to support the family. If the husband had any money, it was because he allegedly depended on his parents for aid. The husband eventually left her and their child when she had to resign from work.

It was in *Molina* where this Court laid down the guidelines for interpreting and applying Article 36. In formulating the guidelines, this Court invited two amici curiae: Rev. Oscar V. Cruz, Vicar Judicial or Presiding Judge of the National Appellate Matrimonial Tribunal of the Philippine Catholic Church; and Justice Ricardo C. Puno, a member of the Family Code Revision Committee. The *Molina* guidelines are as follows:

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

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

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

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

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

(5) Such illness must be grave enough to bring about the disability of the party to assume the essential obligations of marriage. Thus, "mild characterological peculiarities, mood changes, occasional emotional

outbursts" cannot be accepted as root causes. The illness must be shown as downright incapacity or inability, not a refusal, neglect or difficulty, much less ill will. In other words, there is a natal or supervening disabling factor in the person, an adverse integral element in the personality structure that effectively incapacitates the person from really accepting and thereby complying with the obligations essential to marriage.

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

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

The following are incapable of contracting marriage: Those who are unable to assume the essential obligations of marriage due to causes of psychological nature.

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

This is one instance where, in view of the evident source and purpose of the Family Code provision, contemporaneous religious interpretation is to be given persuasive effect. Here, the State and the Church — while remaining independent, separate and apart from each other — shall walk together in synodal cadence towards the same goal of protecting and cherishing marriage and the family as the inviolable base of the nation.[181] (Emphasis in the original, citations omitted)

The Molina guidelines were applied in subsequent cases.[182] Since Molina's promulgation in 1997 until 2008, only *Antonio v. Reyes*[183] was found to have satisfied all the requirements of Molina.[184] Antonio involved a wife whose pathological lying rendered her psychologically incapacitated to comply with her essential marital obligations.

Because of the restrictive interpretation resulting from the application of the Molina guidelines, this Court pronounced in the 2009 case of *Ngo Te v. Yu-Te*[185] that "jurisprudential doctrine has unnecessarily imposed a perspective by which psychological incapacity should be viewed," a view that is "totally inconsistent with the way the concept was formulated[.]"[186] In *Ngo Te*, this Court remarked that the Molina guidelines worked like a "strait-jacket" in which psychological incapacity cases are forced to fit:

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 [Office of the Solicitor General'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 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.[187] (Citations omitted)

In its 2015 Resolution in *Kalaw v. Fernandez*,[188] this Court made a similar statement:

The [Molina] guidelines have turned out to be rigid, such that their application to every instance practically condemned the petitions for declaration of nullity to the fate of certain rejection. But Article 36 of the Family Code must not be so strictly and too literally read and applied given the clear intendment of the drafters to adopt its enacted version of "less specificity" obviously to enable "some resiliency in its application." Instead, every court should approach the issue of nullity "not on the basis of a priori assumptions, predilections or generalizations, but according to its own facts" in recognition of the verity that no case would be on "all fours" with the next one in the field of psychological incapacity as a ground for the nullity of marriage; hence, every "trial judge must take pains in examining the factual milieu and the appellate court must, as much as possible, avoid substituting its own judgment for that of the trial court." [189] (Citation omitted)

This Court's statements in *Ngo-Te* and *Kalaw* notwithstanding, the tendency to rigidly apply the Molina guidelines continued. Apart from *Chi Ming Tsoi v. Court of Appeals*, [190] *Antonio v. Reyes*, [191] *Ngo Te v. Yu-Te*, [192] and *Kalaw v. Fernandez*, [193] only the parties in *Azcueta v. Republic*, [194] *Halili v. Santos-Halili*, [195] *Camacho-Reyes v. Reyes*, [196] *Aurelio v. Aurelio*, [197] *Tani-De La Fuente v. De La Fuente*, [198] *Republic v. Javier*, [199] and *Republic v. Mola Cruz* [200] were granted a decree of nullity by this Court via a signed decision or resolution since the Family Code was signed into law. [201] That only a few cases were found to have satisfied the Molina guidelines is, supposedly, in accordance with the Constitution on the inviolability of marriage, [202] to the extent that this Court often reversed the factual findings of psychological incapacity by both the trial court and the Court of Appeals. [203]

II

It is time for a comprehensive but nuanced interpretation of what truly constitutes psychological incapacity.

II (A)

The first Molina guideline reiterates the fundamental rule in evidence that one who asserts a claim must prove it. Specifically, in psychological incapacity cases, it is the plaintiff-spouse who proves the existence of psychological incapacity. [204]

Molina, however, is silent on what quantum of proof is required in nullity cases. While there is opinion that a nullity case under Article 36 is like any civil case that requires preponderance of evidence, [205] we now hold that the plaintiff-spouse must prove his or her case with clear and convincing evidence. This is a quantum of proof that requires more than preponderant evidence but less than proof beyond reasonable doubt. [206]

The reason is that this jurisdiction follows the presumption of validity of marriages. As was held in the 1922 case of *Adong v. Cheong Seng Gee*: [207]

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 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. [208] (Citation omitted)

As with any presumption—such as the presumption of regularity in the issuance of public documents, [209] regularity in the performance of duty, [210] of good faith, [211] or of sufficient consideration [212]—it can only be rebutted with clear and convincing evidence.

In any case, inasmuch 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. In the past, marriages had been upheld solely for the sake of their permanence when, paradoxically, doing so destroyed the sanctity afforded to the institution. Courts are reminded of *Antonio*, where this Court said:

Now is also opportune time to comment on another common legal guide utilized in the adjudication of petitions for declaration of nullity under Article 36. All too frequently, this Court and lower courts, in denying petitions of the kind, have favorably cited Sections 1 and 2, Article XV of the Constitution, which respectively state that "[t]he State recognizes the Filipino family as the foundation of the nation. Accordingly, it shall strengthen its solidarity and actively promote its total developmen[t]," and that "[m]arriage, as an inviolable social institution, is the foundation of the family and shall be protected by the State." These provisions highlight the importance of the family and the constitutional protection accorded to the institution of marriage.

But the Constitution itself does not establish the parameters of state protection to marriage as a social institution and the foundation of the family. It remains the province of the legislature to define all legal aspects of marriage and prescribe the strategy and the modalities to protect it, based on whatever socio-political influences it deems proper, and subject of course to the qualification that such legislative enactment itself adheres to the Constitution and the Bill of Rights. This being the case, it also falls on the legislature to put into operation the constitutional provisions that protect marriage and the family. This has been accomplished at present through the enactment of the Family Code, which defines marriage and the family, spells out the corresponding legal effects, imposes the limitations that affect married and family life, as well as prescribes the grounds for declaration of nullity and those for legal separation. While it may appear that the judicial denial of a petition for declaration of nullity is reflective of the constitutional mandate to protect marriage, such action in fact merely enforces a statutory definition of marriage, not a constitutionally ordained decree of what marriage is. Indeed, if circumstances warrant, Sections 1 and 2 of Article XV need not be the only constitutional considerations to be taken into account in resolving a petition for declaration of nullity.

Indeed, Article 36 of the Family Code, in classifying marriages contracted by a psychologically incapacitated person as a nullity, should be deemed as an implement of this constitutional protection of marriage. Given the avowed State interest in promoting marriage as the foundation of the family, which in turn serves as the foundation of the nation, there is a corresponding interest for the State to defend against marriages ill-equipped to promote family life. Void ab initio marriages under Article 36 do not further the initiatives of the State concerning marriage and family, as they promote wedlock among persons who, for reasons independent of their will, are not capacitated to understand or comply with the essential obligations of marriage.[213] (Emphasis supplied)

Reflecting a similar sentiment, this Court in *Ngo-Te*[214] said:

In dissolving marital bonds on account of either party's psychological incapacity, the Court is not demolishing the foundation of families, but it is actually protecting the sanctity of marriage, because it refuses to allow a person afflicted with a psychological disorder, who cannot comply with or assume the essential marital obligations, from remaining in that sacred bond. It may be stressed that the infliction of physical violence, constitutional indolence or laziness, drug dependence or addiction, and psychosexual anomaly are manifestations of a sociopathic personality anomaly. Let it be noted that in Article 36, there is no marriage to speak of in the first place, as the same is void from the very beginning. To indulge in imagery, the declaration of nullity under Article will simply provide a decent burial to a stillborn marriage.[215] (Citations omitted)

In the *Kalaw* Resolution,[216] this Court said that "[i]n declaring a marriage null and void ab initio, ... the Courts really assiduously defend and promote the sanctity of marriage as an inviolable social institution. The foundation of our society is thereby made all the more strong and solid." [217]

Further, as the "basic autonomous social institution,"[218] the family should be protected under the Constitution regardless of its structure. This means that a family can be founded, whether or not the parents choose to marry or subsequently choose to dissociate, and this arrangement should be equally entitled to State protection. The right to choose our intimate partners is part of our right to autonomy and liberty, an inherent part of human dignity. Ultimately, should the State interfere with these choices, it should do so only when public interest is imperiled:

The Family Code provides that the "nature, consequences, and incidents [of marriage] are governed by law and not subject to stipulation," but this does not go as far as reaching into the choices of intimacy inherent in human relations. These choices form part of autonomy, protected by the liberty and human dignity clauses. Human dignity includes our choices of association, and we are as free to associate and identify as we are free not to associate or identify.

Our choices of intimate partners define us — inherent ironically in our individuality. Consequently, when the law speaks of the nature, consequences, and incidents of marriage governed by law, this refers to responsibility to children, property relations, disqualifications, privileges, and other matters limited to ensuring the stability of society. The state's interest should not amount to unwarranted intrusions into individual liberties.[219] (Citations omitted)

II (B)

To recall, the term "psychological incapacity" was first defined by this Court in Santos as a "mental (not physical) incapacity"[220] to comply with the essential marital obligations. The term was confined to "the most serious cases of personality disorders clearly demonstrative of an utter insensitivity or inability to give meaning and significance to the marriage." [221] This characterization became the basis of the second Molina guideline, where parties to a nullity case are required to present evidence of the root cause of the psychological incapacity. In particular, this root cause must be medically or clinically identified and sufficiently proven by experts.

By equating psychological incapacity to a "mental incapacity" and to "personality disorders," this Court went against the intent behind Article 36. The Code Committee was clear that psychological incapacity is not a mental incapacity. Among the earlier wordings of the provision on psychological incapacity included "mentally incapacitated,"[222] and "mentally" is obviously absent in the present Article 36. This means that for the Code Committee, "mental" is not synonymous with "psychological."

The reason for deleting "mental" was given by Justice Eduardo P. Caguioa, a member of the Code Committee. He said that "mental" would give the wrong impression of psychological incapacity being a vice of consent.[223] If psychological incapacity was to be an acceptable alternative to divorce,[224] as was intended by the Code Committee, it cannot be a mere vice of consent. Psychological incapacity must consist in a lack of understanding of the essential obligations of marriage, making the marriage void ab initio.

Psychological incapacity is also not a personality disorder, as explained by amicus curiae Dean Sylvia Estrada-Claudio (Dean Estrada--Claudio). Psychological incapacity cannot be found in the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders (DSM-V), the authoritative listing of various mental, including personality, disorders recognized by the scientific community.[225]

Yet, to comply with the second Molina guideline, psychologists and psychiatrists, when serving as expert witnesses, have been forced to assign a personality disorder and pathologize the supposedly psychologically incapacitated spouse.[226] This cruelty could not have been the intent of the Code Committee.

It took time before this Court, in the 2000 case of Marcos v. Marcos,[227] declared that "a medical examination of the person concerned need not be resorted to." [228] Instead, as this Court said, "the totality of evidence

presented is enough to sustain a finding of psychological incapacity[.]"[229]

This pronouncement seemed to do away with the requirement of expert opinion on the root cause of the psychological incapacity, but this Court was not categorical with this. It even said in *Marcos* that the "root cause may be 'medically or clinically identified'"[230]—implying that although medical opinion may be done away with, a clinical identification, which is still expert opinion, must nevertheless be presented.

For this reason, this Court was inconsistent in requiring expert evidence in psychological incapacity cases. Not all cases promulgated after *Marcos* required the totality of evidence rule. Even as recent as 2019, this Court dismissed a nullity case because "[t]he root cause of [the respondent spouse's] alleged psychological incapacity was not sufficiently proven by experts[.]"[231]

In light of the foregoing, this Court now categorically abandons the second *Molina* guideline. Psychological incapacity is neither a mental incapacity nor a personality disorder that must be proven through expert opinion. There must be proof, however, of the durable or enduring aspects of a person's personality, called "personality structure," which manifests itself through clear acts of dysfunctionality that undermines the family. The spouse's personality structure must make it impossible for him or her to understand and, more important, to comply with his or her essential marital obligations.

Proof of these aspects of personality need not be given by an expert. Ordinary witnesses who have been present in the life of the spouses before the latter contracted marriage may testify on behaviors that they have consistently observed from the supposedly incapacitated spouse. From there, the judge will decide if these behaviors are indicative of a true and serious incapacity to assume the essential marital obligations.

In this way, the Code Committee's intent to limit the incapacity to "psychic causes" is fulfilled. Furthermore, there will be no need to label a person as having a mental disorder just to obtain a decree of nullity. A psychologically incapacitated person need not be shamed and pathologized for what could have been a simple mistake in one's choice of intimate partner, a mistake too easy to make as when one sees through rose-colored glasses. A person's psychological incapacity to fulfill his or her marital obligations should not be at the expense of one's dignity, because it could very well be that he or she did not know that the incapacity existed in the first place.

II (C)

Difficult to prove as it may be, a party to a nullity case is still required to prove juridical antecedence because it is an explicit requirement of the law. Article 36 is clear that the psychological incapacity must be existing "at the time of the celebration" of the marriage, "even if such incapacity becomes manifest only after its solemnization." This distinguishes psychological incapacity from divorce. Divorce severs a marital tie for causes, psychological or otherwise, that may have developed after the marriage celebration.

According to Dean Estrada-Claudio, "it is an accepted principle of all major and recognized theoretical schools within psychology that a person's behavior is determined by the interaction of certain genetic predispositions and by his or her environment, working in iterative loops of influence."[232] From this, proof of juridically antecedent psychological incapacity may consist of testimonies describing the environment where the supposedly incapacitated spouse lived that may have led to a particular behavior. For instance, violence against one's spouse and children can be a manifestation of juridically antecedent psychological incapacity when it is shown that the violent spouse grew up with domestic violence or had a history of abusive romantic relationships before the marriage.

The same can be said for child abuse. Trauma research shows that our past, if not properly healed, heavily affects our present.[233] As such, evidence of the juridically antecedent psychological incapacity may consist of

testimony on the spouse's past experiences that may have led him or her to become a child abuser.

Furthermore, not being an illness in a medical sense, psychological incapacity is not something to be cured. And even if it were a mental disorder, it cannot be described in terms of being curable or incurable. Dean Estrada-Claudio explained that true mental disorders follow a probable course or outcome, called "prognosis," that can either be self-limited or remain "stable across time and consistent in situations." [234] If self-limited, the disorder is, in layperson's terms, "curable." If it has poor long-term prognosis, the disorder is said to be "incurable." [235]

That psychological incapacity is "incurable," but in a legal sense, is evident in the deliberations of the Code Committee. This was explained by Justice Eduardo P. Caguioa, when he said that "'incurable' has a different meaning in law and medicine." [236]

Associate Justice Mario V. Lopez, in his concurring opinion, [237] added that characterizing psychological incapacity as "incurable" [238] is antithetical, because the law does not prohibit a person whose former marriage had been nullified under Article 36 to remarry. If psychological incapacity were truly incurable, then remarriage should not be allowed as it would only result in another void marriage. [239]

Reading together the deliberations of the Code Committee and our rulings in Santos and Molina, we hold that the psychological incapacity contemplated in Article 36 of the Family Code is incurable, not in the medical, but in the legal sense; hence, the third Molina guideline is amended accordingly. This means that the incapacity is so enduring and persistent with respect to a specific partner, and contemplates a situation where the couple's respective personality structures are so incompatible and antagonistic that the only result of the union would be the inevitable and irreparable breakdown of the marriage. "[A]n undeniable pattern of such persisting failure [to be a present, loving, faithful, respectful, and supportive spouse] must be established so as to demonstrate that there is indeed a psychological anomaly or incongruity in the spouse relative to the other." [240]

With respect to gravity, the requirement is retained, not in the sense that the psychological incapacity must be shown to be a serious or dangerous illness, but that "mild characterological peculiarities, mood changes, occasional emotional outbursts" [241] are excluded. The psychological incapacity cannot be mere "refusal, neglect[,] or difficulty, much less ill will." [242] In other words, it must be shown that the incapacity is caused by a genuinely serious psychic cause.

II (D)

Molina provides that the essential marital obligations are "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." [243] These provisions are reproduced below for reference:

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.

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

....

ARTICLE 220. The parents and those exercising parental authority shall have with the 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.

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.

....

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 P50,000, 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.

Justice Estela M. Perlas-Bernabe (Justice Perlas-Bernabe) makes an enlightening point in her opinion that the essential marital obligations are limited to those between the spouses, as these are the only provisions "relevant to the finding of a spouse's psychological incapacity [with respect to] to his or her specific partner." [244] She cites the legal definition of marriage, which is primarily a contract between a man and a woman. Therefore, according to her, if a marriage is to be declared void "due to psychological incapacity, it must be so primarily due to the failure to assume the essential marital obligations as a spouse, and only incidentally, as a father or mother." [245]

It is true that marriage is a contract primarily between the spouses; but its cause remains to be the establishment of not just conjugal but also family life. The Constitution treats marriage as the foundation of the family. [246] Furthermore, Article 70 of the Family Code provides that the spouses are jointly responsible for the support of the family. As such, once the parties decide and do have children, their obligations to their children become part of their obligations to each other as spouses.

This interpretation is more consistent with the canonical concept of marriage and psychological incapacity from which Article 36 of the Family Code was drawn. For Article 36 to be a true accommodation, [247] as Justice Perlas-Bernabe submits, [248] the State, through this Court, might as well consider "the theoretical and operational system which ... is inextricably and inherently ... part of [the concept of psychological incapacity] – the Canon Law on Marriage." [249]

Under Christian doctrine, specifically the teachings of St. Augustine, marriages embody three traditional values or *bonum matrimonii*: (1) *bonum fidei*, or "the faithful exclusiveness of the marital commitment"; [250] (2) *bonum sacramenti*, [251] which refers to the permanence of marriage; and (3) *bonum prolis*, [252] that is, that marriage is primarily for procreation or, at the very least, openness to having children. The Family Code definition of marriage reflects all of these Christian values, specifically, the exclusivity of a marital relation between "a man and a woman," the characterization of marriage as a "permanent union," and its purpose being "for the establishment of conjugal and family life." [253]

Both under canon and secular law, *bonum prolis* is as essential as *bonum fidei*. This only shows that the spouses' obligations to their children, once children are conceived, is as much a part of the spouses' obligations to each other. Failure to perform these obligations to their children may be a ground to nullify a spouse's marriage.

But not all kinds of failure to meet their obligations to their children will nullify the *vinculum* between the spouses. In each case, it must be clearly shown that it is of such grievous nature that it reflects on the capacity of one of the spouses for marriage. The easy cases are when one of the spouses sexually abuses one of their children; or, when unknown to the other spouse, a child is subjected to domestic violence; or when due to the spouse's refusal to go through counseling or rehabilitation, his or her substance abuse puts a child through a situation of neglect or outright danger. As in all cases, the context of the whole case, shown by clear and convincing evidence, should be taken into consideration.

II (E)

The persuasive effect of the decisions of the National Appellate Matrimonial Tribunal of the Catholic Church of the Philippines on nullity cases pending before secular courts is retained. [254] Without prejudice to the ponente's view on the separation of Church and State, [255] the inescapable reality is that Article 36 of the Family Code was lifted from canon law, specifically, Canon 1095 of the New Code of Canon Law. [256] As such, Canon 1095 should be taken into account in interpreting Article 36 and in deciding psychological incapacity cases.

Canon 1095 provides:

Canon 1095. The following are incapable of contracting marriage:

- 1) those who lack the sufficient use of reason;
- 2) those who suffer from a grave defect of discretion of judgment concerning the essential matrimonial rights and duties mutually to be handed over and accepted;
- 3) those who are not able to assume the essential obligations of marriage for causes of a psychic nature.[257]

This persuasive effect is especially true in cases where the Catholic Church had already voided the canonical marriage, because it is the explicit intent of the Code Committee to solve "the problem of marriages already annulled by the Catholic Church but still existent under civil law." [258] In *Antonio*, this Court even reproached the Court of Appeals for failing to consider the prior church annulment of the parties' marriage as indicative of the void nature of the secular marriage. This Court even called the error a "deliberate ignorance." [259]

It is true that the wording of Article 36 of the Family Code was lifted almost verbatim from the third paragraph of Canon 1095, and there are views that only those decisions on canonical marriages voided under this paragraph should be considered persuasive by our secular courts.

A review of the deliberations of the Code Committee, however, reveals that lack of due discretion under the second paragraph of Canon 1095 is actually a part of the concept of psychological incapacity as envisioned by the Joint Committee. This was the subject of the article, *Psychological Incapacity and the Canon Law on Marriage: An Exegesis on the Psychological Element of Matrimonial Consent (Exegesis)*. [260]

A canonical marriage, like a secular marriage, is special, albeit for a different reason. Under the teachings of the Catholic Church, a contract of marriage requires a special kind of consent, called "matrimonial consent," to be valid. [261]

The New Code of Canon Law characterizes the "matrimonial covenant" as "a partnership of the whole life." [262] Catholics believe that in marriage, the spouses "are no longer two, but one flesh" [263] and "render mutual help and service to each other through an intimate union of their persons and their actions." [264] Hence, it is said that the subject and object of a contract of marriage are one and the same: the very persons of the spouses. [265] It is this concept of mutual self-giving for the establishment of a conjugal and family life that a party to a canonical marriage consents to.

Matrimonial consent, in turn, consists of three elements: (1) the cognitive element, which corresponds to truth; [266] (2) the volitive element, which corresponds to freedom; [267] and (3) the psychosomatic element, which corresponds to maturity. [268] Canon 1095 refers to the psychosomatic or psychological element of matrimonial consent. The absence of any of these three elements renders a canonical marriage void.

The first paragraph of Canon 1095 refers to those who lack the sufficient use of reason due to a mental illness. [269] The second paragraph on lack of due discretion refers to "the lack of capacity to bind oneself to the rights and obligations of marriage." [270] A person who lacks due discretion "[gives] the appearance of enjoying full use of his [or her] faculties, but ... by reason of some psychic defect he [or she] may not be capable of assuming the obligations of marriage, even if he [or she] may have a notional and conceptual understanding of them." [271] Lastly, the third paragraph on lack of due competence contemplates a situation where the person, while having intellect and ordinary capacity to consent, cannot deliver the object of the marital consent—his or her very person. [272] The incapacity, like in the second paragraph, is due to psychic causes, which is:

- ... something in the psyche or the psychic constitution of a person which impedes his [or her] capacity to assume three (3) general obligations of marriage: (1) consortium of whole life between a man and a woman; (2) a consortium which is directed towards the good of the spouses; and (3) towards the procreation and

upbringing of children.[273]

From this discussion, the concept under the first paragraph of Canon 1095 is explicitly outside the realm of psychological incapacity under Article 36 of the Family Code as envisioned by the Code Committee. To recall, the Code Committee did not view psychological incapacity as a mental disorder.

However, psychological incapacity under Article 36 is actually closer, concept-wise, to lack of due discretion under the second paragraph of Canon 1095, rather than lack of due competence contemplated in the third paragraph. This is strange, because while Article 36 of the Family Code is similarly worded to the third paragraph of Canon 1095, its meaning is similar to that embraced in the second paragraph.

To add to the confusion, and as was previously discussed, this Court's conceptualization of psychological incapacity became medically oriented, discussing psychological incapacity in terms of mental disorders that have to be medically or clinically identified. This is the concept of lack of sufficient use of reason under the first, not the third, paragraph of Canon 1095.

Therefore, while Article 36 of the Family Code is similarly worded to the third paragraph of Canon 1095, canonical decisions based on the second paragraph should likewise have a persuasive effect in secular decisions on psychological incapacity, if we are to avoid anomalous situations where canonically void marriages remain valid under civil law.

The above discussions notwithstanding, canonical decisions are, to reiterate, merely persuasive and not binding on secular courts. Canonical decisions are to only serve as evidence of the nullity of the secular marriage, but ultimately, the elements of declaration of nullity under Article 36 must still be weighed by the judge.

To summarize, psychological incapacity consists of clear acts of dysfunctionality that show a lack of understanding and concomitant compliance with one's essential marital obligations due to psychic causes. It is not a medical illness that has to be medically or clinically identified; hence, expert opinion is not required.

As an explicit requirement of the law, the psychological incapacity must be shown to have been existing at the time of the celebration of the marriage, and is caused by a durable aspect of one's personality structure, one that was formed before the parties married. Furthermore, it must be shown caused by a genuinely serious psychic cause. To prove psychological incapacity, a party must present clear and convincing evidence of its existence.

III

Considering the foregoing, this Court finds Mario psychologically incapacitated to comply with his essential marital obligations.

Rosanna discharged the burden of proof required to nullify her marriage to Mario. Clear and convincing evidence of Mario's psychological incapacity consisted mainly of testimony on Mario's personality structure and how it was formed primarily through his childhood and adult experiences, well before he married Rosanna. In addition to Rosanna's testimony, Dr. Garcia recounted how Mario developed traits exhibiting chronic irresponsibility, impulsivity and lack of genuine remorse, lack of empathy, and sense of entitlement-behaviors manifesting his inherent psychological incapacity to comply with his essential marital obligations:

In summary, there is a Partner Relational Problem (code V61.1), which is secondary to the psychopathology of Mario Victor M. Andal 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).

His psychopathology has its root causes. There were childhood and adolescent precursors which had led to the

development of his psychological deficits.

Mario, the youngest in a brood of eight was born on December 7, 1961. His sedate father, a known businessman died when Mario was 6 years old. His mother, (sic) had to take over the family business; however, she was unable to cope so they had to sell the company. She became a top performer as a sales executive. She migrated to the U.S. His maternal grandmother, who lived with Mario and his siblings, played favorites and was very obvious about it.

His eldest brother, Alfonso the favored grandson was dominant and opinionated. Alfonso had to quit schooling due to his father's death. Alfonso was supposed to take charge of the family business but he was heavy on alcohol intake. He possessed a temper that would lead to the physical abuse of the two youngest siblings (Mario and Alberto). Another brother was also physically aggressive like Alfonso, (sic) was unable to complete college because of his heavy alcohol intake. The intelligent, generous and the talented Socorro stood as the mother to the younger siblings. Alberto, who was unable to complete his college degree in UST, is a substance user who is jobless and irresponsible.

The older siblings had difficulty coping with the change from a relatively prosperous life to a life of near poverty and difficulty coping with major responsibilities like running a company which they were not prepared for. Mario was their baby. His sisters were extra loving and patient with him. Mario is athletic and excels in swimming, football/soccer, and basketball. But[,] he is an introvert[,] i.e.,] he wasn't vocal about his innermost feelings. He was the obedient son who was made to do errands. He adores his mother and is demonstrative of his affections towards her.

Mario, (sic) is an "electronics [whiz]" whose intelligence matches the eldest brother's. He completed his primary and secondary education with the highest honors. But he messed up his third year in UP. He had very few friends in his college days. He hang (sic) around with a buddy who was heavy into drugs and alcohol even when he was still in high school. He could not concentrate on his job; although there were periods when he worked as a technician in a wire company in Switzerland. He was heart-broken when he returned to Manila in 1995.

To sum up, Mario does not have enough ego strength to effectively self-regulate and face the marital the (sic) tasks and relational stressors. Indeed, there were substrates in his development which made him feel inadequate and bitter; thus[,] the need to have power over others to save face.

Mario has a narcissistic-antisocial personality disorder. He exhibits chronic irresponsibility, impulsivity and lack of genuine remorse, Jack of empathy and a sense of entitlement. In addition, he has the propensity to be emotionally constricted and evasive. Superimposed on his personality disorder is substance use disorder with psychotic features (paranoid delusions and bizarre behavior) and aggression against people in his environ[ment]. While he may have satisfactorily endeared himself to his lone child, he miserably failed to comply with his vital marital obligations.[274] (Emphasis in the original)

Dr. Garcia reiterated these findings in her Judicial Affidavit,[275] with Mario's counsel cross-examining her on her statements.

It is true that Dr. Garcia gave the expert opinion—which, we reiterate, is no longer required but is considered here given that it was offered in evidence—without having to interview Mario. Even Dr. Garcia herself admitted during cross-examination that her psychiatric evaluation would have been more comprehensive had Mario submitted himself for evaluation.[276] However, the Court of Appeals erred in discounting wholesale Dr. Garcia's expert opinion because her methodology was allegedly "unscientific and unreliable." [277]

Unlike ordinary witnesses who must have personal knowledge of the matters they testify on,[278] expert witnesses do not testify in court because they have personal knowledge of the facts of the case. The credibility of expert witnesses does not inhere in their person;[279] rather, their testimony is sought because of their special

knowledge, skill, experience, or training[280] that ordinary persons and judges do not have.[281] Rule 130, Section 49 of the Rules of Court on the opinion of expert witness provides:

SECTION 49. Opinion of expert witness. — The opinion of a witness on a matter requiring special knowledge, skill, experience or training which he is shown to possess, may be received in evidence.

Standards for admitting expert opinion were discussed in *Tortona v. Gregorio*.^[282] In *Tortona*, a parcel of land was extrajudicially partitioned based on a deed of absolute sale bearing the thumbmark of the purported seller. The seller's heirs contested the deed for being a forgery because the seller, allegedly illiterate, could not have executed it without the knowledge and assistance of her children. As evidence, they presented the expert opinion of fingerprint examiner Eriberto B. Gomez, Jr. (Gomez) of the National Bureau of Investigation, who testified that the thumbmark on the deed of absolute sale, indeed, did not belong to the purported seller.

In their attempt to discredit Gomez and his competence, the buyer's heirs contended that the examiner was "just an ordinary employee"^[283] in the National Bureau of Investigation who collected fingerprints from applicants for clearance and took the fingerprints of those involved in crimes. In other words, Gomez allegedly lacked the necessary skill, experience, or training to be an expert on fingerprints.^[284]

The trial court nevertheless relied on the expert testimony of Gomez, declaring the deed of absolute sale a forgery.^[285] However, the Court of Appeals reversed the decision, finding that the seller's heirs failed to overcome the presumption of regularity accorded to the deed.^[286] It highlighted that the deed was a notarized document and, therefore, should be presumed genuine, and its execution due and voluntary.^[287]

In reinstating the trial court's decision, this Court gave credence to Gomez and his expert opinion. We first discussed opinions in general. According to this Court, opinions are products of personal interpretation and belief and, therefore, inherently subjective and generally inadmissible in evidence.^[288] Thus, to qualify as an expert and the opinion admitted as expert opinion, the witness must be shown to possess a special knowledge, skill, or training relevant to the matter they are testifying on, and that the opinion was rendered on the basis of any of these special criteria.^[289] This is apart from the requirement that the testimony, in itself, must be credible; that is, it must be based on "common experience and observation . . . as probable under the circumstances."^[290]

This Court in *Tortona* went on to discuss the standards for evaluating expert opinion in the United States. In *Frye v. United States*,^[291] James Alfonso Frye (Frye) was charged with second-degree murder. During trial, he offered as evidence expert testimony on the results of a systolic blood pressure deception test, or the polygraph test, to which he was subjected before trial. The prosecution objected to the offer, and it was sustained by the trial court. On appeal, Frye maintained that the trial court erred in refusing to admit the expert testimony offered in evidence.

The Court of Appeals of the District of Columbia affirmed the trial court's judgment, ruling that the systolic blood pressure test was not "sufficiently established to have gained general acceptance in the particular field in which it belongs":^[292]

Just when a scientific principle or discovery crosses the line between the experimental and demonstrable stages is difficult to define. Somewhere in this twilight zone the evidential force of the principle must be recognized, and while courts will go a long way in admitting expert testimony deduced from a well-recognized scientific principle or discovery, the thing from which the deduction is made must be sufficiently established to have gained general acceptance in the particular field in which it belongs.^[293]

For a time, the general acceptance test in *Frye* had been the standard for admitting expert opinion, until 1993, when it was overturned in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*^[294] *Daubert* involved minors Jason and

Eric Daubert who, assisted by their parents, sued Merrell Dow Pharmaceuticals, the manufacturer of a prescription anti-nausea drug called Bendectin. According to them, they were born with serious birth defects caused by the drug, which their mother ingested while pregnant with them.[295]

After discovery, Merrell Dow Pharmaceuticals moved for summary judgment, submitting in evidence expert opinion saying that Bendectin does not cause malformation in fetuses. The expert, a well-credentialed epidemiologist specializing in risks from exposure to chemical substances, arrived at his conclusion by reviewing all the literature on Bendectin and human birth defects.[296] The Dauberts opposed the motion, presenting as evidence the testimony of eight experts who were likewise well--credentialed. These experts were of the contrary opinion that Bendectin actually caused human birth defects, conducting in vitro and in vivo animal studies that showed a link between Bendectin and malformations.[297]

The District Court granted summary judgment. Applying the Frye test, it held that in vitro and in vivo animal studies have not been generally accepted by the scientific community as scientific procedures for determining causation between the ingestion of Bendectin and birth defects in humans. It thus rejected the expert opinion offered by the Dauberts.[298] The District Court's ruling was affirmed by the United States Court of Appeals for the Ninth Circuit.[299]

Reversing the lower courts' judgments, the United States Supreme Court held that the Frye test, introduced in 1923, has been overturned by the Federal Rules of Evidence, enacted by the legislature in 1975.[300] Rule 702 of the Federal Rules of Evidence provides:

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.[301]

The United States Supreme Court noted how Rule 702 does not require general acceptance for admissibility of expert opinion. Instead, the rule requires the following: first, the "knowledge" testified on must be "scientific," that is, it must be "more than subjective belief or unsupported speculation";[302] second, the specialized knowledge must be of such character that the trial judge is "able to understand the evidence or to determine a fact in issue";[303] and third, the trial judge, like a "gatekeeper," must take a firsthand look on "the scientific validity ... [or] the evidentiary relevance and reliability ... of the principles that underlie"[304] the testimony being offered as expert opinion. "The focus ... must be solely on principles and methodology, not on the conclusions they generate." [305]

On hearsay, Daubert echoed the rule in our jurisdiction that such evidence is generally inadmissible. However, if "the expert opinion [is] based on otherwise inadmissible hearsay, [it is] to be admitted only if the facts or data are 'of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject.' "[306] The United States Supreme Court thus remanded the case "for further proceedings consistent with [its] opinion"[307] in Daubert.

After discussing the standards for admitting expert opinion, this Court in Tortona ultimately held that Gomez qualified as an expert and his testimony, necessarily, as expert opinion. According to this Court, his work as a fingerprint examiner at the National Bureau of Investigation qualified him as an expert on fingerprints. Further, his conclusion—that the seller's fingerprint in the deed of absolute sale and that appearing on the specimen documents were different—was arrived at using a three-part examination done for determining whether a thumbmark was impressed by the same person.[308] The methodology he used was not shown to be unscientific and unreliable; thus, this Court relied on his expert opinion that the thumbmark on the deed did not belong to the purported seller.

Applying Tortona here, we find that Dr. Garcia was sufficiently qualified as an expert in psychiatry. She possesses the special knowledge to practice her profession, holding degrees in medicine and special education.[309] She has been practicing her profession as a physician-psychiatrist since 1990, including working at the Philippine Mental Health Association as a psychiatrist for 11 years.[310]

On the principles and methodology Dr. Garcia applied in evaluating Rosanna and Mario, she conducted a psychiatric clinical interview and mental status examination of Rosanna. She likewise interviewed Ma. Samantha and Jocelyn Genevieve, Rosanna's sister. The psychiatric clinical interview and mental status examination remain to be the principal techniques in diagnosing psychiatric disorders.[311] While ideally, the person to be diagnosed should be personally interviewed, it is accepted practice in psychiatry to base a person's psychiatric history on collateral information, or information from sources aside from the person evaluated.[312] This is usually done if the patient is not available, incapable, or otherwise refuses to cooperate, as in this case.

In any case, it cannot be said that the psychiatric evaluation of Mario was exclusively based on collateral information. Dr. Garcia likewise based her diagnosis on a personal history handwritten by Mario himself while staying at Seagulls, an "independent evidence." [313]

At any rate, this Court said in Marcos[314] that personal examination of the allegedly psychologically incapacitated spouse is "not [required] for a declaration of [nullity of marriage due to] psychological incapacity." [315] So long as the totality of evidence, as in this case, sufficiently proves the psychological incapacity of one or both[316] of the spouses, a decree of nullity of marriage may be issued.[317]

Therefore, the Court of Appeals erred in not giving credence to Dr. Garcia's expert opinion just because Mario did not appear for psychiatric evaluation.

That drug addiction is a ground for legal separation[318] will not prevent this Court from voiding the marriage in this case. A decree of legal separation entitles spouses to live separately from each other without severing their marriage bond,[319] but no legal conclusion is made as to whether the marriage is valid.[320] Therefore, it is possible that the marriage is attended by psychological incapacity of one or both spouses, with the incapacity manifested in ways that can be considered as grounds for legal separation. At any rate, so long as a party can demonstrate that the drug abuse is a manifestation of psychological incapacity existing at the time of the marriage, this should be enough to render the marriage void under Article 36 of the Family Code.

Here, the totality of evidence presented by Rosanna clearly and convincingly proved that Mario's drug abuse was of sufficient durability that antedates the marriage. Admittedly, part of marriage is accepting a person for who they are, including their addictions. However, in Mario's case, his persistent failure to have himself rehabilitated, even bringing his child into a room where he did drugs, indicates a level of dysfunctionality that shows utter disregard of his obligations not only to his wife, but to his child.

We agree with the trial court that Mario failed to render mutual help and support to his wife, failing to find gainful employment and even driving to bankruptcy the construction firm founded by Rosanna by siphoning its funds for his drug use. He failed to exercise his rights and duties as a parent to Ma. Samantha. In the words of the trial court:

... [Mario] is incapable of performing his marital obligations, particularly to observe love and respect for his wife and to render mutual help and support. [Mario] had shown utter disregard for his wife. Throughout their life together, it was [Rosanna] who mostly provided for the needs of the family. [Mario] hardly contributed to their expenses because he never bothered to look for a job. [Mario] was also using prohibited drugs. A responsible husband would not commit acts which will bring danger, dishonor or injury to [his spouse or to his family]. (Art. 72, Family Code of the Philippines). The safety and security of the family at all times is a

primordial duty of the spouse.[321]

Even assuming that Mario has since lived a drug-free life, he only did so after separating from Rosanna. This confirms Dr. Garcia's finding that his psychological incapacity was enduring relative to his long-estranged wife[322] and can manifest again if he is forced to stay with her.

All told, we find that Rosanna proved with clear and convincing evidence that Mario was psychologically incapacitated to comply with his essential marital obligations. Their marriage, therefore, is void under Article 36 of the Family Code.

IV

Void marriages are no marriages. Thus, the provisions of the Family Code on property relations between husband and wife—the systems of absolute community, conjugal partnership of gains, and separation of property—do not apply in disposing of properties that may have been acquired during the parties' cohabitation.[323] Instead, the property regime of parties to a void marriage is governed either by Article 147 or Article 148 of the Family Code, depending on whether the parties have no legal impediment to marry.[324] Article 147 provides:

ARTICLE 147. When a man and a woman who are capacitated to marry each other, live exclusively with each other as husband and wife without the benefit of marriage or under a void marriage, their wages and salaries shall be owned by them in equal shares and the property acquired by both of them through their work or industry shall be governed by the rules on co-ownership.

In the absence of proof to the contrary, properties acquired while they lived together shall be presumed to have been obtained by their joint efforts, work or industry, and shall be owned by them in equal shares. For purposes of this Article, a party who did not participate in the acquisition by the other party of any property shall be deemed to have contributed jointly in the acquisition thereof if the former's efforts consisted in the care and maintenance of the family and of the household.

Neither party can encumber or dispose by acts inter vivos of his or her share in the property acquired during cohabitation and owned in common, without the consent of the other, until after the termination of their cohabitation.

When only one of the parties to a void marriage is in good faith, the share of the party in bad faith in the co-ownership shall be forfeited in favor of their common children. In case of default of or waiver by any or all of the common children or their descendant, each vacant share shall belong to their respective surviving descendants. In the absence of descendants, such share shall belong to the innocent party. In all cases, the forfeiture shall take place upon termination of the cohabitation.

On the other hand, Article 148 provides:

ARTICLE 148. In cases of cohabitation not falling under the preceding Article, only the properties acquired by both of the parties through their actual joint contribution of money, property, or industry shall be owned by them in common in proportion to their respective contributions. In the absence of proof to the contrary, their contributions and corresponding shares are presumed to be equal. The same rule and presumption shall apply to joint deposits of money and evidences of credit.

If one of the parties is validly married to another, his or her share in the co-ownership shall accrue to the absolute community or conjugal partnership existing in such valid marriage. If the party who acted in bad faith is not validly married to another, his or her share shall be forfeited in the manner provided in the last paragraph of the preceding Article.

The foregoing rules on forfeiture shall likewise apply even if both parties are in bad faith.

On what "capacitated" in Article 147 means, this Court in *Valdes v. Regional Trial Court, Branch 102, Quezon City*[325] said:

The term "capacitated" in [Article 147] (in the first paragraph of the law) refers to the legal capacity of a party to contract marriage, i.e., any "male or female of the age of eighteen years or upwards not under any of the impediments mentioned in Articles 37 and 38" of the Code.[326] (Emphasis in the original, citation omitted)

Article 37[327] refers to incestuous marriages, while Article 38[328] refers to void marriages due to public policy.

Here, Mario and Rosanna are parties to a void marriage due to psychological incapacity. When they were married in 1995, Mario was 33 years old while Rosanna was 31. There is no showing that the marriage was incestuous or void due to public policy. They likewise lived exclusively with each other as husband and wife until they separated in 2000. Being capacitated to marry each other and having lived exclusively with each other albeit under a void marriage, Article 147 of the Family Code governs their property relations.

Under Article 147, wages and salaries earned by the parties during their cohabitation shall be equally divided between them. This is regardless of who worked to earn the wage or salary.

With respect to properties acquired during their cohabitation, the rules on co-ownership under the Civil Code govern.[329] Therefore, a property acquired during the parties' cohabitation shall be presumed to have been acquired through the parties' joint efforts. For purposes of Article 147, "joint efforts" includes a party's care and maintenance of the family and of the household. With this presumption, the parties are deemed to own the property in equal shares.

However, if a piece of property was obtained through only one party's effort, work, or industry, and there is proof that the other did not contribute through the care and maintenance of the family and of the household, the property acquired during the cohabitation shall be solely owned by the party who actually worked to acquire the property.[330]

In this case, there is proof that the Parañaque lot was not obtained by Mario and Rosanna's joint efforts, work, or industry. Rita M. Tan, Rosanna's aunt, donated the 315-square meter lot to Rosanna and her father, Rodolfo M. Tan. The Deed of Donation[331] dated August 25, 1998 provides that Rita M. Tan donated 157.50 square meters to "Rodolfo M. Tan, married to Josefina G. Leaño"[332] and to "Rosanna L. Tan-Andal, married to Mario Andal"[333] each. Transfer Certificate of Title No. 139811 covering 157.50 square meters of the Parañaque lot is under the name of "Rosanna L. Tan-Andal, of legal age, Filipino, married to Mario Andal." [334] In *Salas, Jr. v. Aguila*,[335] this Court held that "married to" only refers to the civil status of the property's registered owner.[336]

Thus, Rosanna exclusively owns half of the 315-square meter Parañaque lot. Mario has no share in this property because he did not care for and maintain the family and the household.

As for the half of the duplex house that served as the parties' family home, there is evidence that the funds used to construct the house were obtained solely through Rosanna and her father's efforts. In a promissory note[337] dated July 13, 1998, Rosanna and her father jointly loaned P2,400,000.00 from the Elena P. Tan Foundation for the construction of a house on the Parañaque lot. Although Mario signed the promissory note to give "marital consent" to Rosanna, he has no proof that he participated in acquiring the funds. He cannot be deemed to have contributed jointly in acquiring the funds since he did not care for and maintain the family and the household.

As the funds to construct the house were obtained solely through Rosanna and her father's efforts, and Mario did not care for and maintain the household, he has no share in the duplex.

V

In resolving issues of custody of minors whose parents have separated, Article 213 of the Family Code governs.[338] It states:

ARTICLE 213. In case of separation of the parents, parental authority shall be exercised by the parent designated by the Court. The Court shall take into account all relevant considerations, especially the choice of the child over seven years of age, unless the parent chosen is unfit.

No child under seven years of age shall be separated from the mother unless the court finds compelling reasons to order otherwise.

In *Pablo-Gualberto v. Gualberto*,[339] this Court held that the "separation of parents" contemplated in Article 213 may either be legal separation or separation in fact.[340] In deciding cases involving custody of a minor, the courts must consider, among others, "the previous care and devotion shown by each of the parents; their religious background, moral uprightness, home environment and time availability; [and] the [child's] emotional and educational needs." [341]

Here, Mario and Rosanna have been separated in fact since 2000. Between them, Rosanna showed greater care and devotion to Ma. Samantha. Even when they still lived together, Rosanna had been more available to her child. She raised Ma. Samantha on her own since she and Mario separated. Mario has not supported both mother and child since he separated from Rosanna, even after he had claimed that he has been living "drug-free."

With these considerations, the trial court did not err in awarding Ma. Samantha's custody to Rosanna, without prejudice to Mario's right to visit his daughter.

Nonetheless, Rosanna's parental authority over Ma. Samantha was already terminated in 2014[342] when the child reached the age of majority.[343] Ma. Samantha is now qualified and responsible for all acts of civil life[344] and, therefore, is at liberty to choose how to relate with her father.

VI

Love is founded on a promise: to seek beyond ourselves in order to enable and ennoble the other to continue to become the best version of themselves.

Being in love can be carried on the wings of poetry, announced publicly through each other's gazes. It is made real and felt with every act of unconditional care and comfort that the lover provides. Love can be beyond labels.

Marriage is not compulsory when in love; neither does it create love. Nonetheless, it remains an institution designed to provide legal and public recognition that may be well deserved not only for the couple, but also for their families existing or yet to come.

To be clear, our collective hope is that one who chooses marriage realizes that the other deserves more caring, more compassion, more kindness in the daily and banal grind of their relationship. It is in these same values of sacrifice and empathy that we will have the chance to evolve into a society that is more humane and, eventually, more just.

Yet, we are not blind to the reality that a person may be truly psychologically incapable for the other from the beginning. Should there be grave need to part for the reasons we have stated, courts can lead the way to make parting less bitter, minimize animosity, and make lives more forward-looking for those most affected. Parting is already a sorrow. It need not be more than what it already is.

WHEREFORE, the Petition for Review on Certiorari is GRANTED. The Court of Appeals' February 25, 2010 Decision and April 6, 2011 Resolution in CA-G.R. CV No. 90303 are REVERSED and SET ASIDE. The May 9, 2007 Decision of the Regional Trial Court of Parañaque City, Branch 260, in Civil Cases 01-0228 and 03-0384 is REINSTATED.

SO ORDERED.

Gesmundo, C.J., Carandang, and Rosario, JJ., concur.

Perlas-Bernabe, Hernando, Lazaro-Javier, Inting, Delos Santos, Gaerlan, and J. Lopez, JJ., please see separate concurring opinion.

Caguioa, J., please see separate opinion.

Zalameda, J., no part.

M. Lopez, J., please see concurring opinion.

[1] 310 Phil. 21 (1995) [Per J. Vitug, En Banc].

[2] 335 Phil. 664 (1997) [Per J. Panganiban, En Banc].

[3] Rollo, pp. 8-450.

[4] Id. at 71-90. The February 25, 2010 Decision was penned by Associate Justice Vicente S. E. Veloso and was concurred in by Associate Justices Francisco P. Acosta and Rodil V. Zalameda (now a Justice of this Court) of the Special Seventeenth Division, Court of Appeals, Manila.

[5] Id. at 92. The April 6, 2011 Resolution was penned by Associate Justice Vicente S. E. Veloso and was concurred in by Associate Justices Francisco P. Acosta and Rodil V. Zalameda (now a Justice of this Court) of the Former Special Seventeenth Division, Court of Appeals, Manila.

[6] Id. at 93-102. The May 9, 2007 Decision was penned by Presiding Judge Jaime M. Guray of the Regional Trial Court of Parañaque City, Branch 260.

[7] Id. at 73. Court of Appeals Decision.

[8] Id.

[9] Id. at 15-16. Petition for Review.

[10] Id. at 302. Psychiatric Evaluation.

[11] Id. at 108. Petition for Custody.

[12] Id. at 107-109. Petition for Custody, docketed as Civil Case No. 01-0228.

[13] Id. at 108.

[14] Id. at 138-164. Docketed as Civil Case No. 03-0384.

[15] Id. at 182. Report.

[16] Id.

[17] Id. at 190.

[18] Id. at 138. Petition.

[19] Id. at 139.

[20] Id.

[21] Id.

[22] Id.

[23] Id.

[24] Id.

[25] Id.

[26] Id.

[27] Id.

[28] Id.

[29] Id. at 140.

[30] Id.

[31] Id.

[32] Id.

[33] Id.

[34] Id. at 141.

[35] Id.

[36] Id.

[37] Id.

[38] Id. at 141-142.

[39] Id. at 142.

[40] Id.

[41] Id.

[42] Id. at 73.

[43] Id. at 143.

[44] Id.

[45] Id.

[46] Id.

[47] Id. at 143-144.

[48] Id. at 144.

[49] Id.

[50] Id.

[51] Id.

[52] Id. at 144-145.

[53] Id. at 145.

[54] Id.

[55] Id. at 145-146.

[56] Id. at 146.

[57] Id. at 146-147.

[58] Id. at 147.

[59] Id. at 147-148.

[60] Id. at 148.

[61] Id.

[62] Id.

[63] Id.

[64] Id.

[65] Id. at 149.

[66] Id.

[67] Id. at 297. Psychiatric Evaluation.

[68] Id. at 150. Petition. See also Deed of Donation of Real Property and Acceptance Thereof, rollo, pp. 268-271.

[69] Id. at 150. Petition.

[70] Id. at 150-151.

[71] Id. at 151.

[72] Id.

[73] Id. at 151-152.

[74] Id. at 152.

[75] Id.

[76] Id.

[77] Id. at 126. Petition for Confinement of a Drug Dependent in a Center.

[78] Id. at 128. July 28, 1999 Letter.

- [79] Id. at 130. August 4, 2000 Order.
- [80] Id. at 154-155. Petition.
- [81] Id. at 156.
- [82] Id. at 157.
- [83] Id. at 157-158.
- [84] Id. at 158.
- [85] Id.
- [86] Id.
- [87] Id. at 130. August 4, 2000 Order.
- [88] Id. at 158. Petition.
- [89] Id. at 131. January 11, 2001 Letter.
- [90] Id. at 159. Petition.
- [91] Id. at 160.
- [92] Id. at 163.
- [93] Id. at 283-288.
- [94] Id. at 296-297. Psychiatric Evaluation.
- [95] Id. at 286. Judicial Affidavit.
- [96] Id.
- [97] Id.
- [98] Id. at 287.
- [99] Id.
- [100] Id.
- [101] Id.
- [102] Id.
- [103] Id.
- [104] CA rollo, pp. 1286 and 1292-1293. Original Transcript of Stenographic Notes.
- [105] Id. at 1281-1282.
- [106] Rollo, p. 166. Answer.
- [107] Id.
- [108] Id.
- [109] Id. at 166-167.

[110] Id. at 167.

[111] Id.

[112] Id. at 168.

[113] Id.

[114] Id. at 168-169.

[115] Id. at 169.

[116] Id.

[117] Id. at 169 170.

[118] Id. at 170-171.

[119] Id. at 170.

[120] Id. at 171.

[121] Id. at 172-173.

[122] Id. at 93-102.

[123] Id. at 99-100.

[124] Id. at 100-101.

[125] Id. at 331-336.

[126] Id. at 370-371.

[127] Id. at 84.

[128] Id.

[129] Id. at 86 and 88.

[130] Id. at 71-90.

[131] Id. at 89.

[132] CA rollo, pp. 251-286.

[133] Rollo, p. 92.

[134] Id. at 8-450.

[135] Id. at 463-478.

[136] Id. at 479-494.

[137] Id. at 523-524.

[138] Id. at 557-558. September 24, 2019 Resolution.

[139] Id. at 567-570. November 5, 2019 Resolution.

[140] Dean Estrada-Claudio is the Dean of the University of the Philippines College of Social Work and

Community Development.

[141] Professor Sta. Maria is the Dean of the Far Eastern University Institute of Law and Professor of Civil Law at the Ateneo Law School.

[142] Fr. Dacanay is a Doctor of Canon Law and Judge of the Metropolitan Tribunal of the Archdiocese of Manila.

[143] Rollo, pp. 567-570. November 5, 2019 Resolution.

[144] Id. at 849-921, Memorandum for Petitioner, and pp. 691-721 Memorandum for Respondent.

[145] Id. at 591-681.

[146] 335 Phil. 664 (1997) [Per J. Panganiban, En Banc].

[147] 310 Phil. 21 (1995) [Per J. Vitug, En Banc].

[148] Id. at 28-34. Petition.

[149] 629 Phil. 157 (2010) [Per J. Brion, Second Division].

[150] Rollo, pp. 882-883 and 876-877, Memorandum for Petitioner.

[151] Id. at 890. Memorandum for Petitioner.

[152] Id. at 893.

[153] Id. at 895.

[154] Tani-De La Fuente v. De La Fuente, 807 Phil. 31 (2017) [Per J. Leonen, Second Division]; Mendoza v. Republic, 698 Phil. 241 (2012) [Per J. Bersamin, First Division]; Camacho-Reyes v. Reyes, 642 Phil. 602 (2010) [Per J. Nachura, Second Division]; Ting v. Velez-Ting, 601 Phil. 676 (2009) [Per J. Nachura, Third Division].

[155] Rollo, p. 899. Memorandum for Petitioner.

[156] Id. at 899-900.

[157] Id. at 900.

[158] Id. at 900-903.

[159] 836 Phil. 1266 (2018) [Per J. Gesmundo, Third Division].

[160] Rollo, pp. 902-903. Memorandum for Petitioner.

[161] Id. at 903-904.

[162] Id. at 904-912.

[163] Id. at 466-468, Comment, and pp. 702-712, Memorandum for Respondent.

[164] FAMILY CODE, art. 55(5) provides:

Art. 55. A petition for legal separation may be filed on any of the following grounds:

....

(5) Drug addiction or habitual alcoholism of the respondent[.]

- [165] Rollo, pp. 466-468, Comment, and pp. 708-709, Memorandum for Respondent.
- [166] *Id.* at 712-713, Memorandum for Respondent.
- [167] *Id.* at 714.
- [168] 397 Phil. 840 (2000) [Per J. Panganiban, Third Division].
- [169] 612 Phil. 1061, 1078 (2009) [Per J. Brion, Second Division].
- [170] Rollo, pp. 714-715. Memorandum for Respondent.
- [171] *Id.* at 715-716.
- [172] *Id.* at 716.
- [173] *Id.* at 472, Comment, and 716-718, Memorandum for Respondent.
- [174] 310 Phil. 21 (1995) [Per J. Vitug, En Banc].
- [175] *Id.* at 36.
- [176] *Id.*, citing *Salita v. Magtolis*, G.R. No. 106429, June 13, 1994. See also *Republic v. Court of Appeals and Molina*, 335 Phil. 664, 677 (1997) [Per J. Panganiban, En Banc].
- [177] *Id.* at 40.
- [178] *Id.*
- [179] *Id.* at 39.
- [180] 335 Phil. 664 (1997) [Per J. Panganiban, En Banc].
- [181] *Id.* at 676-679. The eighth guideline on the certification from the Solicitor General briefly stating his or her reasons for agreeing or opposing the petition for declaration of nullity of marriage on the ground of psychological incapacity has been dispensed with under A.M. No. 02-11-10-SC (Re: Proposed Rule on Declaration of Absolute Nullity of Void Marriages and Annulment of Voidable Marriage). See *Padilla Rumbaua v. Rumbaua*, 612 Phil. 1061, 1078 (2009) [Per J. Brion, Second Division]; *Navales v. Navales*, 578 Phil. 826, 839 (2008) [Per J. Austria-Martinez, Third Division]; *Tongol v. Tongol*, 562 Phil. 725, 735 (2007) [Per J. Austria-Martinez, Third Division]; *Antonio v. Reyes*, 519 Phil. 337, 358 (2006) [Per J. Tinga, Third Division]; *Carating-Siayngco v. Siayngco*, 484 Phil. 396, 410 (2004) [Per J. Chico-Nazario, Second Division].
- [182] *Navales v. Navales*, 578 Phil. 826 (2008) [Per J. Austria-Martinez, Third Division]; *Narvarro, Jr. v. Cecilio-Navarro*, 549 Phil. 632 (2007) [Per J. Quisumbing, Second Division]; *Tongol v. Tongol*, 562 Phil. 725 (2007) [Per J. Austria-Martinez, Third Division]; *Republic v. Tanyag-San Jose*, 545 Phil. 725 (2007) [Per J. Carpio Morales, Second Division]; *Antonio v. Reyes*, 519 Phil. 337 (2006) [Per J. Tinga, Third Division]; *Republic v. Iyay*, 507 Phil. 485 (2005) [Per J. Chico-Nazario, Second Division]; *Republic v. Quintero-Hamano*, G.R. No. 149498, May 20, 2004 [Per J. Corona, Third Division]; *Ancheta v. Ancheta*, 468 Phil. 900 (2004) [Per J. Callejo, Sr., Second Division]; *Choa v. Choa*, 441 Phil. 175 (2002) [Per J. Panganiban, Third Division]; *Pesca v. Pesca*, 408 Phil. 713 (2001) [Per J. Vitug, Third Division]; *Republic v. Dagdag*, 404 Phil. 249 (2001) [Per J. Quisumbing, Second Division]; *Marcos v. Marcos*, 397 Phil. 840 (2000) [Per J. Panganiban, Third Division]; *Hernandez v. Court of Appeals*, 377 Phil. 919 (1999) [Per J. Mendoza, Second Division].
- [183] 519 Phil. 337 (2006) [Per J. Tinga, Third Division].

[184] Another case where the parties successfully obtained a decree of nullity of marriage due to psychological incapacity was *Chi Ming Tsoi v. Court of Appeals*, 334 Phil. 294 (1997) [Per J. Torres, Jr., Second Division]. However, *Chi Ming Tsoi* was not decided under the *Molina* guidelines. This Court had yet to promulgate *Molina* when *Chi Ming Tsoi* was decided. In *Chi Ming Tsoi*, this Court ruled that "[a party's] refusal [to consummate his or her marriage] is ... psychological incapacity," procreation being "the basic end of marriage."

[185] 598 Phil. 666 (2009) [Per J. Nachura, Third Division].

[186] *Id.* at 669.

[187] *Id.* at 695-696.

[188] 750 Phil. 482 (2015) [Per J. Bersamin, Special First Division].

[189] *Id.* at 499-500.

[190] 334 Phil. 294 (1997) [Per J. Torres, Jr., Second Division].

[191] 519 Phil. 337 (2006) [Per J. Tinga, Third Division].

[192] 598 Phil. 666 (2009) [Per J. Nachura, Third Division].

[193] 750 Phil. 482 (2015) [Per J. Bersamin, Special First Division].

[194] 606 Phil. 177 (2009) [Per J. Leonardo-de Castro, First Division].

[195] 607 Phil. 1 (2009) [Per J. Corona, Special First Division].

[196] 642 Phil. 602 (2010) [Per J. Nachura, Second Division].

[197] 665 Phil. 693 (2011) [Per J. Peralta, Second Division].

[198] 807 Phil. 31 (2017) [Per J. Leonen, Second Division].

[199] G.R. No. 210518, April 18, 2018 [Per J. Reyes, Jr. Second Division].

[200] G.R. No. 236629, July 23, 2018 [Per J. Gesmundo, Third Division].

[201] As of date, the following are the cases on psychological incapacity resolved via a signed decision or signed resolution by this Court. *Simundac-Keppel v. Keppel*, G.R. No. 202039, August 14, 2019, <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65677>> [Per C.J. Bersamin, First Division]; *Eliscupidez v. Eliscupidez*, G.R. No. 226907, July 22, 2019, <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65547>> [Per J. Peralta, Third Division]; *Cahapisan-Santiago v. Santiago*, G.R. No. 241144, June 26, 2019, <<https://elibrary.judiciary.gov.ph/thebookshelf/docmonth/Jun/2019/1>> [Per J. Perlas-Bernabe, Second Division]; *Cortez v. Correz*, G.R. No. 224638, April 10, 2019, <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65103>> [Per J. Peralta, Third Division]; *Go-Yu v. Yu*, G.R. No. 230443, April 3, 2019, <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65062>> [Per J. Peralta, Third Division]; *Republic v. Deang*, G.R. No. 236279, March 25, 2019, <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65071>> [Per J. Perlas-Bernabe, Second Division]; *Republic v. Tecag*, G.R. No. 229272, November 19, 2018, <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64764>> [Per J. Perlas-Bernabe, Second Division]; *Republic v. Mola Cruz*, G.R. No. 236629, July 23, 2018, <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64585>> [Per J. Gesmundo, Third Division]; *Republic*

v. Javier, 830 Phil. 213 (2018) [Per J. Reyes, Jr. Second Division]; Espina-Dan v. Dan, 829 Phil. 605 (2018) [Per J. Del Castillo, First Division]; Republic v. Tobora-Tionglico, 823 Phil. 672 (2018) [Per J. Tijam, First Division]; Lontoc-Cruz v. Cruz, 820 Phil. 62 (2017) [Per J. Del Castillo, First Division]; Bakunawa III v. Bakunawa, 816 Phil. 649 (2017) [Per J. Reyes, Jr., Third Division]; Garlet v. Garlet, 815 Phil. 268 (2017) [Per J. Leonardo-De Castro, First Division]; Tani-De La Fuente v. De La Fuente, 807 Phil. 31 (2017) [Per J. Leonen, Second Division]; Del Rosario v. Del Rosario, 805 Phil. 978 (2017) [Per J. Perlas-Bernabe, First Division]; Castillo v. Republic, 805 Phil. 209 (2017) [Per J. Peralta, Second Division]; Matudan v. Republic, 799 Phil. 449 (2016) [Per J. Del Castillo, Second Division]; Republic v. Pangasinan, 792 Phil. 808 (2016) [Per J. Velasco, Jr. Third Division]; Republic v. Spouses Romero, 781 Phil. 737 (2016) [Per J. Perlas-Bernabe, First Division]; Mallilin v. Jamesolamin, 754 Phil. 158 (2015) [Per J. Mendoza, Second Division]; Viñas v. Parel-Viñas, 751 Phil. 762 (2015) [Per J. Reyes, Third Division]; Kalaw v. Fernandez, 750 Phil. 482 (2015) [Per J. Bersamin, Special First Division]; Republic v. De Gracia, 726 Phil. 502 (2014) [Per J. Perlas-Bernabe, Second Division]; Republic v. Encelan, 701 Phil. 192 (2013) [Per J. Brion, Second Division]; Mendoza v. Republic and Mendoza, 698 Phil. 241 (2012) [Per J. Bersamin, First Division]; Republic v. The Hon. Court of Appeals (Ninth Division) and De Quintos, Jr., 698 Phil. 257 (2012) [Per J. Bersamin, First Division]; Republic v. Galang, 665 Phil. 658 (2011) [Per J. Brion, Third Division]; Ochoa v. Alana and Republic, 655 Phil. 512 (2011) [Per J. Leonardo-de Castro, First Division]; Yambao v. Republic and Yambao, 655 Phil. 346 (2011) [Per J. Nachura, Second Division]; Marable v. Marable, 654 Phil. 528 (2011) [Per J. Villarama, Jr., Third Division]; Agraviador v. Amparo-Agraviador, 652 Phil. 49 (2010) [Per J. Brion, Third Division]; Baccay v. Baccay and Republic, 0651 Phil. 68 (2010) [Per J. Villarama, Jr., Third Division]; Camacho-Reyes v. Reyes, 642 Phil. 602 (2010) [Per J. Nachura, Second Division]; Taring v. Taring and Republic, 640 Phil. 434 (2010) [Per J. Brion, Third Division]; Ligeralde v. Patalinghug, 632 Phil. 326 (2010) [Per J. Mendoza, Third Division]; Suazo v. Suazo, 629 Phil. 157 (2010) [Per J. Brion, Second Division]; Paz v. Paz, 627 Phil. 1 (2010) [Per J. Carpio, Second Division]; Lim v. Sta. Cruz-Lim, 625 Phil. 407 (2010) [Per J. Nachura, Third Division]; Aspillaga v. Aspillaga, 619 Phil. 434 (2009) [Per J. Quisumbing, Second Division]; Padilla-Rumbaua v. Rumbaua, 612 Phil. 1061 (2009) [Per J. Brion, Second Division]; Najera v. Najera, 609 Phil. 316 (2009) [Per J. Peralta, Third Division]; Halili v. Santos-Halili, 607 Phil. 1 (2009) [Per J. Corona, Special First Division]; So v. Valera, 606 Phil. 309 (2009) [Per J. Brion, Second Division]; Azcueta v. Republic, 606 Phil. 177 (2009) [Per J. Leonardo-De Castro, First Division]; Ting v. Velez-Ting, 601 Phil. 676 (2009) [Per J. Nachura, Third Division]; Ngo-Te v. Yu Te, 598 Phil. 666 (2009) [Per J. Nachura, Third Division]; Navales v. Navales, 578 Phil. 826 (2008) [Per J. Austria-Martinez, Third Division]; Navarro, Jr. v. Cecilia-Navarro, 549 Phil. 632 (2007) [Per J. Quisumbing, Second Division]; Tongol v. Tongol, 562 Phil. 725 (2007) [Per J. Austria-Martinez, Third Division]; Republic v. Tanyag-San Jose, 545 Phil. 725 (2007) [Per J. Carpio Morales, Second Division]; Antonio v. Reyes, 519 Phil. 337 (2006) [Per J. Tinga, Third Division]; Republic v. Iyoy, 507 Phil. 485 (2005) [Per J. Chico-Nazario, Second Division]; Republic v. Quintero-Hamano, G.R. No. 149498, May 20, 2004 [Per J. Corona, Third Division]; Dedel v. Court of Appeals, 466 Phil. 226 (2004) [Per J. Ynares-Santiago, First Division]; Pesca v. Pesca, 408 Phil. 713 (2001) [Per J. Vitug, Third Division]; Republic v. Dagdag, 404 Phil. 249 (2001) [Per J. Quisumbing, Second Division]; Marcos v. Marcos, 397 Phil. 840 (2000) [Per J. Panganiban, Third Division]; Hernandez v. Court of Appeals, 377 Phil. 919 (1999) [Per J. Mendoza, Second Division]; Republic v. Court of Appeals and Molina, 335 Phil. 664 (1997) [Per J. Panganiban, En Banc]; Chi Ming Tsoi v. Court of Appeals, 334 Phil. 294 (1997) [Per J. Torres, Jr., Second Division]; and Santos v. Court of Appeals, 310 Phil. 21 (1995) [Per J. Vitug, En Banc].

[202] CONST., art. XV, sec. 2 provides:

SECTION 2. Marriage, as an inviolable social institution, is the foundation of the family and shall be protected by the State.

[203] See *Republic v. Deang*, G.R. No. 236279, March 25, 2019 [Per J. Perlas-Bernabe, Second Division]; *Republic v. Tecag*, G.R. No. 229272, November 19, 2018 [Per J. Perlas-Bernabe, Second Division]; *Republic v. Tobora-Tionglico*, G.R. No. 21860, January 11, 2018 [Per J. Tijam, First Division]; *Republic v. Spouses Romero*, 781 Phil. 737 (2016) [Per J. Perlas-Bernabe, First Division]; *Republic v. De Gracia*, 726 Phil. 502 (2014) [Per J. Perlas-Bernabe, Second Division]; *Republic v. Pangasinan*, G.R. No. 214077, August 10, 2016 [Per J. Velasco, Jr. Third Division]; *Republic v. Encelan*, 701 Phil. 192 (2013) [Per J. Brion, Second Division]; *Republic v. Court of Appeals and De Quintos, Jr.*, 698 Phil. 258 (2012) [Per J. Bersamin, First Division]; *Republic v. Galang*, 665 Phil. 658 (2011) [Per J. Brion, Third Division]; *Navales v. Navales*, 578 Phil. 826 (2008) [Per J. Austria-Martinez, Third Division]; *Tongol v. Tongol*, 562 Phil. 725 (2007) [Per J. Austria-Martinez, Third Division]; *Republic v. Quintero-Hamano*, 472 Phil. 807 (2004) [Per J. Corona, Third Division]; *Republic v. Dagdag*, 404 Phil. 249 (2001) [Per J. Quisumbing, Second Division]; *Republic v. Iyoy*, 507 Phil. 485 (2005) [Per J. Chico-Nazario, Second Division]; *Republic v. Court of Appeals and Molina*, 335 Phil. 664 (1997) [Per J. Panganiban, En Banc].

[204] *Republic v. Court of Appeals and Molina*, 335 Phil. 664-693 (1997) [Per J. Panganiban, En Banc].

[205] *Antonio v. Reyes*, 519 Phil. 337 (2006) [Per J. Tinga, Third Division].

[206] See *Spouses Manalo v. Roldan-Confesor*, 290 Phil. 311 (1992) [Per J. Bellosillo, First Division].

[207] 43 Phil. 438 (1922) [Per J. Malcolm, En Banc], cited in *J. Perlas-Bernabe, Concurring Opinion*, p. 34.

[208] *Id.* at 43-58.

[209] *Alcantara-Daus v. Spouses De Leon*, 452 Phil. 92 (2003) [Per J. Panganiban, Third Division], cited in *J. Perlas-Bernabe's Concurring Opinion*, p. 34.

[210] See *Yap v. Lagtapon*, 803 Phil. 652 (2017) [Per J. Caguioa, First Division], cited in *J. Perlas-Bernabe's Concurring Opinion*, p. 34.

[211] See *Spouses Espinoza v. Spouses Mayandoc*, 812 Phil. 95 (2017), cited in *J. Perlas-Bernabe's Concurring Opinion*, p. 35.

[212] See *Sepe v. Heirs of Kilang*, G.R. No. 199766, April 10, 2019, <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65300>> [Per J. Caguioa, Second Division], cited in *J. Perlas-Bernabe's Concurring Opinion*, p. 35.

[213] *Antonio v. Reyes*, 519 Phil. 337, 371 (2006) [Per J. Tinga, Third Division].

[214] *Ngo-Te v. Yu Te*, 598 Phil. 666 (2009) [Per J. Nachura, Third Division].

[215] *Id.* at 698-699 (2009) [Per J. Nachura, Third Division].

[216] 750 Phil. 482, 501 (2015) [Per J. Bersamin, Special First Division].

[217] *Id.* at 501.

[218] CONST., art. II, sec. 12.

[219] *J. Leonen, Dissenting Opinion in Mallilin v. Jamesolamin*, 754 Phil. 158, 203-204 (2015) [Per J. Mendoza, Second Division].

[220] *Santos v. Court of Appeals*, 310 Phil. 21-49 (1995) [Per J. Vitug, En Banc].

[221] *Id.* at 40.

[222] Id. at 30. One of the earlier drafts of Article 36 read as follows:

Article 36. — ...

(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.

[223] Id. at 35.

[224] Id. at 34.

[225] Amicus Curiae Brief of Dean Estrada-Claudio, p. 1.

[226] Id. at 6.

[227] 397 Phil. 840 (2000) [Per J. Panganiban, Third Division].

[228] Id. at 850.

[229] Id.

[230] Id.

[231] See *Eliscupidez v. Eliscupidez*, G.R. No. 226907, July 22, 2019, 909 SCRA 607, 222 [Per J. Peralta, Third Division].

[232] Amicus Curiae Brief of Dean Sylvia Estrada-Claudio, p. 2.

[233] See B. VAN DER KOLK, M.D., *THE BODY KEEPS THE SCORE, BRAIN, MIND, AND BODY IN THE HEALING OF TRAUMA* (2014).

[234] Amicus Curiae Brief of Dean Estrada-Claudio, p. 4.

[235] Id. at 4.

[236] *Santos v. Court of Appeals*, 310 Phil. 21, 33 (1995) [Per J. Vitug, En Banc].

[237] J. M. V. Lopez, Concurring Opinion, p. 4.

[238] Id. at 5.

[239] Id.

[240] J. Perlas-Bernabe, Concurring Opinion, p. 26.

[241] *Republic v. Court of Appeals and Molina*, 335 Phil. 664, 678 (1997) [Per J. Panganiban, En Banc].

[242] Id.

[243] Id.

[244] J. Perlas-Bernabe, Concurring Opinion, p. 32.

[245] Id. at 26.

[246] CONST., art. XV, sec. 2.

[247] See *Estrada v. Escritor*, 455 Phil. 411 (2003) [Per J. Puno, En Banc].

[248] J. Perlas-Bernabe, Concurring Opinion, p. 3.

[249] M.A.C. Dizon, Psychological Incapacity and the Canon Law on Marriage: An Exegesis on the Psychological Element of Matrimonial Consent, 75 P.L.J. 365 (2000).

[250] *Id.* at 367.

[251] *Id.* at 367-368.

[252] *Id.* at 368.

[253] FAMILY CODE, art. 1.

[254] This guideline only applies to spouses married under Catholic rites.

[255] See J. Leonen, Dissenting Opinion in *In Re: Letter of Valenciano, Holding of Religious Rituals at the Hall of Justice Bldg. in Q.C.*, 806 Phil. 786 (2017) [Per J. Mendoza, En Banc].

[256] *Santos v. Court of Appeals*, 310 Phil. 21 (1995) [Per J. Vitug, En Banc].

[257] See Code of Canon Law, available at <https://www.vatican.va/archive/cod-juris-canonici/eng/documents/cic_lib4-cann998-1165_en.html#TITLE_VII> (last accessed on April 1, 2021).

[258] *Antonio v. Reyes*, 519 Phil. 337, 354 (2006) [Per J. Tinga, Third Division].

[259] *Id.* at 371.

[260] M.A.C. Dizon, Psychological incapacity and the Canon Law on Marriage: An Exegesis on the Psychological Element of Matrimonial Consent, 75 P.L.J. 365 (2000).

[261] *Id.* at 366.

[262] *Id.* at 369.

[263] *Id.*

[264] *Id.*

[265] *Id.* at 376.

[266] *Id.* at 372.

[267] *Id.*

[268] *Id.*

[269] *Id.* at 374.

[270] *Id.*

[271] *Id.*

[272] *Id.* at 376-377.

[273] *Id.* at 377.

[274] Rollo, pp. 315-316.

[275] *Id.* at 286-288.

[276] Original Transcript of Stenographic Notes, p. 1287.

[277] Rollo, p. 84.

[278] RULES OF COURT, Rule 130, sec. 20.

[279] *Tortona v. Gregorio*, 823 Phil. 980 (2018) [Per J. Leonen, Third Division].

[280] RULES OF COURT, Rule 130, Sec. 49.

[281] See V.C. RAMIREZ, *THE LAW ON MARRIAGE* 181 (3[rd] ed., 2011).

[282] 823 Phil. 980 (2018) [Per J. Leonen, Third Division].

[283] *Id.* at 993.

[284] *Id.*

[285] *Id.* at 987.

[286] *Id.* at 988-989.

[287] *Id.* at 989.

[288] *Id.* at 994.

[289] *Id.* at 995.

[290] *Id.* citing *Borguilla v. Court of Appeals*, 231 Phil. 9 (1987) [Per J. Paras, Second Division].

[291] 54 App. D.C. 46, 293 F. 1013 (1923) cited in *Tortona v. Gregorio*, 823 Phil. 980 (2018) [Per J. Leonen, Third Division].

[292] *Tortona v. Gregorio*, 823 Phil. 980, 1001 (2018) [Per J. Leonen, Third Division].

[293] *Id.*

[294] 509 U.S. 579, 113 S.Ct. 2786 (1993) cited in *Tortona v. Gregorio*, 823 Phil. 980 (2018) [Per J. Leonen, Third Division].

[295] *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 582 (1993).

[296] *Id.*

[297] *Id.* at 583.

[298] *Id.* at 583-584.

[299] *Id.* at 584.

[300] *Id.* at 586-589.

[301] *Id.* at 588 as cited in *Tortona v. Gregorio*, 823 Phil. 980 (2018) [Per J. Leonen, Third Division].

[302] *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 590 (1993).

[303] Id. at 591.

[304] Id. at 595-596.

[305] Id. at 595.

[306] Id.

[307] Id. at 598.

[308] V.C. RAMIREZ, THE LAW ON MARRIAGE 181 (3[rd] ed., 2011).

[309] Rollo, p. 283. Judicial Affidavit.

[310] Id. at 284.

[311] See B.J. SADOCK, M.D. AND V.A. SADOCK, M.D. KAPLAN & SADOCK'S SYNOPSIS OF PSYCHIATRY BEHAVIORAL SCIENCE/CLINICAL PSYCHIATRY 229-245 (9[th] ed., 2003).

[312] Id. at 229.

[313] Rollo, p. 85, Court of Appeals Decision.

[314] Marcos v. Marcos, 397 Phil. 840 (2000) [Per J. Panganiban, Third Division]. See also V.C. RAMIREZ, JR., THE LAW ON MARRIAGE 170-172 (3[rd] ed., 2011), where a clinical psychologist explained how a personal examination of one spouse is sufficient to evaluate "the psychological capacity to contract marriage of the other spouse." Through projection, identification, and introjection, a spouse "would reveal the interpersonal relations between the spouses... [and] the characteristics each spouse has acquired from the other." The expert would then "distinguish which of the characteristics are not acquired and, therefore, inherent, and which are acquired and therefore, not inherent."

[315] Id. at 850.

[316] Ngo Te v. Yu-Te, 598 Phil. 666 (2009) [Per J. Nachura, Third Division].

[317] Marcos v. Marcos, 397 Phil. 840, 850 (2000) [Per J. Panganiban, Third Division].

[318] FAMILY CODE, art. 55(5) provides:

Art. 55. A petition for legal separation may be filed on any of the following grounds:

....

(5) Drug addiction or habitual alcoholism of the respondent[.]

[319] FAMILY CODE, art. 63(1).

[320] See Amicus Curiae Brief of Dean Sta. Maria, pp. 19-20.

[321] Rollo, p. 99. RTC Decision.

[322] Id. at 288. Judicial Affidavit.

[323] Valdes v. RTC, Br. 102, Quezon City, 328 Phil. 1289, 1299-1304 (1996) [Per J. Vitug, First Division].

[324] Id. at 1295.

[325] 328 Phil. 1289 (1996) [Per J. Vitug, First Division].

[326] *Id.* at 1296.

[327] FAMILY CODE, art. 37 provides:

Art. 37. Marriages between the following are incestuous and void from the beginning, whether relationship between the parties be legitimate or illegitimate:

- (1) Between ascendants and descendants of any degree; and
- (2) Between brothers and sisters, whether of the full or half blood.

[328] FAMILY CODE, art. 38 provides:

Art. 38. The following marriages shall be void from the beginning for reasons of public policy:

- (1) Between collateral blood relatives whether legitimate or illegitimate, up to the fourth civil degree;
- (2) Between step-parents and step-children;
- (3) Between parents-in-law and children-in-law;
- (4) Between the adopting parent and the adopted child;
- (5) Between the surviving spouse of the adopting parent and the adopted child;
- (6) Between the surviving spouse of the adopted child and the adopter;
- (7) Between an adopted child and a legitimate child of the adopter;
- (8) Between adopted children of the same adopter; and
- (9) Between parties where one, with the intention to marry the other, killed that other person's spouse, or his or her own spouse.

[329] *Valdes v. RTC*, Br. 102, Quezon City, 328 Phil. 1289, 1297 (1996) [Per J. Vitug, First Division].

[330] *Id.*

[331] *Rollo*, pp. 268-271.

[332] *Id.* at 268.

[333] *Id.*

[334] *Id.* at 272.

[335] 718 Phil. 274 (2013) [Per J. Carpio, Second Division].

[336] *Id.* at 283.

[337] *Rollo*, p. 274.

[338] *Pablo-Gualberto v. Gualberto*, 500 Phil. 226 (2005) [Per J. Panganiban, Third Division].

[339] *Id.*

[340] *Id.* at 246.

[341] *Id.* at 250.

[342] Ma. Samantha was born in 1996. See *rollo*, p. 73, Court of Appeals Decision.

[343] FAMILY CODE, art. 234, as amended by Republic Act No. 6809 (1989), provides:

Article 234. Emancipation takes place by the attainment of majority. Unless otherwise provided, majority commences at the age of eighteen years.

[344] FAMILY CODE, art. 236, as amended by Republic Act No. 6809 (1989), provides:

Article 236. Emancipation shall terminate parental authority over the person and property of the child who shall then be qualified and responsible for all acts of civil life, save the exceptions established by existing laws in special cases.

Contracting marriage shall require parental consent until the age of twenty-one.

Nothing in this Code shall be construed to derogate from the duty or responsibility of parents and guardians for children and wards below twenty-one years of age mentioned in the second and third paragraphs of Article 2180 of the Civil Code.

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 1095[3] of the New Code of Canon Law from which Article 36 was lifted by its framers — the Molina guidelines 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:

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 illumined 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]

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 5, 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 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 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 x [26] (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 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 Opinion [31] 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 Opinion [33] 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 effectivity, 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 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 psychically ill to such an extent that the person could not have known the obligations he was assuming, or knowing them, could not have given valid assumption thereof. Although no example of such incapacity need be given here so as not to limit the application of the provision under the principle of ejusdem generis, nevertheless such root cause must be identified as a psychological illness and its incapacitating nature fully explained. Expert evidence may be given by qualified psychiatrists and clinical psychologists. [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.

(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 case^[49] 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 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 cases [60] 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 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 *eiusdem 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 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 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)

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]

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 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 x[85] (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 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 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:

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 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."

X X X X

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 defect-; 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.

x x x x

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 commentaries[102] which mention that Article 36 was understood by some of the framers to be a fusion between paragraphs 2 (lack 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

Canon 1095. They are incapable of contracting marriage:

3. who for causes of psychological nature are unable to assume the essential obligations of marriage.

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)

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 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]

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, 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, 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 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 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 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 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 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.

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 225[134] 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 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 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 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 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 Report^[150] 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 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 x[169]

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.

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

[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:

- who lack the sufficient use of reason;
- who suffer from grave lack of discretion of judgment concerning essential matrimonial rights and duties which are to be mutually given and accepted;
- 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:

- who lack sufficient use of reason;
- who suffer from a grave defect of discretion of judgment concerning essential matrimonial rights and duties, to be given and accepted mutually;
- who for causes of psychological nature are unable to assume the essential obligations of marriage. (emphasis supplied)

[4] Molina, *supra* at 677.

[5] Id.

[6] Id.

[7] Santos, *supra*.

[8] Id. at 37; emphasis and underscoring supplied.

[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.

[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.

[21] Id. at 1-2.

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

[23] Id. at 30.

[24] Id.

[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.

[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.

[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.

[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.

[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.

[62] *Id.*

[63] 750 Phil. 482 (2015).

[64] *Id.* at 495-496.

[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.

[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.

[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:

- who lack the sufficient use of reason;
- who suffer from grave lack of discretion of judgment concerning essential matrimonial rights and duties which are to be mutually given and accepted;
- 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 <<http://www.canonlawsocietyofindia.org/research/persons-incompetent-to-contract-marriage/>> [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.

[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.

[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.

[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.

[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).

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

[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.

[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.

[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.

[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.

[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.

[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.

[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.

[125] Emphases supplied.

[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.

[128] Id. at 533-535.

[129] FAMILY COURT, Article 36; emphasis supplied.

[130] Molina, *supra* note 2, at 678.

[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 P50,000, 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.

[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); *Azcuenta v. Republic*, 606 Phil. 177 (2009); *Ngo Te*, supra note 52; and *Antonio v. Reyes*, supra note 17.

[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.

[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.
- [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.
- [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.
- [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.
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SEPARATE OPINION

CAGUIOA, J.:

I concur in the result.

I agree that Article 147 of the Family Code governs the property relations of the parties, and that Rosanna exclusively owns half of the 315-square meter portion of the Parañaque lot donated in her favor, as well as the duplex built thereon which served as the parties' family home. I find that Rosanna presented sufficient evidence to prove that Mario neither cared for the family nor maintained the household, and that the family home had been constructed exclusively using funds which Rosanna and her father borrowed.

As well, I agree that the issue on custody is now moot and academic since the parties' daughter, Ma. Samantha (Samantha), already reached the age of majority in 2014.

Further, I agree that the Court of Appeals (CA) erred in reversing the Decision of the Regional Trial Court (RTC) of Parañaque that had declared the marriage of petitioner Rosanna L. Tan-Andal (Rosanna) and respondent Mario Victor M. Andal (Mario) null and void based on Article 36 of the Family Code. I find that Rosanna sufficiently established that Mario was psychologically incapacitated at the time of the celebration of the marriage, even under the parameters of *Republic v. Court of Appeals and Molina*[1] (Molina) as presently applied.

I share the ponencia's observations with respect to the overly restrictive application of the Molina guidelines. As will be explained in detail below, the Molina guidelines merely serve to identify, with particularity, the factors which the trial courts may consider as evidence of psychological incapacity. These guidelines were intended precisely to serve as a guide to assist the courts in ascertaining whether the totality of evidence proves that one or both of the parties were incapable of understanding and complying with the essential marital obligations at the time of the celebration of the marriage. However, contrary to this purpose, the Molina guidelines have been erroneously treated as a rigid checklist, resulting in the adoption of a "strait-jacket" interpretation of psychological incapacity — an interpretation diametrically opposed to its underlying legislative intent. For this reason, I agree that the Molina guidelines should be clarified in light of the framers' intent to make psychological incapacity a resilient and flexible legal concept.

However, while I agree with the ponencia's reformulation of the first second, and fourth Molina guidelines, I wish to express my reservations with respect to the reasons cited by the ponencia as basis for such reformulation.

First, while I concur that the quantum of proof required in nullity cases should be clear and convincing evidence, I disagree that this requirement stems from the presumption of validity accorded to marriages. Rather, I submit that this higher quantum of proof is primarily premised on the State's policy to protect marriage as a special contract of permanent union and an inviolable social institution.[2]

Second, while I likewise concur with the ponencia's reformulation of the second and fourth Molina guidelines, I wish to stress that my concurrence is grounded solely on the spirit and intent of Article 36 as reflected in the deliberations of the Joint Civil Code Revision and Family Law Committee (Joint Committee). This reformulation does not redefine psychological incapacity as a less stringent ground for nullity of marriage. Rather, it clarifies how psychological incapacity should be understood and applied in a manner that is faithful to its underlying legislative intent.

I expound.

The requirement of clear and convincing evidence is necessitated by the State's policy to protect marriage as an

inviolable social institution

The ponencia holds that in cases involving nullity of marriage, the plaintiff-spouse must prove his or her case through clear and convincing evidence due to the presumption of validity of marriages.[3] I submit, however, that this higher evidentiary standard is more properly grounded on the characterization of marriage under law.

Article 1 of the Family Code defines marriage. It states:

ARTICLE 1. Marriage is a special contract of permanent union between a man and a woman entered into in accordance with law for the establishment of conjugal and family life. It is the foundation of the family and an inviolable social institution whose nature, consequences, and incidents are governed by law and not subject to stipulation, except that marriage settlements may fix the property relations during the marriage within the limits provided by this Code.

This provision echoes the State policy enshrined in Article XV of the 1987 Constitution, thus:

SECTION 1. The State recognizes the Filipino family as the foundation of the nation. Accordingly, it shall strengthen its solidarity and actively promote its total development.

SECTION 2. Marriage, as an inviolable social institution, is the foundation of the family and shall be protected by the State.

To warrant the severance of what the Constitution characterizes as an inviolable social institution, mere preponderance of evidence, which is the standard of evidence required to nullify ordinary civil contracts, will not suffice. A higher standard must be required in recognition of the status of marriage as a special contract of permanent union that is protected by the Constitution. To afford the institution of marriage the necessary protection against arbitrary dissolution, clear and convincing evidence must therefore be required. In turn, evidence is clear and convincing if it produces in the mind of the trier of fact a firm belief or conviction as to the allegation sought to be established. It is indeterminate, being more than preponderance, but not to the extent of such certainty as is required beyond reasonable doubt in criminal cases.[4]

Psychological incapacity is a legal concept

Article 36 of the Family Code provides:

ART. 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.

Based on the foregoing provision, psychological incapacity as a ground for the absolute nullity of marriage only has two textual requirements — first, that the afflicted spouse be incapacitated to comply with the essential marital obligations, and second, that such incapacity be present at the time of the celebration of the marriage.

As to the first requirement, the deliberations of the Joint Committee clarify that the inability to comply with the essential marital obligations must proceed from a complete lack of understanding of the essential marital obligations and the effects and/or consequences of marriage. Such lack of understanding must be of such gravity as to render the afflicted spouse incapable (i.e., lacking the capacity, power, ability or qualification[5]) of complying with his or her marital obligations, thus:

Justice [Eduardo] 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.

x x x x

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

Justice [Eduardo] 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.[6] (Emphasis supplied)

The deliberations further clarify that the lack of understanding of one's marital obligations, to be a ground for nullity, must be shown to exist at the time of the celebration of the marriage, although its manifestations may become apparent later on.

Justice [Ricardo 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 [Eduardo] Caguioa explained that since in divorce, the psychological incapacity may occur after the marriage, in void marriages, it has to be at 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 the marriage, one is psychologically incapacitated to comply with the essential marital obligations, which incapacity continues and later becomes manifest.[7] (Emphasis supplied)

Based on the language of Article 36 and the spirit of the provision as reflected in the Joint Committee deliberations, therefore, the only indispensable requirements that must be established to sustain a finding of psychological incapacity are: (i) a lack of understanding of the effects of marriage that is of such gravity as to bring about the afflicted spouse's incapacity to comply with the essential marital obligations provided in the Family Code; and (ii) the existence of such incapacity at the time of the celebration of the marriage. These essential marital obligations include the obligations of the spouses to one another (that is, those detailed under Articles 68 to 71 of the Family Code), and the obligations of the spouses as parents (that is, those detailed under Articles 220, 221, and 225 of the Family Code) for, as aptly explained by the ponencia, the State affords protection to marriage in view of its role as the foundation of the family.[8] Undoubtedly, a fruitful family life requires the fulfillment of the spouses' obligations not only as husband and wife, but also as parents.

Indeed, the deliberations demonstrate that the Joint Committee purposely refrained from narrowly defining the term "psychological incapacity" or from giving examples to allow resiliency and flexibility in its application.[9]

On this score, I agree with the ponencia insofar as it holds that proof of a medically or clinically incurable illness should not be deemed as an indispensable requisite in actions involving psychological incapacity for two main reasons.

First, as already mentioned, imposing such a requirement would unduly limit the concept in contravention of the clear intent of the framers.

Second, as keenly pointed out by Senior Associate Justice Estela P. Bernabe during the course of the

deliberations, "psychological incapacity," while coined as such, is not really a medical or clinical concept. Rather, it is a legal concept that must be interpreted on a case-to-case basis and applied when the factual circumstances show that the two foregoing textual requisites are attendant. Indeed, Joint Committee member Justice Eduardo P. Caguioa took great pains in distinguishing psychological incapacity (which contemplates a defect in understanding) from insanity (which contemplates a defect in the mind). To quote:

On psychological incapacity, [Justice Flerida Ruth] Romero inquired if they do not consider it as going to the very essence of consent. She asked if they are really removing it from consent. In reply, Justice [Eduardo] Caguioa explained that, ultimately, consent in general is affected but he stressed that his point is that it is not principally a vitiation of consent since there is a valid consent. He objected to the lumping together of the validity of the marriage celebration and the obligations attendant to marriage, which are completely different from each other, because they require a different capacity, which is eighteen years of age, for marriage but in contract, it is different. Justice [Ricardo] Puno, however, felt that psychological incapacity is still a kind of vice of consent and that it should not be classified as a voidable marriage which is incapable of convalidation; it should be convalidated but there should be no prescription. In other words, as long as the defect has not been cured, there is always a right to annul the marriage and if the defect has been really cured, it should be a defense in the action for annulment so that when the action for annulment is instituted, the issue can be raised that actually, although one might have been psychologically incapacitated, at the time the action is brought, it is no longer true that he has no concept of the consequence of marriage.

[Professor Esteban] Bautista raised the question: Will not cohabitation be a defense? In response, Justice [Ricardo J Puno stated that even the bearing of children and cohabitation should not be a sign that psychological incapacity has been cured.

[Justice Flerida Ruth] Romero opined that psychological incapacity is still insanity of a lesser degree. Justice [Lionor Ines] Luciano suggested that they invite a psychiatrist, who is the expert on this matter. Justice [Eduardo] Caguioa, however, reiterated that psychological incapacity is not a defect in the mind but in the understanding of the consequences of marriage, and, therefore, a psychiatrist will not be of help.

[Professor Esteban] Bautista stated that, in the same manner that there is a lucid interval in insanity, there are also momentary periods when there is an understanding of the consequences of marriage. Justice [J.B.L.] Reyes and Dean [Fortunato] Gupit remarked that the ground of psychological incapacity will not apply if the marriage was contracted at the time when there is understanding of the consequences of marriage.[10] (Emphasis supplied)

The foregoing distinction is confirmed by the fact that psychological incapacity and insanity are treated differently, i.e., the first is defined and governed by Article 36, whereas insanity is governed by Article 45(2) of the Family Code.

As psychological incapacity under Article 36 contemplates the inability to take cognizance of and to assume the basic marital obligations[11] set forth under the Family Code, a clinically or medically diagnosed illness or disorder amounts to psychological incapacity in legal contemplation only when such an illness or disorder causes a party to be truly incognizant of his or her essential marital obligations. In like manner, the absence of a clinical or medical diagnosis should not in any way be considered fatal, provided the totality of evidence proves that one or both of the spouses were absolutely incapable of understanding the effects of marriage and thus complying with its attendant obligations, and that such incapacity existed at the time of the celebration of the marriage.

In other words, when the evidence on record clearly and convincingly demonstrates that there was a lack of understanding of marital obligations at the time of the marriage which rises to a degree that renders the afflicted spouse incapable of fulfilling his or her marital obligations, a declaration of absolute nullity of marriage on the ground of psychological incapacity is warranted. In such cases, the lack of expert testimony identifying the root

cause of such incapacity and confirming its incurability, without more, should not serve as ample ground for dismissal. As stated by Justice Teodoro R. Padilla in his Separate Statement in *Molina*, "each case must be judged, not on the basis of a priori assumptions, predilections or generalizations but according to its own facts. In the field of psychological incapacity as a ground for annulment of marriage, it is trite to say that no case is on 'all fours' with another case. The trial judge must take pains in examining the actual milieu and the appellate court must, as much as possible, avoid substituting its own judgment for that of the trial court." [12]

The *Molina* guidelines are evidentiary guideposts, not rigid requisites

While I agree that neither the identification of a medically or clinically identified root cause nor a finding of a permanent or incurable illness is indispensable, I deem it necessary to clarify that they should not be deemed wholly irrelevant in determining whether an action for declaration of nullity on the ground of psychological incapacity should prosper. As stated at the outset, these two factors remain relevant as evidentiary guideposts which aid the trial courts in the assessment of the evidence on record.

To recall, the *Molina* guidelines were formulated because of the difficulty then being experienced by many trial courts in interpreting and applying the novel concept of psychological incapacity under Article 36. Hence, following the conduct of oral arguments, the Court handed down guidelines for the application and interpretation of Article 36, based on the discussions and written memoranda of amici curiae Reverend Oscar V. Cruz and Justice Ricardo C. Puno, thus:

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

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

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

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

(4) Such Incapacity must also be shown to be medically or clinically permanent or incurable. Such incurability may be absolute or even relative only in regard to the other spouse, not necessarily absolutely against everyone of the same sex. Furthermore, such incapacity must be relevant to the assumption of marriage obligations, not

necessarily to those not related to marriage, like the exercise of a profession or employment in a job. Hence, a pediatrician may be effective in diagnosing illnesses of children and prescribing medicine to cure them but may not be psychologically capacitated to procreate, bear and raise his/her own children as an essential obligation of marriage.

(5) Such illness must be grave enough to bring about the disability of the party to assume the essential obligations of marriage. Thus, "mild characterological peculiarities, mood changes, occasional emotional outbursts" cannot be accepted as root causes. The illness must be shown as downright incapacity or inability, not a refusal, neglect or difficulty, much less ill will. In other words, there is a natal or supervening disabling factor in the person, an adverse integral element in the personality structure that effectively incapacitates the person from really accepting and thereby complying with the obligations essential to marriage.

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

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

"The following are incapable of contracting marriage: Those who are unable to assume the essential obligations of marriage due to causes of psychological nature."

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

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

(8) The trial court must order the prosecuting attorney or fiscal and the Solicitor General to appear as counsel for the state. No decision shall be handed down unless the Solicitor General issues a certification, which will be quoted in the decision, briefly stating therein his reasons for his agreement or opposition, as the case may be, to the petition. The Solicitor General, along with the prosecuting attorney, shall submit to the court such certification within fifteen (15) days from the date the case is deemed submitted for resolution of the court. The Solicitor General shall discharge the equivalent function of the defensor vinculi contemplated under Canon 1095.[13] (*Italics in the original; emphasis supplied*)

To be sure, the Molina guidelines only provide, with particularity: (i) who has the burden of establishing the existence of psychological incapacity (as in guideline 1[14]); and, more importantly (ii) the factors which may be considered in determining the existence of psychological incapacity (as in guidelines 2, 3, 4, 5 and 7[15]). It should be noted that these factors which are identified as relevant in the Molina guidelines merely echo those which were discussed in the course of the Joint Committee deliberations.

Nevertheless, while intended merely as an aid in the evaluation of evidence, the Molina guidelines have been erroneously applied as a rigid checklist, perhaps owing to the directory language in which the Molina guidelines had been couched. In *Ngo Te v. Yu-Te*[16] (*Ngo Te*), the Court recognized the unintended restrictive effect of the

Molina guidelines in these words:

The resiliency with which the concept should be applied and the case-to-case basis by which the provision should be interpreted, as so intended by its framers, had, somehow, been rendered ineffectual by the imposition of a set of strict standards in Molina x x x[.]

x x x x

Noteworthy is that in Molina, while the majority of the Court's membership concurred in the ponencia of then Associate Justice Oater Chief Justice) Artemio V. Panganiban, three justices concurred "in the result" and another three—including, as aforesaid, Justice Romero—took pains to compose their individual separate opinions. Then Justice Teodoro R. Padilla even emphasized that "each case must be judged, not on the basis of a priori assumptions, predelictions or generalizations, but according to its own facts. In the field of psychological incapacity as a ground for annulment of marriage, it is trite to say that no case is on 'all fours' with another case. The trial judge must take pains in examining the factual milieu and the appellate court must, as much as possible, avoid substituting its own judgment for that of the trial court."

Predictably, however, in resolving subsequent cases, the Court has applied the aforesaid standards, without too much regard for the law's clear intention that each case is to be treated differently, as "courts 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."

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 [Office of the Solicitor General'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.[17] (Emphasis in the original)

Considering that the restrictive effect of the Molina guidelines stems not from the guidelines themselves, but rather, from their misapplication, I maintain that clarification, rather than abandonment, is the proper course of action.

As stated, psychological incapacity under Article 36 is a legal and not a medical concept. Its existence must therefore be judicially determined based on attendant circumstances established by the totality of evidence on record. To reiterate, 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 persuasive effect since [Article 36] was taken from Canon Law." [18]

In line with this, the Molina guidelines were crafted as an evidentiary tool to aid trial courts in ascertaining the weight and sufficiency of the evidence presented, as no single case of psychological incapacity may be deemed identical to another. The Molina guidelines merely identify some of the factors which the trial court may consider as evidence to support a claim of psychological incapacity. These factors may change and evolve over time, but this too was intended by the Joint Committee.

Hence, and it bears repeating, these guidelines should not be used as a rigid checklist. The pieces of evidence

identified therein are neither indispensable nor exhaustive of the type of evidence that may be used to prove the existence of psychological incapacity.

Thus, the absence of one or more factors espoused in *Molina*, e.g., a psychiatric evaluation, shall not serve as a ground for dismissal, provided that the totality of evidence on record clearly and convincingly shows that the lack of understanding of marital obligations rises to a degree that renders the afflicted spouse incapable of fulfilling his or her marital obligations. The opposite is true as well — "[t]he well-considered opinions of psychiatrists, psychologists, and persons with expertise in psychological disciplines might be helpful or even desirable"[19] and a positive finding of a grave and incurable personality disorder could strengthen a claim of psychological incapacity if said illness or disorder incapacitated the party from understanding and complying with the essential marital obligations at the time of the celebration of the marriage.

However, I have observed that psychiatric and psychological reports are often heavily laden with scientific esoteric terms pertaining to certain mental disorders which trial courts may have difficulty in appreciating in relation to the afflicted parties' inability to understand and comply with the essential marital obligations under the Family Code. Hence, I deem it apt to stress that the expert opinion, when offered, should shed light on how and to what extent these diagnosed personality disorders affect the afflicted party's inability to understand and comply with his or her essential marital obligations, and whether such inability existed at the time of the marriage. Conversely, trial courts must examine the expert witnesses and their reports in this light.

The totality of evidence on record clearly and convincingly establishes Mario's psychological incapacity

I find that the totality of evidence on record shows that Mario suffers from psychological incapacity to fulfill the essential obligations of marriage. The facts established by said evidence indicate that at the time of his marriage, Mario failed to appreciate and fulfill the essential marital obligations, as shown by his failure to provide emotional and financial support to his family due to his unstable behavior.[20] Further, Mario's psychological state also hampered his ability to provide his daughter with moral and spiritual guidance.[21]

Indeed, Rosanna was able to prove that Mario was a persistent drug-user despite his many promises to stop, that he was financially irresponsible and could not support his family, that he was incapable of caring for her and for Samantha, and that he even exposed Samantha to his drug-use, among others. Rosanna supported her claims by presenting Dr. Valentina Del Fonso Garcia (Dr. Garcia), a physician and psychiatrist, who testified that Mario's disorders began in "early childhood"[22] and developed as a consequence of several factors, including: (i) his father's death when he was only six years old; (ii) his physically abusive brothers; (iii) the drastic change in lifestyle that he and his siblings had to endure due to their father's untimely death; and (iv) his exposure to drugs and alcohol at an early age, among others.[23] The fact that Mario failed to fully appreciate the consequences of marriage even prior to the parties' marriage is further bolstered by his own assertion that he only proposed to Rosanna to prevent her from undergoing an abortion.[24] The seriousness or gravity of Mario's incapacity is confirmed by his repeated stints in rehabilitation centers. Based on Rosanna's evidence, Mario was committed for drug rehabilitation at the National Bureau of Investigation Treatment and Rehabilitation Center[25] and Seagulls Flight Foundation by order of the RTC of Parañaque City.[26] Mario himself admits that he was also committed for detoxification at the Medical City for six months.[27]

As stated in the ponencia, Mario was diagnosed with Narcissistic Antisocial Personality Disorder and Substance Abuse Disorder with Psychotic Features,[28] and that this "abnormality in behavior"[29] is characterized by "a pervasive pattern of grandiosity in fantasy or behavior, need for admiration, and lack of empathy." [30] While

neither sufficient in itself nor indispensable in all cases, I find that this diagnosis, when taken in consonance with or as part of the totality of evidence, leads to no other conclusion than that Mario was incapable of understanding and complying with his obligation to love, respect, help, and support Rosanna, to financially support their family, and to care for and rear Samantha in a manner that is consistent with the development of her moral, mental, and physical well-being.

All told, the evidence on record clearly and convincingly establish that: (i) Mario is incognizant of his marital obligations to a degree that renders him incapable of fulfilling his marital obligations; and (ii) such incapacity existed even prior to the marriage.

The judicial determination of psychological incapacity must be based on the trial court's independent assessment of the totality of evidence on record

With the clarification on how to properly understand and treat the second and fourth Molina guidelines, concerns against potential abuse once raised in the course of the Joint Committee deliberations necessarily resurface, for without expert testimony tending to establish incurability and a clinically or medically explained root cause, mere difficulty, refusal, neglect, or ill will^[31] in the performance of one's marital obligations can easily be feigned as psychological incapacity. Indeed, relegating the treatment of expert testimony from an indispensable requirement to a dispensable form of evidentiary support, may result in opening the floodgates to a deluge of petitions seeking the declaration of absolute nullity of marriage on the basis of feigned incapacity. As expressed by Joint Committee member Professor Esteban Bautista:

[Professor] Esteban [Bautista] stated that he is in favor of making psychological incapacity a ground for voidable marriage since otherwise it will encourage one who really understood the consequences of marriage to claim that he did not and to make excuses for invalidating the marriage by acting as if he did not understand the obligations of marriage. Dean [Fortunato] Gupit added that it is a loose way of providing for divorce.^[32] (Emphasis supplied)

In this connection, I echo the following statement of Justice Teodoro R. Padilla — "[w]hile it is true that the broad term 'psychological incapacity' can open the doors to abuse by couples who may wish to have an easy way out of their marriage, there are, however, enough safeguards against this contingency, among which, is the intervention by the State, through the public prosecutor, to guard against collusion between the parties and/or fabrication of evidence."^[33] Further, it is apt to stress, as Joint Committee member Justice Eduardo Caguioa once did, that as with the interpretation of all other provisions of law, one cannot argue on the basis of abuse.^[34] Ultimately, the Joint Committee did not accord Article 36 a fixed definition to allow some resiliency in its application. As psychological incapacity rests on the attendant circumstances that are unique in each case, the Joint Committee deliberately left the determination of the existence of psychological incapacity to the trial courts.^[35] As stated by Justice Eduardo P. Caguioa:

x x x A code should not have so many definitions, because a definition straitjackets the concept and, therefore, many cases that should go under it are excluded by the definition. [That is] why we leave it up to the court to determine the meaning of psychological incapacity.^[36] (Italics omitted)

To reiterate once more, each case must be decided by the judge on a case-to-case basis after evaluating the relevance, competence, and credibility of the various types of evidence presented. Accordingly, the alleged manifestations of psychological incapacity in each case must be assessed together with all other circumstances attendant therein. The Court therefore calls upon the presiding judges of the trial courts to take up the cudgels and

assiduously perform their duty as gatekeepers against potential abuse, ensuring that declarations of absolute nullity of marriage are issued only in cases where psychological incapacity as contemplated under Article 36 is judicially determined to exist. In turn, the trial court's determination must be based on its own assessment of the totality of evidence on record.

Final Note

To close, I wish to state, as I did in *Republic v. Manalo*,^[37] that while it is indeed desirable that statutes remain responsive to the realities of the present time, it must be borne in mind that responsiveness is a matter of policy which requires a determination of what the law ought to be, and not what the law actually is.

Hence, it is important to emphasize that the reformulation of the Molina guidelines is not a redefinition of psychological incapacity to conform to the current mores of the times or other "contemporary circumstances". Rather, the reformulation of these guidelines is to make them more in accord with the original intent of the Joint Committee. In this reformulation, therefore, the Court stays faithful to its duty to exercise judicial power within the bounds of law as it is presently written.

Premises considered, I vote to GRANT the Petition.

[1] G.R. No. 108763, February 13, 1997, 268 SCRA 198.

[2] FAMILY CODE, Art. 1.

[3] Ponencia, p. 27.

[4] *Dela Paz v. Republic*, G.R. No. 195726, November 20, 2017, 845 SCRA 34, 46-47.

[5] Incapacity is defined by Merriam-Webster as the "quality or state of being incapable." See <https://www.merriam-webster.com/dictionary/incapacity> > <https://www.merriam-webster.com/dictionary/incapacity>. In turn, incapable is defined as "lacking capacity, ability, or qualification for the purpose or end in view." See <https://www.merriam-webster.com/dictionary/incapable>.

[6] Minutes of the 148th Meeting of the Civil Code and Family Law Committees, July 26, 1986, pp. 9-10.

[7] Minutes of the 149th Meeting of the Civil Code and Family Law Committees, August 2, 1986, p. 4.

[8] See ponencia, p. 28.

[9] See *Santos v. Court of Appeals*, G.R. No. 112019, January 4, 1995, 240 SCRA 20, 31.

[10] Minutes of the 148th Joint Meeting of the Civil Code and Family Law Committees, July 26, 1986, pp. 12-13.

[11] See *id.* at 13.

[12] See J. Padilla, Separate Statement in *Republic v. Molina*, *supra* note 1, at 214.

[13] *Republic v. Court of Appeals and Molina*, *supra* note 1, at 209-213.

[14] That is, "[t]he burden of proof to show the nullity of the marriage belongs to the plaintiff Any doubt should be resolved in favor of the existence and continuation of the marriage and against its dissolution and nullity."

[15] To restate: (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; (3) The

incapacity must be proven to be existing at "the time of the celebration" of the marriage; (4) Such incapacity must also be shown to be medically or clinically permanent or incurable; (5) Such illness must be grave enough to bring about the disability of the party to assume the essential obligations of marriage; (6) The essential marital obligations must be those embraced by Articles 68 up to 71 of the Family Code as regards the husband and wife as well as Articles 220, 221 and 225 of the same Code in regard to parents and their children; and (7) Interpretations given by the National Appellate Matrimonial Tribunal of the Catholic Church in the Philippines, while not controlling or decisive, should be given great respect by our courts.

[16] G.R. No. 161793, February 13, 2009, 579 SCRA 193.

[17] *Id.* at 220-225.

[18] On the Canon Law roots of Article 36, see Justice Florida Ruth P. Romero's Separate Opinion in *Molina*:

With 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.

Canon 1095 which states, *inter alia*, that the following persons are incapable of contracting marriage: "3. (those) who, because of causes of a psychological nature) are unable to assume the essential obligations of marriage" provided the model for what is now Art. 36 of the Family Code: "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."

It bears stressing that unlike in Civil Law, Canon Law recognizes only two types of marriages with respect to their validity: valid and void. Civil Law, however, recognizes an intermediate state, the voidable or annulable marriages. When the Ecclesiastical Tribunal "annuls" a marriage, it actually declares the marriage null and void, *i.e.*, it never really existed in the first place, for a valid sacramental marriage can never be dissolved. Hence, a properly performed and consummated marriage between two living Roman Catholics can only be nullified by the formal annulment process which entails a full tribunal procedure with a Court selection and a formal hearing.

Such so-called church "annulments" are not recognized by Civil Law as severing the marriage ties as to capacitate the parties to enter lawfully into another marriage. The grounds for nullifying civil marriage, not being congruent with those laid down by Canon Law, the former being more strict, quite a number of married couples have found themselves in limbo—freed from the marriage bonds in the eyes of the Catholic Church but yet unable to contract a valid civil marriage under state laws. Heedless of civil law sanctions, some persons contract new marriages or enter into live-in relationships. (J. Romero, Separate Opinion in *Republic v. Court of Appeals and Molina*, *supra* note 1, at 217-218.)

[19] *Santos v. Court of Appeals*, *supra* note 9, at 35.

[20] As required by Articles 68 and 220 of the Family Code.

[21] As required by Article 220 of the Family Code.

[22] Ponencia, p. 11.

[23] *Id.* at 41-42.

[24] *Id.* at 12.

[25] *Id.* at 8.

[26] Id.

[27] Id. at 13.

[28] Id. at 11.

[29] Id.

[30] Id.

[31] *Yambao v. Republic*, G.R. No. 184063, January 24, 2011, 640 SCRA 355, 367.

[32] Minutes of the 148th Meeting of the Civil Code and Family Law Committees, July 26, 1986, p. 10.

[33] J. Padilla, Dissenting Opinion in *Santos v. Court of Appeals*, *supra* note 9, at 36-37.

[34] Minutes of the 150th Meeting of the Civil Code and Family Law Committees, August 9, 1986, p. 9.

[35] See Amicus Brief of Dean Melencio S. Sta. Maria, p. 5, citing Joint Committee Member Justice Eduardo P. Caguioa at the Senate Committee hearing on Women and Family Relations on February 3, 1988.

[36] Id.

[37] J. Caguioa, Dissenting Opinion in *Republic v. Manalo*, G.R. No. 221029, April 24, 2018, 862 SCRA 580, 653.

SEPARATE CONCURRING OPINION

HERNANDO, J.:

I respectfully vote in the result, that is, grant the petition due to the psychological incapacity of respondent Mario Victor M. Andal. I believe, however, in the soundness still of Molina guidelines, as clarified in *Ngo Te v. Te*,^[1] a ponencia of the now retired Mr. Justice Antonio Eduardo B. Nachura.

I. Some Philosophical Premises

Concluding a lengthy essay entitled "The Good of Marriage and the Morality of Sexual Relations: Some Philosophical and Historical Observation", John Finnis, the recognized legal philosopher who has advocated a "natural law" approach, writes:

"Marriage is the coherent, stable category of relationships, activities, satisfactions and responsibilities which can be intelligently and reasonably chosen by a man together with a woman, and adopted as their demanding mutual commitment and common good, because its components respond and correspond fully reasonably to that complex of interlocking, complementary good reasons."^[2]

Is this an unwarranted assumption of Finnis? An unjustified a priorism? One thing is certain: It is what Finnis describes that people expect (better, hope!) when they enter into marriage. It is the very reason that marriage exists and, despite the twists and turns it has taken in human history, remains one of society's most reliable institutions. It is good phenomenology in the sense that it clarifies and reduces to the clarity of concepts the common experience of marriage. It is good philosophy because it takes the good of the individual and the common good in conjunction.

For purposes of the present discussion, two concepts invite closer attention: "coherent, stable" and "chosen". If marriage did not enjoy the coherence that makes of it a stable union – and demands that it be so – there would

utterly be no need for it, absolutely no sense to it. Transient alliances and partnerships need no name, need no special treatment from the law, but marriage has always received particular attention. The rites and rituals of various cultures and religions, the laws and taboos collectively attest to the fact that there has persisted the social expectation that marriage is meant "to last a lifetime".

Society does have a stake in the promises that people make – and often, these promises are lent stability by the institution of law. The promise of a witness to be truthful, of a public servant to uphold and defend the Constitution, of ethnic groups to avoid the ways of violence – these are some examples of promises that society has every right to expect will be kept. And if the State Policy that announces that "the State recognizes the sanctity of family life and shall protect and strengthen the family as a basic autonomous social institution"[3] is to be more than lofty rhetoric, then the State indeed has a stake in the promises of marriage and married life without which families, as conceived by our Constitution, would not exist!

The thrust of the esteemed Mr. Marvic Mario Victor F. Leonen's well-reasoned ponencia is towards liberalizing what he takes to be an unduly restrictive jurisprudential reading of Article 36 on psychological incapacity. Before anything else, should we be going in that direction – making it easier for spouses to be free of their marriage vows? I respectfully take that to be the orientation of the ponencia considering that he prefaces his argument with an interesting account of divorce law in the Philippines. What worries me particularly is that in the desire to be pragmatic about dysfunctional unions, we trade off our moral convictions about marriage – moral convictions that lie behind our legal provisions. Carl Schneider, in a very interesting article, makes what I consider a salutary reminder;

"For one thing the law cannot easily escape the need to adopt and apply a moral theory of marriage...The law therefore needs principles for resolving those conflicts, and such principles ultimately must rest in part on some understanding of the moral nature of marriage...If the law is to operate predictably and fairly, it needs to stay in some kind of contact with assumptions on which people base their beliefs."[4]

All marriage rites with which I am familiar – and the earliest rites were of course religious rites, followed only by so-called civil marriages – whether expressly or tacitly left no doubt that marriage was a lasting union ending in death. This sentiment is summed up almost lyrically in the Catholic rite of marriage where the spouses recite the words:

"Grant us O Lord to be one heart and one soul from this day forward, for better or for worse, for richer or for poorer, in sickness and in health until death do us part."[5]

Aside from the express Constitutional policy that recognizes the sanctity of family life – the latter being impossible without marriage – there is also the fact that no matter how long a couple in the Philippines may have been in cohabitation, they will always seek marriage to lend stability to their union. The moral persuasion of the people is that marriage is not some tentative arrangement or partnership but a life-long union. It is this moral persuasion that should go into our reading of the law, if law is to be the instrument of social cohesion that it should be.

Significantly, even in first-world countries where divorce is readily available, the moral assumptions articulated above on marriage hold. In a scholarly study on French law, it is said: "Despite a widespread increase in cohabitation and other forms of non-marital union in France, marriage remains a valued institution..."[6] Nothing less is true under German law. "The civil marriage, the only legally recognized form of marriage in Germany, is referred to...as a bond for life. The celebration is regulated by the Civil Code. A valid marriage requires that the parties have the capacity to marry and that there is no impediment to the marriage."[7]

The disjunction posed by the ponencia between the state protection of marriage on the one hand and personal

autonomy and dignity on the other is, with all due respect, specious. It is because of personal autonomy that marriage is entered into and the dignity that the State is duty-bound to uphold is not the dignity of the individual alone but the dignity of the institution of marriage, which is the reason for the definition it receives in the Family Code as a "special contract of permanent union between a man and a woman entered into in accordance with law for the establishment of conjugal and family life." Whatever might be our personal persuasions, it is this provision of law that embodies State policy towards marriage, and while this Court, undoubtedly, relies on some policy or other factors to arrive at decisions, policy decisions, as a general rule are non-justiciable!

In sum, the law, as an instrument of social cohesion, reflects moral assumptions on marriage. It will be easily conceded that of all subjects covered by the Civil Code (of which the Family Code is rightly a part), marriage is that aspect of human relations laden with moral concepts and assumptions. It is the axial concept of family, children and home.

II. Article 36

Mr. Justice Leonen takes offense at the fact that Article 36 was drawn from Canon 1095, 3. He argues that when Molina prescribes that Article 36 of the Family Code be read as it has been read in canon law, there is transgression of the separation of Church and State. Yet, we do not oppose Presidential Decree 1083, the Code of Muslim Personal Laws that is in actuality an enactment of Shari'ah within the Philippine Legal system.

In his classic study on the civil law system, John Henry Merryman makes the following observation:

"The second oldest component of the civil law tradition is the canon law of the Roman Catholic Church. This body of law and procedure was developed by the Church for its own governance and to regulate the rights and obligations of its communicants. Just as Roman civil law was the universal law of the temporal empire, directly associated with the authority of the emperor, so the canon law as the universal law of the spiritual domain, directly associated with the authority of the pope. Each had its own sphere of application and a separate set of courts existed for each: the civil courts for Roman civil law and the ecclesiastical courts for canon law. There was, however, a tendency toward overlapping jurisdiction, and before the Reformation it was common to find ecclesiastical courts exercising civil jurisdiction, particularly in family law and succession matters." [8]

Mr. Justice Leonen remarks: "It is strange that the sensibilities of a particular religion are considered in the creation of state policy and the drafting of our laws." [9] It would be stranger, indeed, if they did not, for as discussed above, laws such as those governing marriage must rest on some moral convictions about marriage and the facts both of history and our culture as a people is that in many ways, our beliefs have been shaped, contoured and orientated by Christianity. And that is not necessarily a bad thing. If anything, our society is what it is today because of those beliefs.

Even then, the provenance of the law should not really matter, and whatever may be our personal inclinations or disinclinations towards borrowing from canon law, the fact remains that Article 36 was lifted from Canon 1095, 3 of the Code of Canon Law, and that therefore, the latter is part of its legislative history. In one case, this Court had the following to say about legislative history:

When 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 law. [10]

Interestingly, a provision akin to Article 36 of our Family Code is found in Article 120 of the Italian Civil Code that makes a marriage susceptible to annulment where one of the parties is unable, even if only transitorily, "to

intend or to will" the marriage at the time the marriage is contracted. As interestingly, the comment on this article mentions a "diminution of intellective or volitional capacities that impedes the party from a correct valuation of his own acts and that render him incapable or at least diminish his ability of self-determination." [11]

In reality, Article 36 and its origin, Canon 1095, 3 originate not from theological grounds but from empirical foundations. The provision, whether in the Family Code or in the Code of Canon Law, is a recognition of the fact that a person is a psycho-somatic being, and just as there can be physical impediments such as impotence, there can also be psychological blocks to the fulfillment of the essential obligations of marriage. There is nothing particularly "sectarian" or "Catholic" about this comment on Canon 1095, 3, but a keen observation of what psychological incapacity involves and an admission of the fact that the science is still developing.

"It is not possible to identify all the possible ways in which a person might be unable to assume the essential obligations. Firstly, this is an area where jurisprudence is still developing, and so there is no definitive list of what obligations are deemed to be essential; secondly, the psychological sciences themselves, on which depend the identification and evaluation of the 'causes of a psychological nature', are also an area of development. Apart from conditions such as nymphomania or satyriasis which are fairly clear-cut in the way in which they affect capacity for particular obligations in marriage, most examples of invalidity under this section will be concerned with the more general capacity for a true conjugal relationship." [12]

It is crucial to remember that in the instant case, the "psychological incapacity" plea entered into the picture only pursuant to Rosanna's position that she should have custody over Samantha. That Rosanna was convinced of the psychological incapacity of her husband, or simply wanted to have a monopoly of custody over Samantha, born out of an aversion for her husband is not settled.

Law deals with phenomena that are explained by science. In respect to such phenomena, the court is not at liberty to "restate" or to "revise". It takes the phenomena as described by science and analyzed by science's practitioners and provides legal norms for dealing with them. An analogy is helpful. Psychiatrists or clinical psychologists will describe for the court the mental capacities or psychological disabilities of a person, and it will be for the court to determine whether the capacities or disabilities, as described, impede such a person from entering into a contract, as the law on contracts requires. It is the same in regard to such a simple thing as a driver's license. The ophthalmologist will suggest the degree of visual impairment of a patient, and the law determines where it draws the line between permitting one to drive and denying one a license.

Whatever the psychiatric or psychological diagnosis may be, the central question is whether the condition described by the psychiatrist or psychologist is such as to stand in the way of a person's ability to fulfill the essential obligations of marriage. It should be underscored that the experts cannot decide for the court, and courts should not delegate to experts the task of deciding. When a psychiatrist, for instance, declares that the patient she has examined is "incapable of fulfilling the essential obligations of marriage", she has stepped impermissibly into the shoes of the judge. She may venture an opinion, but it is for the judge, evaluating all that he has been told by the psychiatrist or the clinical psychologist, to draw a conclusion about the capacity of a person to fulfill the essential obligations of marriage.

True, indeed, "psychological incapacity" is not a category of mental disorder recognized in the manuals of psychological disorders. But neither is "child abuse" or "habitual delinquency". These are legal characterizations resting on empirical manifestations. As mentioned above, it is for practitioners to observe the manifestations. It is for the court to apply – or to refuse to apply – the characterization. In this respect, the court cannot be arbitrary, for it should be able to draw the nexus between the observations of an expert and the requirement of the law that a party to a marriage be capable of fulfilling the essential obligations of marriage.

III. The Molina Doctrine

It may not have been necessary to accompany the statement of the Molina doctrine with reference to the "cadence" of Philippine law and canon law. But in the main, I most respectfully submit that the doctrine, relaxed but fortified by the "no straitjacket" on non-restricting approach in the case of *Ngo Te v. Te*, remains good jurisprudence. To me, due to the latter's refinement of the doctrine, it should be denominated properly already as the "Molina – Ngo Te Doctrine."

The doctrine, as thus far enunciated, rests on the law, and this Court is helpless in regard to the formulation of the law. It is noticeable that the ponencia bemoans not only the jurisprudence but the law itself.

The complaint about juridical antecedence, for one, is, in my respectful submission, misplaced. The law requires it because Article 36 qualifies "psychologically incapacitated to comply with the essential marital obligations of marriage" with "at the time of celebration". The ponencia criticizes this and argues that this is wrong because the psychological incapacity may come about as a result of the particular circumstances of the marriage entered into. If this is the case, then it is not a question of being void ab initio, because the incapacity is post factum. The remedy for this lacuna is not with the court, but with the legislature, but it should be clear that the clear intendment of the law is that the incapacity should be such as to afflict the person at the time of the celebration of the marriage.

The Tani-De la Fuente case cited does not argue against the Molina jurisprudence but supports it, for if a person is suffering from paranoid personality disorder during marriage, the presumption is that this existed at the time of the marriage, since such a personality disorder does not develop overnight.

The requirement of juridical antecedence is necessary – and is certainly not wrong – because what is contemplated by the law is the inability of a party, for psychological reasons (though covert at the time of the marriage and manifest only after) to contract marriage.

If the requirements of the Molina seem stringent, it is because they should be so. Were the requirements for obtaining a declaration of an absolutely void marriage under this title relaxed, in effect, allowing for "de facto divorce", that would be a subversion of enunciated state policy. When spouses have an easy way out of marriage, no effort will be expended to reconcile and to make the marriage work when disagreements and quarrels afflict the union, as they are bound to do when two people are to live together for life. Which is why the law requires that only those psychologically capable of essentially fulfilling the obligations of marriage enter into such a demanding contract.

If, in this case, Mario is indeed suffering from narcissistic-antisocial personality, then certainly, this is a condition incompatible with the essential obligations of marriage and, unless there is clear and convincing evidence to the contrary, it should be presumed that this disorder existed at the time the marriage was contracted.

Mr. Justice Caguioa is right about pointing out to lower courts that the Molina guidelines are "guidelines" and are not meant to be some kind of a taxonomic check-list. Since, however, they distill the thought of the High Court on the matter, they should not be set aside in cavalier fashion. When a lower court departs from them, therefore, it must explain why it had to deviate, lest the evil of discordant and irreconcilable applications of Article 36 that Molina was meant to eliminate re-emerge.

What follows might be considered a proposed re-statement of the Molina doctrine:

- The burden of proof is with the petitioner.
- Psychological incapacity must be a conclusion based on a clinically or satisfactorily evidenced psychological

disorder preponderantly established by a court-appointed clinical psychologist or psychiatrist, or indubitably established by competent evidence.

- There should be no evidence that puts into question the presumption that the condition existed at the time of the marriage and was, as such, juridically antecedent.

- The disorder must be such as to prevent the afflicted party from discharging the essential obligations of marriage, and the petition must clearly allege the essential obligations that the respondent has failed to perform.

Mr. Justice Caguioa does raise many concerns about situations for which the present law and jurisprudence do not provide adequate remedies or relief to couples who have reached beyond repair the limits of living together. In light of the foregoing, I vote merely in the result. But the Court is always cognizant of the limits of judicial power, for awesome though these might be, they must be confined lest they disturb the careful calibration of the great powers of government distributed between coordinate, co-equal branches.

[1] 598 Phil. 666 (2009).

[2] John Finnis, "The Good of Marriage and the Morality of Sexual Relations: Some Philosophical and Historical Observations", *American Journal of Jurisprudence*, 42 (1998) 97-134.

[3] 1987 Constitution of the Philippines, Art. II, Sec. 12.

[4] Carl E. Schneider, "Marriage, Morals, and the Law: No-Fault Divorce and Moral Discourse", *University of Michigan Law School Scholarship Repository*, 1994, 503-585.

[5] Catholic Rite of Marriage.

[6] John Bell, et al., *Principles of French Law*, 2d Ed., Oxford University Press, 2008, 244.

[7] J. Zekoll and M. Reimann, *Introduction to German Law*, 2d Ed., Kluwer International, 2005, 254.

[8] John Henry Merryman, *The Civil Law Tradition*, Stanford University Press, 1985, 10-11.

[9] Ponencia, p. 32.

[10] *Commissioner of Internal Revenue v. SM Prime Holdings*, 627 Phil. 581 (2010).

[11] Rosanna Petrucci, *Codice Civile*, XII Edizione, Edizione Giuridiche Simone, 2008, 190.

[12] Gerard Sheehy, et al., *The Canon Law: Letter and Spirit*, Geoffrey Chapman, 1995, 611-612.

CONCURRING OPINION

LAZARO-JAVIER, J.:

When Martin Luther King Jr. said that "judicial decrees may not change the heart, but they can restrain the heartless," he could have been referring as well to judicial decrees restraining judicial decrees. This reflection is apt for the present case where the ponencia has insightfully re-examined the concept of psychological incapacity under Article 36 of the Family Code.

The ponencia brings heart back to the discussion of psychological incapacity when it contextualizes its reasoning with how this concept has evolved to disempower families from regaining back their lives, instead of empowering

them to have the capacity to start anew. But what I thought was the ponencia's ideological pursuit did not come to pass; otherwise, the ponencia would have provided the opportunity to deconstruct psychological incapacity as a remedy and determine its efficacy for individuals and families who have pinned their hopes correctly or wrongly upon it.

Hence, I wholeheartedly and heartily agreed to the initial and developing iterations of the ponencia, only to realize that the Court's role in introducing incremental changes to our laws will strictly be that - incremental.

Nonetheless, I concur in the ponencia's reasoned outcome. I also express my deepest admiration and respect for Justice Marvic Mario Victor Famorca Leonen and his unquestionable commitment to collegiality to accept the collective genius that the other Justices have offered to what eventually has evolved to be the present ponencia. This shows how we, as members of this Court, have become accommodating without necessarily surrendering our convictions and tenaciously discerning without being disagreeable and losing the good vibes of courteousness.

The prototypical conception of psychological incapacity

Article 36 of the Family Code, as amended, recognizes the psychological incapacity of a spouse or both spouses as a ground to void a marriage. This provision, however, does not define what being psychologically incapacitated means. It barely states:

Art. 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.

Therefore, the prototypical conception of psychological incapacity has depended on decisions of the Supreme Court.

The Supreme Court has explained Article 36 by consistently reiterating over the years the binding rule that "psychological incapacity" has been intended by law to be confined to the "most serious cases of personality disorders" clearly demonstrative of an utter insensitivity or inability to give meaning and significance to the marriage. As defined, the most serious personality disorder so as to constitute psychological incapacity must be characterized by (a) gravity, i.e., it must be serious such that the party would be incapable of carrying out the ordinary duties required in a marriage, (b) juridical antecedence, i.e., it must be rooted in the history of the party antedating the marriage though the overt manifestations may emerge only after the marriage, and (c) incurability, i.e., it must be not be susceptible to any cure, or even if it were otherwise, the cure would be beyond the means of the party involved. These characteristics make up the elements of the cause of action of psychological incapacity and represent a summary of the binding rules in *Republic v. Molina*:^[1]

- (1) The burden of proof to show the nullity of the marriage belongs to the plaintiff. Any doubt should be resolved in favor of the existence and continuation of the marriage and against its dissolution and nullity....
- (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....
- (3) The incapacity must be proven to be existing at "the time of the celebration" of the marriage....
- (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....

(5) Such illness must be grave enough to bring about the disability of the party to assume the essential obligations of marriage.... In other words, there is a natal or supervening disabling factor in the person, an adverse integral element in the personality structure that effectively incapacitates the person from really accepting and thereby complying with the obligations essential to marriage.

(6) The essential marital obligations must be those embraced by Articles 68 up to 71 of the Family Code as regards the husband and wife as well as Articles 220, 221 and 225 of the same Code in regard to parents and their children.....

(7) Interpretations given by the National Appellate Matrimonial Tribunal of the Catholic Church in the Philippines, while not controlling or decisive, should be given great respect by our courts....

(8) The trial court must order the prosecuting attorney or fiscal and the Solicitor General to appear as counsel for the state.....

The standard of proof in a case under Article 36 is preponderance of evidence or balance of probabilities. The burden of proof is discharged by the Petitioner if he or she is able to prove his or her cause of action more likely than not.

Taking account of the applicable rules on the elements of psychological incapacity and burden of proof, the issues to be resolved in a case invoking Article 36 are:

On the basis of the evidence on record, is it more likely or probable than not that:

- a. the essential marital obligations embraced in Articles 68 up to 71 of the Family Code have not been performed?
- b. the individual responsible for the non-performance of the essential marital obligations embraced in Articles 68 up to 71 of the Family Code was the Respondent or the Petitioner or both of them?
- c. the Respondent or the Petitioner or both of them are suffering from a personality disorder or personality disorders that have been medically or clinically identified?
- d. the personality disorders of the Respondent or the Petitioner or both of them are grave, that is, the essential marital obligations under Articles 68 up to 71 of the Family Code have not been performed by the Respondent or the Petitioner or both of them on account of or due to his or her or their personality disorders, and that these duties have not been performed in a manner that is "clearly demonstrative of an utter insensitivity or inability to give meaning and significance to the marriage"?
- e. the disorder or disorders of the Respondent or the Petitioner or both are medically or clinically permanent or incurable?
- f. the grave and incurable personality disorders of the Respondent or the Petitioner or both of them have existed at "the time of the celebration" of their marriage or prior thereto?

In terms of proving the existence of a clinically or medically identified personality disorder, a party is, in practice, though not in law, required to hire a clinical psychologist or psychiatrist. The same is true when it comes to proving the gravity, incurability or permanence, and juridical antecedence of the personality disorder. In practice, a lay person would be hard pressed to prove these elements of psychological incapacity. The lay person would be unable to identify the personality disorder involved, much less, medically or clinically identify as grave, incurable or permanent, and in existent on or before the marriage.

More often than not, there are no two versions of the claims asserted in a case under Article 36. The narrative is solely that of the petitioner and his or her witnesses. This narrative is not disputed by any other version. The State,

through either the Office of the Solicitor General or its deputy, the Trial Prosecutor, almost always has no evidence to refute the petitioner's evidence. Hence, without any countervailing submission, whether the petitioner's pieces of evidence, on their own, would be accepted as preponderant would depend on their inherent probability and their independent corroboration by evidence of contemporaneous conduct, documentation or records, and circumstances that tend to support this single account.

The evidence bearing on the clinical or medical identification of a personality disorder is solely the evidence of the Clinical Psychologist or the Psychiatrist. The usual procedure is for this expert to interview and conduct psychological tests upon the petitioner and his or her corroborative informants, and very rarely the respondent or relatives on the latter's behalf. Hence, the problem at trial of the one-sided presentation of facts was preceded by the same underfill procedure of the expert. The State does not even have access to a Clinical Psychologist or Psychiatrist to vet the petitioner's evidence and testify as a witness for the State.

Understandably, thus, the family court judge is left with only one set of facts to work with, a situation that should lead one to question the accuracy, precision, and reliability of the findings of the trial and appellate courts. I therefore find Justice Caguioa's admonition to trial court judges, viz.:

.... [t]he Court therefore calls upon the presiding judges of the trial courts to take up the cudgels and assiduously perform their duty as gatekeepers against potential abuse, ensuring that declarations of absolute nullity of marriage are issued only in cases where psychological incapacity as contemplated under Article 36 is judicially determined to exist[.]

to be well meaning, albeit it does not totally reflect what is actually taking place in the overwhelming number of Article 36 petitions before our Family Courts.

The centrality of personality disorder in the prototypical definition of psychological incapacity calls for a general understanding of this concept.

Some define personality disorder as a type of mental disorder in which one has a rigid and unhealthy pattern of thinking, functioning, and behaving.[2] Others refuse to lump personality disorders with mental disorders as they equate mental disorder with mental illness.[3] They conclude:

It seems clear from this analysis that it is impossible at present to decide whether personality disorders are mental disorders or not, and that this will remain so until there is an agreed definition of mental disorder. It is also apparent that personality disorders are conceptually heterogeneous, that information about them is limited, and that existing knowledge is largely derived from unrepresentative clinical populations. The clinical literature on personality disorders – indeed, the basic concept of personality disorder – has few points of contact with the psychological literature on personality structure and development, and little is known of the cerebral mechanisms underlying personality traits. There is also a glaring need for a better classification of personality disorders and for more long-term follow-up studies of representative samples, derived from community rather than clinical populations, to answer basic questions about the extent, nature and time course of the handicaps associated with different types of personality disorder.

.... Although it is difficult to provide irrefutable arguments that personality disorders are mental disorders, it is equally difficult to argue with conviction that they are not. The fact that they have been included in the two most influential and widely used classifications of mental disorders (the ICD and the DSM) for the past half-century is difficult to disregard, whether or not one accepts the view that mental disorder is an ostensive concept. It could be argued, though, that the crucial issue is not whether personality disorder is embraced by any particular definition or concept of mental illness, but what kinds of considerations lead doctors to change their minds about assignments of illness, and in this context two issues loom large.

.... CLINICAL IMPLICATIONS

- Because the term mental illness has no agreed meaning it is impossible to decide with confidence whether or not personality disorders are mental illnesses.
- The historical reasons for regarding personality disorders as fundamentally different from illnesses are being undermined by both clinical and genetic evidence.
- The introduction of effective treatments would probably have a decisive influence on psychiatrists' attitudes.

In any event, a person with a personality disorder has trouble perceiving and relating to situations and people.[4] This causes significant problems and limitations in relationships, social activities, work, and school.[5]

Types of personality disorders are grouped into clusters, based on similar characteristics and symptoms.[6] Many people with one personality disorder also have signs and symptoms of at least one additional personality disorder.[7] It is not necessary to exhibit all the signs and symptoms listed for a disorder to be diagnosed.[8] But at least four or five of the symptoms must be present in one's behavioral manifestations to be diagnosed with a personality disorder.

The existence of the factual bases for the behavioral manifestations does not by itself warrant a finding of a personality disorder. The diagnosis of a personality disorder also requires the factual bases to be indicative of a long-term marked deviation from cultural expectations that leads to significant distress or impairment in at least two of these areas:

- The way one perceives and interprets oneself, other people, and events;
- The appropriateness of one's emotional responses;
- How well one functions when dealing with other people and in relationships; and
- Whether one can control one's impulses.[9]

Additionally, as held by decisions of the Supreme Court, there ought to be a link between the factual behavioral manifestations and the supposed personality disorder. The link is the symptoms of the personality disorder or personality disorders clinically and medically identified. There must be a one-to-one correlation between the theoretical behavioral manifestations of the identified personality disorder and the actual behavioral manifestations observed from the spouse concerned. These actual behavioral manifestations must of course be proved by preponderant evidence, that is, the evidence prove that they exist more likely than not. Generally, the existence of this correlation establishes the GRAVITY of the personality disorder.

The Supreme Court clarified though that behavioral manifestations that correlate to the symptoms of the alleged personality disorder, per se and without more, are NOT DETERMINATIVE of the existence of psychological incapacity. This is because:

Irreconcilable differences, sexual infidelity or perversion, emotional immaturity and irresponsibility and the like, do not by themselves warrant a finding of psychological incapacity under Article 36, as the same may only be due to a person's refusal or unwillingness to assume the essential obligations of marriage. In order for sexual infidelity to constitute as psychological incapacity, the respondent's unfaithfulness must be established as a manifestation of a disordered personality.... It is indispensable that the evidence must show a link, medical or the like, between the acts that manifest psychological incapacity and the psychological disorder itself.[10]

The behavioral manifestations of an atypical or wild conduct may not at all be connected to a personality disorder but to mere difficulty, neglect, refusal, or ill will to perform marital or parental obligations.[11]

It would appear then that in every claim of personality disorder, there is the counterpart cause for the odd and

obnoxious behavioral manifestations, which is either a mere difficulty, neglect, refusal, or ill will to discharge marital or parental obligations.[12]

To visualize the logic, the alternatives are either:

ATYPICAL CONDUCT

BEHAVIORIAL MANIFESTATIONS

PERSONALITY DISORDER/S

Or:

ATYPICAL CONDUCT

BEHAVIORIAL MANIFESTATIONS

DIFFICULTY, NEGLECT, REFUSAL, ILL WILL

The behavioral manifestations of an atypical or wild conduct, if not at all connected to a personality disorder, may be linked to a spouse's mere difficulty, neglect, refusal or ill will to deal with the other spouse or to perform the former's marital and familial obligations.

Thus, in determining whether the causative factor is a spouse's personality disorder, the court must ask:

(i)

whether there is evidence of conduct of the spouses or one of them probably exhibiting difficulty, neglect, refusal, or ill will to perform marital and familial obligations, and

(ii)

whether there is evidence that such conduct showing difficulty, neglect, refusal, or ill will to perform marital or parental obligations is established more likely than not to be the cause of the marital breakdown.

Further, for the personality disorder to be grave, the failure to perform marital and parental duties and obligations must be "clearly demonstrative of an utter insensitivity or inability to give meaning and significance to the marriage."

Under the prototypical definition of psychological incapacity, the standard of proof was preponderance of evidence. A court would be satisfied if an event has occurred if the court considers that, on the evidence, the occurrence of the event was more likely than not. When assessing probabilities, the court will have in mind as a factor, to whatever extent is appropriate in the particular case, that the more serious the allegation, the less likely it

is that the event occurred and, hence, the stronger should be the evidence before the court concludes that the allegation is established on the balance of probability.

For instance, fraud is usually less likely than negligence. Deliberate physical injury is usually less likely than accidental physical injury.

Built into the preponderance of probability standard is a generous degree of flexibility in respect of the seriousness of the allegation. Although the result is much the same, this does not mean that where a serious allegation is in issue, the standard of proof required is higher. It means only that the inherent probability or improbability of an event is itself a matter to be taken into account when weighing the probabilities and deciding whether, on balance, the event occurred. The more improbable the event, the stronger must be the evidence that it did occur before, on the balance of probability, its occurrence will be established.

As between the existence of a personality disorder as a causative factor and the existence of difficulty, neglect, refusal, or ill will to perform marital and familial obligations, the former is more improbable. Hence, it is incumbent upon a petitioner to present stronger evidence of the existence of a personality disorder as the causative factor.

The incurability or permanence of a personality disorder is within the purview of the expert to determine. While an expert is not a required witness, the prototypical definition of psychological incapacity requires in practice the testimony of an expert.

As regards juridical antecedence, unless the psychologically incapacitated is the petitioner herself or himself, the petitioner would be hard-pressed to obtain first-hand personal and non-hearsay evidence of the root-cause of the personality disorder of the respondent traceable to the respondent's history antedating the marriage, most likely childhood or adolescence.

In practice, this would entail involving or in real terms co-opting the respondent and his or her relatives, those who witnessed him or her grow up, in obtaining such evidence. This would be either costly, impracticable, or impossible, depending on a number of factors beyond the petitioner's control, such as the state and degree of animosity between the spouses, knowledge of the respondent's whereabouts, the access of the petitioner and the expert to the respondent, and the requirement that there should be no actual and appearance of collusion between the spouses.

The conception of psychological incapacity, according to the ponencia

In the ponencia's opening paragraph, the rhythm of the observation that the prototypical definition of psychological incapacity "has proven to be restrictive, rigid, and intrusive of our rights to liberty, autonomy, and human dignity" has given many the hope that this definition would soon give way to a more fluid and realistic conceptualization and operationalization. After all, the right to personal autonomy as an aspect of liberty has been the lynchpin of divorce laws in other jurisdictions. But 56 pages or so later, the reference to liberty and personal autonomy slowly dissipated until finally it disappeared from the face of the ponencia, nowhere to be found in its text.

The ponencia grounds the sole causative factor of the marital breakdown on either or both spouses' personality structure and psychic causes to be proven clearly and convincingly, but maintains that experts are no longer required since [o]rdinary witnesses who have been present in the life of the spouses before the latter contracted

marriage may testify on behaviors that they have consistently observed from the supposedly incapacitated spouse." Supposedly "from there, the judge will decide if these behaviors are indicative of a true and serious incapacity to assume the essential marital obligations." But this is not as straightforward as it seems - reason: the cause of such incapacity has remained to be the incapacitated spouse's personality structure or psychic causes. The evidence is not simply going to be a collection of anecdotes about the concerned spouse's behaviors to prove clearly and convincingly his or her psychological incapacity. The collection of anecdotes must refer back and pinpoint a personality structure or psychic causes to be acceptable as psychological incapacity.

Questions: (i) Are family court judges equipped or have they been equipped with the requisite expertise to make such conclusion? (ii) Most Article 36 petitions have only a singular point of view. Family courts have no access to experts to call as witnesses. Assuming family court judges are given the expertise to render such conclusion, are judges allowed to introduce as evidence their own expertise to bear upon the resolution of the case without them and their expertise being disclosed and thereafter subjected to cross-examination? (iii) In theory, personality structure and psychic causes seem to be so common place and pedestrian terms. Yet, why does the ponencia have to quote from an expert (to be sure, not just an expert but a *primus inter pares* among experts) to explain the entire gamut of psychological incapacity from the perspective of personality structure and psychic causes?

It would have been different if the incapacity has been reduced to (i) the incapacitated spouse's reputation of being incapacitated – that is, the viewpoint of reasonable members of the spouses' relevant communities, and (ii) the offended spouse's own experience of neglect, abandonment, unrequited love, and infliction of mental distress. Judges – even family court judges – are already equipped to assess the evidence on these matters. They do not have to disclose and be cross-examined in order for them to bring their expertise and experience in reading the evidence bearing on them. For this is what judges are by tradition expected to do. But determine personality structures and psychic causes as the root cause of the offending spouse's incapacity? The last time I heard about a judge resolving his own disputes using psychic causes, he was dismissed from the service.[13]

Too, in elucidating on the elements of gravity, permanence or incurability, and juridical antecedence, the ponencia has to refer to the opinion of the *primus inter pares* among psychologists. If the Supreme Court were to require an explanation coming from such expert, how could we now conclude that a lay witness could clearly and convincingly prove psychological incapacity?

The resolution of the present dispute involving the marriage of the Andals was helped immensely by the expert who testified on the husband's personality structure. The ponencia references extensively the psychiatrist's report and judicial affidavit. Her expertise was vouched for. The tests she had administered were assessed as reliable. The whole shebang of this case revolved around the expert's evidence. I cannot say therefore that the ponencia has veered from the personality disorder-centric formulation of psychological incapacity and shifted to a rights-based (i.e., right to personal autonomy) approach to Article 36. In any case, does this distinction really make any difference?

Respondent correctly declared to be psychologically incapacitated and the marriage correctly nullified on this ground – even under the prototypical doctrine on psychological incapacity

I concur with the ponencia in declaring respondent-husband psychologically incapacitated and nullifying his marriage with petitioner-wife on this ground. The evidence proves clearly and convincingly (a stricter requirement now imposed from the previous more likely than not standard) that respondent fits even the prototypical definition of a psychologically incapacitated spouse. The ponencia has exhaustively evaluated the

evidence on record, and I agree with the ponencia's findings. To some extent, the state of the evidentiary record in the present case is unusually complete because the evidence came from both petitioner and respondent. This is unusual because oftentimes there are no two versions of the claims asserted in an Article 36 case – the narrative is solely that of a petitioner and her or his witnesses, and is for that reason, undisputed by any other version. I submit, hence, that the Court of Appeals erred in reversing the trial court and decreeing that respondent was not psychologically incapacitated.

I further submit that this disposition would have been the same whether under the existing conception or pursuant to the more progressive and RIGHTS-BASED view of psychological incapacity that the ponencia had initially vigorously espoused, which my initial Reflections wholly supported.

The prototypical definition of psychological incapacity as inadequate to address dynamics of troubled and troubling marriages

I eagerly concurred with Justice Leonen on his initial reasoning in this case to accord a sensible and sensitive understanding and application of the remedy of psychological incapacity. I agree with his then analogy of the Article 36 remedy to a "strait-jacket," a fossilized description that does not account for the real-life dynamics inside the abode and within the relationship of couples in troubled and troubling marriages. For a marriage that is no longer what it is supposed to be, is a silence that paradoxically screams of poison and violence.[14]

Remedy of psychological incapacity as actually practiced in trial courts

As a remedy, psychological incapacity has not just been out-of-touch with the subject-matter it ought to deal with, its operationalization, in actual practice, has been unwieldy and precariously inaccurate and inadequate. For these reasons, this remedy has often appeared to be farcical. Let me refer to what usually happens in the proceedings before the family or designated-family court hearing a petition for psychological incapacity.

As noted, it is often the case that only the petitioner and her or his witnesses are heard. The respondent could not be located, his or her whereabouts is unknown, and he or she is summoned by publication. Examining the pleadings, one would immediately notice the histrionic epithets and exaggerated accounts of a spouse's qualities, the objective of this form of pleading being to "strait-jacket" one's case within the prototypical doctrine of psychological incapacity.

Practitioners also learn from precedents dismissing Article 36 petitions. To address concerns that a clinical psychologist or psychiatrist was able to obtain information from and personally assess only the petitioner, yet, declare the other spouse (i.e., respondent) as being psychologically incapacitated, an Article 36 petition would instead allege that both petitioner and respondent are psychologically incapacitated. This way, even if the expert was not able to examine the respondent in person, and the expert opinion that the respondent is psychologically incapacitated would have been based only upon the petitioner's second-hand information, the expert has the alternative of having gotten information and administered tests and interviews from the petitioner personally. In the latter case, the petitioner has first-hand and personal knowledge of himself or herself and the facts upon which the expert opinion of the petitioner's psychological incapacity would be based; this manner of pleading and proof would obviate the type of objections that the Court of Appeals applied in the present case of Spouses Rosanna and Mario.

It is also the case that the trial prosecutor, who appears as deputy of the Office of the Solicitor General as counsel for the State, has no access to evidence that would impeach or contradict the petitioner's evidence. The trial prosecutor has no clinical psychologist or psychiatrist to call as witness or even to consult for purposes of an informed cross-examination of the petitioner's evidence. As is often the case, the trial ends and the case is submitted for decision with only the petitioner and his or her witnesses providing the evidence.

The evidentiary record is therefore often incomplete. The result is the inability to articulate in terms required by our rules of procedure and establish the screaming silence, the violence and poison, the anger, the resentments, and the mental disease.[15]

An inadequate and incomplete evidentiary record, as mentioned, is the consequence of the desire of the petitioner to adhere slavishly to the restrictive strictures of the prototypical and prevailing conceptualization of psychological incapacity, to the detriment of the context of family dynamics that already renders the marriage unbearable, hostile, and unsafe. In turn, an incomplete evidentiary record impacts negatively on the burden and standard of proof required of the petitioner, which results in the Article 36 remedy as being ineffectual and unresponsive against the needs and mischief it is supposed to address. Also, an inadequate and incomplete evidentiary record encourages, on one hand, trial judges to rely obsequiously upon the expert opinion of the clinical psychologist or psychiatrist, and on the other, petitioner to insist that such expert opinion must be dispositive of the case.

One may ask for the reasons giving rise to this state of affairs in an Article 36 petition. I venture to say that the petitioner, as much as possible, would like to take advantage of proceeding as if *ex parte*, that is, except for the trial prosecutor's cross-examination, with only his or her version of the facts on record. Costs of staging an honest-to-goodness case build-up and presentation could be staggering. Emotions may also be running high. The respondent may not wish to get involved in a case, the outcome of which, he or she has no interest or stakes. It may also be true that the respondent's whereabouts is sincerely unknown to the petitioner.

The remedy of psychological incapacity, as the prototypical doctrine understands it to be, does not work as well in practice as it is in theory. This is unfortunate because there are real needs and actual mischief that the remedy seeks to address – the dysfunctional marriage and the decaying family that the latter breeds. I agree with the initial iterations of the ponencia that to make the remedy responsive and relevant, some adjustments have to be written into the prototypical doctrine. But again, this did not come to pass.

For one, as Justice Leonen had initially propounded, and correctly I must add, the Court could establish presumptions on the basis of facts, the proof of which would already clearly and convincingly establish psychological incapacity. Justice Leonen then mentioned physical, psychological, and emotional violence inflicted upon either spouse by the other. He also mentioned abandonment for five years or more, and the deliberate failure to provide support. Unlike the prototypical doctrine on psychological incapacity, proof by an expert of the existence of a personality disorder would realistically be only one of the means of proving the existence of psychological incapacity.

For another, it is high-time to abandon the prototypical insistence on proof of clinically-identified personality disorders (now termed personality structure and psychic causes) as the sole elemental source of psychological incapacity. Rather, as the examples then propounded by Justice Leonen would show, it would also be enough to prove mental state or state of mind of an inability to fulfil the marital and parental duties as a trigger to the ascription of psychological incapacity to a spouse.

It is also apt to abandon the requirement of juridical antecedence so that the trigger mental state that develops post-marriage can be accounted for. To be sure, it is not illogical or contrary to common experience that love

blinds only for so long, and thereafter, when emotions have subsided and the dynamics of having to interact with another breathes a life of its own, the mind has stopped to function in the marital partnership and duties are no longer being fulfilled, there is no love and respect but screaming silence, violence, and poison. These experiences are relevant to a finding of psychological incapacity and should not be shut off only because they happen post-marriage.

Lastly, incurability or permanence should now be seen and analyzed in terms of a spouse's failure to reconcile with the other despite bonafide endeavours to do so.

Article 36 petitions are different from ordinary civil cases because they implicate an individual's right to liberty in the most intimate ways. The liberty right I talk about here, as my senior colleagues have said so eloquently so many times before, does not just involve physical bars that restrain. The gravity of the pain that the unwanted detention in a broken marriage brings is one that cannot be measured by simply counting the days; it is a pain that many do not see, it is an incarceration that some of the fortunate ones could not understand and could also be possibly scoffing at. It is a pain that manifests in the cold stares and a death that does not end the pain but only aggravates it. The restraint is not one that he or she can escape from by digging a tunnel, cutting steel bars, or driving a fast car. For there is no hiding from the dying and cold empty look.[16]

As many of my senior colleagues in the Court have observed, the constitutional right to liberty does not simply refer to freedom from physical restraint. This right includes the right to be free to choose to be one's own person. As Justice Jardeleza explained, "[t]his necessarily includes the freedom to choose how a person defines her personhood and how she decides to live her life. Liberty, as a constitutional right, involves not just freedom from unjustified imprisonment. It also pertains to the freedom to make choices that are intimately related to a person's own definition of her humanity. The constitutional protection extended to this right mandates that beyond a certain point, personal choices must not be interfered with or unduly burdened as such interference with or burdening of the right to choose is a breach of the right to be free." The ability to choose one's intimate partner, as Justice Leonen spells out in his Twitter messages and not long ago in the past and now abandoned iteration of his ponencia, is connected to human autonomy and dignity, and it degrades or demeans an individual when he or she is denied the right to associate or not to associate with an intimate partner, because the choice of one's intimate partner ultimately defines the individual.

Cultural competence in both the practice and understanding of psychological incapacity is a necessity if we are to correct the inequities of the prevailing doctrine on psychological incapacity. Cultural competence is the capacity to communicate and interact effectively, respectfully, and comfortably with people of differing cultures or backgrounds.[17] Social differences include indigeneity, religion, physical and mental ability, class, and education.[18] A judge or a lawyer (a trial prosecutor or a counsel from the Public Attorney's Office or a lawyer from the Office of the Solicitor General), who meets an Article 36 (psychological incapacity) litigant for only their brief appearances in court, invariably shapes and reinforces the judge's or lawyer's values, ways of organizing and understanding information, and norms of social behaviour, which in turn shape or reinforce how the judge or the lawyer assesses credibility, organizes facts, and makes judgments about what the litigant actually does, says, or seeks.[19] Reading and implementing psychological incapacity in ways that incorporate cultural competency helps bridge between the legal profession's duty to promote access to justice and protect public interest and the fact that we simply live in a society where law and legal system are contributors to the privileging of values and cultural practices of some dominant groups therein.[20]

At a broader systemic level, a culturally competent understanding and practice of any branch of law includes recognizing that the fast-paced directive style of articulating the rule of law in the dominant culture such as how the prototypical doctrine on psychological incapacity has appropriated elements from the tenets of the Catholic

faith, may actually impede information exchange and trust in relationships.[21] This is especially true where the spouses' social, religious, or political culture prioritizes all members having a real conversation – a chance to speak, deep listening, and above all, consensus decision-making as regards what is or what is no longer a viable marriage in terms of the spouses' respective mental states towards the marital relations.[22] This means having to shun the monocentric conception of psychological incapacity in favor of a respectful consideration of the social mores of the different cultures to one of which the litigants belong. To illustrate in a practical sense, and I am sure Justice Leonen is aware of this, the practices of indigenous cultures on marriage and marital breakdown should also inform a more inclusive understanding and application of psychological incapacity in our courts.

Additionally, cultural competence may also require that judges and lawyers alike embrace the reality that experiences of systemic discrimination in law and by actors or institutions within the legal system may affect the parties' choices, actions, and degree of trust in the legal system, especially where the court case as in one involving psychological incapacity affects them deeply personally.[23] For example, a petitioner in a nullity case who has also been a victim of violence by her spouse would not have much appreciation for a disposition of her nullity case on the basis of the strait-jacketed elements our courts have used in resolving claims of psychological incapacity. For one, the costs of securing an expert (a clinical psychologist or psychiatrist) would be one drawback for her. Her cross-examination by the counsel for the State could be another disadvantage that she may not endearingly appreciate. So is the requirement that she prove more likely than not that her husband, who had subjected her already to violence, suffers from a clinically identified personality disorder, that this personal disorder is the more proximate of all the causes of all her troubles, and that this personal disorder has roots in her husband's adolescence or childhood. I do not wish to make this analogy of the trial of psychological incapacity cases to rape, but it is substantially the same – it is like having the petitioner-wife having to go through and re-live the abuse once again, this time through our court processes.

I believe that we have to be aware of the social facts arising from our communities and court processes, in conjunction with our special responsibility by virtue of our collective responsibility as the court of last resort, to ensure that legal services are delivered in a manner that facilitates access to justice and public confidence in the administration of justice.

I propose that Article 36 of the Family Code should be read and implemented generously consistent with, one, the constitutional right to personal liberty and privacy as this is understood by many well-meaning constitutionalists, and two, a culturally competent understanding and practice of the law on psychological incapacity. As the Supreme Court interprets the law, this is the right and decent thing to do. When marriage has reached its end, when the spouses have lit all the candles, said all the prayers, and the anti-depressants do not anti-depress anymore, though there may be no more capacity to change hearts, judicial decrees can and must restrain the heartless.

ACCORDINGLY, I concur in the result. On different grounds, I vote to grant the Petition for Review, to set aside and reverse the Decision dated February 25, 2010 of the Court of Appeals in CA-G.R. CV No. 90303, and to reinstate the Decision dated May 9, 2007 of the Regional Trial Court, Branch 260, Paranaque City, in Civil Cases Nos. 01-0228 and 03-0384.

[1] 335 Phil. 664, 676-679 (1997).

[2] Mayo Clinic, Personality Disorders, <https://www.mayoclinic.org/diseases-conditions/personality-disorders/diagnosis-treatment/drc-20354468>, last accessed on May 17, 2021.

[3] R. E. Kendell, "The distinction between personality disorder and mental illness," The British Journal of Psychiatry, published online by Cambridge University Press: 02 January 2018, at <https://www.cambridge.org/core/journals/the-british-journal-of-psychiatry/article/distinction-between-personality-disorder-and-mental-illness/F4FC446AEB38B5704ED132245F86E93B>, last accessed on May 19, 2021.

[4] Ibid.

[5] Ibid.

[6] Ibid.

[7] Ibid.

[8] Ibid.

[9] <https://www.mayoclinic.org/diseases-conditions/personality-disorders/diagnosis-treatment/drc-20354468>, last accessed on May 17, 2021.

[10] Garlet v. Garlet, 815 Phi. 268-305 (2017).

[11] Ibid.

[12] Ibid.

[13] Office of the Court Administrator v. Floro, (Resolution) A.M. No. RTJ-99-1460, August 11, 2006.

[14] Inspired by the lyrics of the song "100% or Nothing" by Primal Scream.

[15] Ibid.

[16] Ibid.

[17] Hannah Bahmanpour and Julie MacFarlane, What Court Staff Told Us: A Summary from the National Self-Represented Litigants Study 2011-2012, National Self Represented Litigants Project, 2014 CanLIIDocs 33186, <<http://www.canlii.org/t/sjqf>>, retrieved on 2019-08-12; see also Rose Voyvodic, Lawyers Meet the Social Context: Understanding Cultural Competence, 2006 84-3 Canadian Bar Review 563, 2006 CanLIIDocs 152, <<http://www.canlii.org/t/2cgq>>, retrieved on 2019-08-12; Western Centre for Research and Education on Violence Against Women and Children, Make It Our Business," at <http://makeitourbusiness.ca/blog/what-does-it-mean-be-culturally-competent>, last accessed May 15, 2021.

[18] Ibid.

[19] Ibid.

[20] Ibid.

[21] Ibid.

[22] Ibid.

[23] Ibid.

SEPARATE CONCURRING OPINION

INTING, J.:

This Separate Opinion is to reflect my views and emphasize my reasons for concurring with the ponencia's amendments to the guidelines set forth in *Republic v. Molina*[1] (Molina) as regards the interpretation and application of the concept of psychological incapacity as a ground for voiding marriages under Article 36 of the Family Code of the Philippines (Family Code).

The earliest definition of "psychological incapacity" under Article 36 can be found in *Santos v. CA, et al.*[2] (Santos) as follows:

x x x Thus correlated, "psychological incapacity" should refer to no less than a mental (not physical) incapacity that causes a party to be truly incognitive of the basic marital covenants that concomitantly must be assumed and discharged by the parties to the marriage which, as so expressed by 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 intentment of the law has been to confine the meaning of "psychological incapacity" to the most serious cases of personality disorders clearly demonstrative of an utter insensitivity or inability to give meaning and significance to the marriage. x x x[3] (Italics supplied.)

In *Santos*, the Court observed that the absence of a clear-cut definition of "psychological incapacity" in the Family Code had not been an oversight on the part of the Family Code Revision Committee. Rather, the deliberate vagueness in the term itself was so designed in the law "as to allow some resiliency in its application." [4]

Then came the ruling in *Molina* in which the Court laid down the guidelines for the bench and the bar in interpreting and applying Article 36 of the Family Code, viz.:

From their submissions and the Court's own deliberations, the following guidelines in the interpretation and application of Art. 36 of the Family Code are hereby handed down for the guidance of the bench and the bar:

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

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

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

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

thereto.

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

(5) Such illness must be grave enough to bring about the disability of the party to assume the essential obligations of marriage. Thus, "mild characterological peculiarities, mood changes, occasional emotional outbursts" cannot be accepted as root causes. The illness must be shown as downright incapacity or inability, not a refusal, neglect or difficulty, much less ill will. In other words, there is a natal or supervening disabling factor in the person, an adverse integral element in the personality structure that effectively incapacitates the person from really accepting and thereby complying with the obligations essential to marriage.

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

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

"The following are incapable of contracting marriage: Those who are unable to assume the essential obligations of marriage due to causes of psychological nature."

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

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

(8) The trial court must order the prosecuting attorney or fiscal and the Solicitor General to appear as counsel for the state. No decision shall be handed down unless the Solicitor General issues a certification, which will be quoted in the decision, briefly stating therein his reasons for his agreement or opposition, as the case may be, to the petition. The Solicitor General, along with the prosecuting attorney, shall submit to the court such certification within fifteen (15) days from the date the case is deemed submitted for resolution of the court. The Solicitor General shall discharge the equivalent function of the defensor vinculi contemplated under Canon 1095.[5] (Emphasis supplied.)

Since its promulgation in 1997, the Court has strictly applied the Molina guidelines in petitions for nullity under Article 36, which has more often than not resulted in the denial thereof for failure to prove that one or both spouses are psychologically incapacitated to comprehend and comply with their essential marital obligations.

To illustrate, in *Republic v. Deang (Deang)*,^[6] the Court refused to nullify the marriage of the parties in the

absence of sufficient evidence establishing psychological incapacity within the context of Article 36, viz.:

x x x Emilio may have engaged in an extra-marital affair, gambled, failed to support Cheryl and their son, is irritable and aggressive, and abandoned his family, while Cheryl may have married Emilio simply in obedience to her parents' decision and had the constant need for her parents' care and support. However, these acts, by themselves, do not prove that both parties are psychologically incapacitated as these may have been simply due to jealousy, emotional immaturity, irresponsibility, or dire financial constraints. x x x Accordingly, it cannot be said that either party is suffering from a grave and serious psychological condition which rendered either of them incapable of carrying out the ordinary duties required in a marriage.[7]

Notably, the Court in *Deang* had disregarded the testimony of the expert witness as regards the alleged psychological incapacity as the psychologist's findings were solely founded on the narrations of the respondent spouse and her sister.[8]

In *Dedel v. Court of Appeals*,[9] the Court ruled that a spouse's sexual infidelity or perversion and abandonment, by themselves, do not constitute psychological incapacity within the contemplation of Article 36. It further held that emotional immaturity and irresponsibility, too, are not manifestations of a disordered personality which would make him or her completely unable to discharge the essential obligations of the marital state.[10] Although it was shown that the respondent spouse had Antisocial Personality Disorder exhibited by her blatant display of infidelity and abandonment of her family, the Court still declared that, at best, these are grounds for legal separation under Article 55 of the Family Code.

Similarly, in *Paz v. Paz*,[11] the Court found the Borderline Personality Disorder of the petitioner spouse to be insufficient, based on the totality of evidence, to prove psychological incapacity so grave, permanent, and incurable as to deprive him of the awareness of the duties and responsibilities of the matrimonial bond. It noted that at most, the evidence showed that the petitioner spouse was irresponsible, insensitive, or emotionally immature given his tendencies to resort to violence, to lie about his whereabouts and to hang out and spend a great deal of time with his friends, as well as his severe dependence on and attachment to his mother even for their son's supply of milk and diapers.

Nevertheless, in select, few cases, the Court has also applied the resiliency with which the concept of psychological incapacity under Article 36 should be applied and the case to case basis by which the provision should be interpreted.[12]

In *Halili v. Santos-Halili, et al.*,[13] the Court declared the marriage void under Article 36 considering the diagnosis of an expert witness that the petitioner spouse was suffering from a Mixed Personality Disorder, which was serious and incurable and directly affected his capacity to comply with his essential marital obligations. According to the expert witness, the petitioner spouse displayed a self-defeating and submissive attitude which encouraged other people to take advantage of him – first, by his father who treated his family like robots and, later, by the respondent spouse who was as domineering as his father.[14]

Also, in *Camacho-Reyes v. Reyes-Reyes*,[15] the Court concluded that the factual antecedents, as alleged in the petition and established during trial, all pointed to the inevitable conclusion that the respondent spouse was psychologically incapacitated to perform the essential marital obligations as evidenced by his: (1) sporadic financial support; (2) extra-marital affairs; (3) substance abuse; (4) failed business attempts; (5) unpaid money obligations; (6) inability to keep a job that is not connected with the family businesses; and (7) criminal charges of estafa.[16]

As I see it, these cases show a clear disparity in how the courts have been applying the Molina guidelines in deciding psychological incapacity cases through the years. In this, I completely agree with the ponencia that the

Molina guidelines have been applied too rigidly in past cases in a way that is inconsistent with the spirit and intent of Article 36.

Notably, the Court, too, has previously made the same observations relating to the strict application of the Molina guidelines. In *Ngo Te v. Gutierrez Yu-Te, et al.*,^[17] the Court noted that the guidelines have "unnecessarily imposed a perspective by which psychological incapacity should be viewed, totally inconsistent with the "way the concept was formulated—free in form and devoid of any definition."^[18] It further expounded on the unintended consequences of the strict application of the Molina guidelines as follows:

x x x 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 institution. 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.

The Court need not worry about the possible abuse of the remedy provided by Article 36, for there are ample; safeguards against this contingency, among which is the intervention by the State, through the public prosecutor, to guard against collusion between the parties and/or fabrication of evidence. The Court should rather be alarmed by the rising number of cases involving marital abuse, child abuse, domestic violence and incestuous rape.^[19] (*Italics supplied.*)

This is not to say, however, that the Molina guidelines are truly unfounded and without any legal bases or flawed beyond repair. This, in fact, is a point that I refused to concede from the very beginning despite the number of valid concerns that have been raised, both in the past and in the present, as regards the impact of the Molina ruling in the disposition of psychological incapacity cases. In my view, the guidelines simply had to be revisited, refined, and updated to reflect what is already provided in pertinent laws and jurisprudence so as to avoid further confusion in its application by the bench and the bar.

To this end, it is my stand that the alleged root cause of psychological incapacity need not be medically or clinically identified as a specific, incurable psychological illness or be proven in court by expert testimony for a petition under Article 36 to be granted.

Section 2(d) of A.M. No. 02-11-10-SC, otherwise known as the Rules on Declaration of Absolute Nullity of Void Marriages and Annulment of Voidable Marriages, provides:

SECTION 2. Petition for declaration of absolute nullity of void marriages. -

x x x x

(d)

What to allege. — A petition under Article 36 of the Family Code shall specifically allege the complete facts showing that either or both parties were psychologically incapacitated from complying with the essential marital obligations of marriage at the time of the celebration of marriage even if such incapacity becomes manifest only after its celebration.

The complete facts should allege the physical manifestations, if any, as are indicative of psychological incapacity at the time of the celebration of the marriage but expert opinion need not be alleged. (*Italics supplied.*)

Veritably, what Article 36 requires is only a showing of facts relating to manifestations or symptoms indicative of psychological incapacity and not necessarily a specific, incurable mental disorder that supposedly caused such incapacity. At most, the presentation of expert testimony to prove that a person is suffering from an incurable mental illness may be deemed as compelling evidence in resolving the issue of psychological incapacity, but it should not be considered an indispensable requirement for a petition under Article 36 to prosper.

This case provides an excellent opportunity for the Court to once again emphasize that an expert opinion is not absolutely necessary and may easily be dispensed with if the totality of the evidence shows that psychological incapacity had existed at the time of the celebration of the marriage. After all, there is no requirement in the law or in *Molina* that a person must first be examined by a physician before he or she can be declared psychologically incapacitated under Article 36.[20] "What is important is the presence of evidence that can adequately establish the party's psychological condition." [21]

On this point, the Committee on the Revision of the Rules on the rationale of the Rule on Declaration of Absolute Nullity of Void Marriages and Annulment of Voidable Marriages further explained:

To require the petitioner to allege in the petition the particular root cause of the psychological incapacity and to attach thereto the verified written report of an accredited psychologist or psychiatrist have proved to be too expensive for the parties. They adversely affect access to justice of poor litigants. It is also a fact that there are provinces where these experts are not available. Thus, the Committee deemed it necessary to relax this stringent requirement enunciated in the *Molina* Case. The need for the examination of a party or parties by a psychiatrist or clinical psychologist and the presentation of psychiatric experts shall now be determined by the court during the pre-trial conference.[22]

It is for these reasons that I emphasize that psychological incapacity, as contemplated under Article 36, should be considered as a legal concept and not a medical one. Stated differently, psychological incapacity is a legal conclusion of the courts that is not, as it should not be, wholly dependent on the medical diagnosis of one or both spouses by an expert in the fields of psychology or psychiatry. To reiterate, it is still the totality of evidence that must convince the court that the parties, or one of them, was mentally ill to such an extent that the person could not have known the essential marital obligations he or she was assuming, or knowing them, could not have given valid assumption thereof.

In line with this, it necessarily follows that the presentation of any form of medical evidence to prove psychological incapacity will not guarantee that a petition for declaration of nullity of marriage under Article 36 will be granted by the courts. Nevertheless, I must stress that the courts should not arbitrarily reject a physician's medical opinion concerning the alleged psychological incapacity of a party; rather, the courts should consider the expert opinion in view of the facts and circumstances of the case and, when common knowledge fails; such opinion may be given controlling effect.[23]

With these considerations in mind, I concur with the ponencia that in proving psychological incapacity for purposes of Article 36, a party must prove by clear and convincing evidence the requirements of juridical antecedence, gravity, and incurability, albeit in the legal sense. Moreover, as an amendment to *Molina*, the alleged root cause of the psychological incapacity no longer needs to be medically or clinically identified or be proven by expert testimony.

The first two requirements are simple enough to explain. Juridical antecedence, for one, is an explicit requisite under the law as the psychological incapacity must be shown to have existed at the time of the celebration of the marriage, even if it only manifested later on. As for gravity, it is well settled that mere neglect, refusal or difficulty to perform the essential marital obligations cannot be considered tantamount to psychological incapacity

within the contemplation of Article 36.[24]

As regards the aspect of incurability, I agree with the ponencia's qualification that the term must be understood in the legal, not medical, sense. In other words; incurability as applied in psychological incapacity cases pertain not to a person's medical prognosis, but to his or her incapacity to perform the essential marital obligations with respect to a specific partner. Again, as I mentioned earlier, psychological incapacity must be fully viewed by the bench and the bar as a legal concept that does not require the presentation of an expert witness to be sufficiently established in court.

Thus, I support the conclusion that the totality of the evidence presented by Rosanna L. Tan-Andal (Rosanna) clearly established that Mario Victor M. Andal (Mario) was psychologically incapacitated to comply with his essential marital obligations: first, Mario suffers from Narcissistic Antisocial Personality Disorder and Substance Abuse Disorder with Psychotic Features; second, these mental disorders have clearly rendered him psychologically incapacitated to perform his essential marital obligations to Rosanna and their child; and third, Mario's psychological incapacity, which is undeniably grave and incurable with respect to his relationship with Rosanna, had existed prior to the celebration of their marriage.

There is, therefore, no question that the marriage of Rosanna and Mario is void under Article 36 of the Family Code.

As a final point, I find it imperative to once more remind the bench and the bar that the Molina guidelines, even as amended in this case, are still exactly just that—mere guidelines that are to be applied on a case to case basis, with due regard to the peculiar set of facts and circumstances in a given case.

WHEREFORE, I vote to GRANT the petition and to DECLARE the marriage of petitioner Rosanna L. Tan-Andal and respondent Mario Victor M. Andal null and void in view of the latter's psychological incapacity to comply with his essential marital obligations.

[1] 335 Phil. 664 (1997).

[2] 310 Phil. 21 (1995).

[3] Id. at 40.

[4] Id. at 36.

[5] Republic v. Molina, supra note 1 at 676-679.

[6] G.R. No. 236279, March 25, 2019.

[7] Id.

[8] Id.

[9] 466 Phil. 226 (2004).

[10] Id. at 233.

[11] 627 Phil. 1 (2010).

[12] See Dissenting Opinion of Associate Justice Marvic M.V.F. Leonen in *Mallilin v. Jamesolamin, et al.*, 754 Phil. 158, 200 (2015).

[13] 607 Phil. 1 (2009).

[14] *Id.* at 6.

[15] 642 Phil. 602 (2010).

[16] *Id.* at 632-633.

[17] 598 Phil. 666 (2009).

[18] *Id.* at 669.

[19] *Id.* at 695-698.

[20] See *Marcos v. Marcos*, 397 Phil. 840, 850 (2000).

[21] *Id.*

[22] *Ting v. Velez-Ting*, 601 Phil. 676, 692 (2009), citing Rationale for the New Rules as submitted by the Committee on the Revision of Rules to the Supreme Court, November 11, 2002, p. 3, as cited in *Sta. Maria, Jr., Court Procedures in Family Law Cases*, 2007 ed., pp. 10-11. *Italics in the original.*

[23] See *Lavarez, et al. v. Guevarra, et al.*, 808 Phil. 247, 256 (2017).

[24] See *Republic v. Romero*, 781 Phil. 737, 749 (2016).

CONCURRING OPINION

M. LOPEZ, J.:

Petitioner Rosanna L. Tan-Andal (Rosanna) married Mario Victor M. Andal (Mario) on December 16, 1995. Rosanna gave birth to Ma. Samantha, the only child of the parties, the following year. Since Mario had no work, Rosanna allowed Mario to run the construction firm she set up before they got married. During their marital cohabitation, Mario showed emotional immaturity, financial irresponsibility, irritability and paranoia. Mario also struggled with substance abuse and despite attempts to rehabilitate him, he relapsed to drugs use. Rosanna took care of their child without Mario's help and support.

Rosanna eventually filed a Petition for Declaration of Nullity of Marriage. To prove Mario's psychological incapacity, Rosanna presented, as expert witness, a psychiatrist who diagnosed Mario with Narcissistic Antisocial Personality Disorder and Substance Abuse Disorder with Psychotic Features of Paranoid Delusions and Bizarre Behavior. The psychiatrist testified that Mario's personality disorder was grave, deeply rooted in his character, and impermeable to any form of psychiatric therapeutic modality. The trial court voided the parties' marriage and awarded the custody of their child to Rosanna. The trial court likewise declared Rosanna as the sole and absolute owner of a duplex including the lot on which it was built. However, the Court of Appeals reversed the trial court and ruled that the psychiatrist's evaluation is unscientific and unreliable. According to the CA, the psychiatrist's conclusion was based on second-hand information provided to her by the petitioner. Hence, this petition.

I am of the view that Rosanna has sufficiently proven Mario's psychological incapacity. Mario's disorders were seen as a pervasive life pattern of irresponsibility, inability to maintain his own direction in life without the financial help and support of Rosanna and other people, impulsivity, aggression and lack of empathy. The frequency, intensity and duration of these symptomatic behaviors similarly indicated their gravity and seriousness. The totality of evidence in this petition confirms that Mario's disorders rendered him psychologically incapacitated, thus, incapable of fulfilling his essential marital obligations as embodied in the Family Code.

I agree with the conclusion reached in the ponencia ably written by the Honorable Marvic M.V.F. Leonen. With the ponente's indulgence, I offer my observations.

Psychological incapacity is a legal concept, but its root cause can be a mental or personality disorder.

There are clear scientific standards to determine certain medical conditions (insanity, serious sexually transmissible disease, incapability to consummate, etc.) that serve as qualifying characteristics for a legal status (the marriage is voidable, etc.). Psychological incapacity, on the other hand, does not have any clinical equivalent. Justice Leonen expounded that psychological incapacity is not a mental disorder recognized by the scientific community but is a purely legal concept. However, psychologists and psychiatrists are forced to ascribe a diagnosis because *Republic v. CA and Molina*[1] requires a root cause that is medically or clinically identified.

In *Leouel Santos v. CA*[2] and reiterated in *Molina*, the Court ruled, viz:

x x x "psychological incapacity" should refer to no less than a mental (not physical) incapacity that causes a party to be truly incognitive of the basic marital covenants that concomitantly must be assumed and discharged by the parties to the marriage which, as so expressed by 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. This psychologic condition must exist at the time the marriage is celebrated.

The learned ponente also mentioned personality structure manifested through clear acts of dysfunctionality that undermines the family, and this aspect of personality fulfills the law's intent to limit psychological incapacity to "psychic causes".

Indeed, the term psychological incapacity per se is and has always been a legal concept. For the concept to be meaningful and to settle the confusion about what really constitutes inability to understand and comply with one's marital obligations, there should be indicators or facts to verify the concept. For the court to arrive at a legal conclusion of psychological incapacity, the aggrieved party must prove certain facts including the root cause which may be a mental or personality disorder. To establish the root cause of psychological incapacity, a psychologist or psychiatrist may be required to assess and evaluate the psychological condition of the parties. By the very nature of Article 36 cases, due regard must be given to expert opinion on the psychological and mental disposition of the respondent.[3]

Further, the term "personality structure" appears in the literature of psychology.[4] Personality structure is defined as the organization of the personality in terms of its basic, enduring components and their relationship to each other.[5] The famous Sigmund Freud talked about personality structure as tripartite, or composed of the id, ego and superego, developing at different stages in our lives.[6] Neither the petitioner nor an ordinary witness can solely characterize the so-called personality structure of one who is allegedly psychologically incapacitated. An expert in the field of psychology may be necessary to explain and prove that the personality structure of the respondent, or both parties, has manifested itself through acts of dysfunctionality.

The fifth version of the Diagnostic and Statistical Manual of Mental Disorders (DSM-5), used by clinicians for assessments and diagnosis of mental disorders, may be considered. The manual describes personality disorder as a sub-class or one of the major diagnostic categories of mental disorders.[7] In *Santos* and *Molina*, psychological incapacity was explained in the context of mental incapacity and personality disorder; there is no indication to

limit psychological incapacity to the term "personality disorder" in its technical sense. The intention was simply to differentiate mental or psychologic condition from physical incapacity. To confine the root cause of psychological incapacity to personality disorders only would negate the discussions of the Civil Code and Family Law Committee on the existence of relative incapacity,[8] which is not possible in personality disorders that are, by their nature, pervasive or deeply ingrained in the personality of the individual. Further, mental disorders like psychosis, characterized by distortions in thinking, perception, emotions, language, sense of self and behavior,[9] although not categorized as personality disorder, may cause a party's inability to comply with marital obligations. The root cause of psychological incapacity should therefore be interpreted to encompass other subcategories of mental disorders, not just personality disorders.

Certainly, diagnosis of a personality or other mental disorder will only clarify and strengthen an action under Article 36. The resulting incapacity as it relates to the essential marital obligations, which is the core issue in Article 36 cases, must still be proven. Ultimately, it is the judge, not the psychiatrist or the psychologist, who gets to decide when a party is incapable of fulfilling the essential obligations of marriage.

The concepts of root cause and juridical antecedence should not be confused with childhood development.

In *Molina* it was held that 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. The issue on root cause needs to be revisited because a lot of cases were denied simply because of petitioner's failure to present evidence or witness (expert or corroborative) on the respondent's childhood development.

It must be emphasized that in Article 36 cases, it is the respondent's psychological incapacity to perform essential marital obligations – not his childhood development or upbringing – that must be proven in court. The root cause of the incapacity refers to the respondent's disorder, not his childhood development. Even without a description of childhood development of the party alleged to be psychologically incapacitated, a wife or husband's narration to the psychologist as to what could have given rise to the psychological incapacity should already suffice.

Both heredity and environment shape personality. The interplay of these factors defines the development of characteristic traits in an individual. There are a lot of things that happen to a child outside of the home that contribute to his character development, such as peer pressure, media, or relations with neighbors, teachers and other people the child gets in contact with. For example, although much can be traced on how a child was reared, there are children from broken families or with physically abusive parents who grew up to be ideal partners.

Furthermore, it is not possible to truly have a witness who can trace every fact or circumstance regarding a person's childhood development. It is doubtful that siblings or parents of the respondent would come to court and testify as to how their family member was brought up and became psychologically incapacitated. At best, statements from respondent's family members are only their recollection of events. In determining the root cause, what's important is the assessment and diagnosis by a psychologist whose psychological evaluation report may be considered as an *amicus curiae* brief.

Regarding juridical antecedence, it simply means, as required by the clear text of Article 36 of the Family Code, that psychological incapacity must exist at the time of the celebration of marriage although such incapacity becomes manifest only after its solemnization. The provision does not refer to the disorder or root cause which should be present during the time the marriage is celebrated, but rather, the incapacity to fulfill marital obligations

must have attached at such moment or prior to thereto. Surely, tracing childhood development is not the only way which would reveal and clarify the state of mind and incapacity of the party at the moment of celebration of marriage.

Psychological incapacity need not be incurable.

The ponencia discussed that medical health professionals use prognosis or the prospect of recovery as anticipated from the usual course of disease or peculiarities of the case. Curability or incurability is not used as a description. Significantly, the textual requirements of Article 36 do not mention incurability. There is no basis for mandating the element of incurability.[10]

Incurability as a characterization of psychological incapacity appears antithetical. Even if some mental disorders are treatable or improvement possible through medicine, therapy, or other treatments, the subsequent cure will not make the marriage valid. Further, a person may be psychologically incapacitated vis-à-vis his or her spouse but he or she is just like any regular person to the rest of the world. In fact, there is no law that prohibits a psychologically incapacitated person from marrying again.[11] If psychological incapacity is permanent or incurable, it cannot be confined within one's relations with the present spouse. This requirement creates an unintended consequence and confusion. How can a person who is permanently psychologically incapacitated still contract a valid marriage later on?

How do we determine psychological incapacity?

In Santos, the Court stated that psychological incapacity, as interpreted by the Catholic Marriage Tribunal, must be characterized by gravity, juridical antecedence and incurability. Jurisprudence mentioned some guidelines and requisites but did not specify the procedure on how to assess psychological incapacity. Justice Leonen elucidated that psychological incapacity develops within the marital relationship as a result of interpersonal dynamics of the couple. Necessarily, different behaviors manifested by the husband or wife before and during the marriage must be considered, but how do we gather information about these behaviors?

The spouse of the person alleged to be psychologically incapacitated may be interviewed by the psychologist since he or she is in the best position to describe his or her spouse's inability to comply with marital obligations. The period of marital cohabitation and matters involving the spouses' affective communication with each other, the time they devoted to each other, the spouses' dissatisfaction on matters involving family income and expenses, manner of resolving major concerns, issues and problems in the family, style of rearing their child, interpersonal dealings with each other's family members and other significant events can only be discussed by the spouse. Other indicia of psychological incapacity that can only be witnessed by the spouse include paraphilia, aberrant sexual behavior, sexual promiscuity and inhibitions. Based on the spouse's observations, the psychologist can identify and explain whether the respondent is psychologically incapacitated.

A clinical psychologist, once qualified as an expert witness, interprets the facts of the case and gives his or her opinion, unlike an ordinary witness who is required to have personally seen or heard something. Expert opinion is crucial to enable courts to properly assess the issue and arrive at a judicious determination of each case.[12] As emphasized in Hernandez v. Court of Appeals,[13] expert testimony is important to establish the precise cause of a party's psychological incapacity.

Moreover, a spouse's testimony cannot be hearsay since the spouse has personal knowledge which is a substantive prerequisite for accepting testimonial evidence. Other witnesses may likewise be presented but should not be required. Courts should bear in mind that it may be difficult or even impossible to obtain witnesses who have personal knowledge of the different behaviors displayed by a spouse during marital cohabitation. Even if other

witnesses are able to observe the respondent, their testimony is only based on isolated incidents or "snapshots" of the respondent's life rather than continuing patterns. Nevertheless, factual information gathered by courts from these witnesses may be considered corroborative evidence.

Lack of personal examination or interview of the psychologically incapacitated spouse does not invalidate the findings of the expert.

As *Marcos v. Marcos*[14] asserts, there is no mandatory requirement that a party alleged to be psychologically incapacitated be personally examined. The Court explained:

Psychological incapacity, as a ground for declaring the nullity of a marriage, may be established by the totality of evidence presented. There is no requirement, however, that the respondent should be examined by a physician or a psychologist as a condition sine qua non for such declaration.

In *Dela Fuente v. Dela Fuente*,[15] the Court ruled that the psychologist's testimony, as corroborated by the petitioner, sufficiently proved that respondent suffered from psychological incapacity. In *Camacho-Reyes v. Reyes*,[16] the Court reiterated that the non-examination of one of the parties will not automatically render as hearsay or invalidate the findings of the examining psychologist since marriage, by its very definition, necessarily involves only two persons. The totality of the behavior of one spouse during the cohabitation and marriage is generally and genuinely witnessed mainly by the other.

In other words, diagnosis by an expert should not be dismissed as "unscientific" just because the expert has not interviewed the person alleged to be psychologically incapacitated. Not even a personal interview of the respondent can elicit accurate information because it is highly doubtful that a respondent would admit that he or she is psychologically incapacitated. This is a characteristic of one who has a personality disorder; he or she will not admit that something is wrong with him or her. Besides, while examination of the respondent is desirable, it may not be realistic in all cases given the oftentimes estranged relations between the parties. How can a person be examined when he or she persistently refuses to be interviewed? It would be absurd for the psychologically incapacitated party's refusal or defensiveness to be taken against the petitioner.

Totality of evidence and the quantum of evidence required must be clarified.

Psychological incapacity may be established by the totality of evidence presented.[17] There is no calibrated standard as to how totality of evidence is determined. It is up to the courts to decide on a case-to-case basis since no situation is identical with another.[18] Here, Mario's behaviors were severe enough to warrant a diagnosis of different disorders. Rosanna has likewise documented records of Mario's drug problem. The root cause of his psychological incapacity was identified and its incapacitating nature was fully explained by Dr. Garcia. As aptly ruled by the trial court, Mario is incapable of performing his marital obligations and had shown utter disregard for his wife. On the other hand, the negative behaviors of Rosanna, as mentioned by Mario, were situational behaviors or her reactions to Mario's ill behaviors and drug addiction. Mario's allegations were unsubstantiated.

The ponencia prescribed that since there is a presumption of validity of marriage, Article 36 cases must be proven by clear and convincing evidence which is a more stringent standard than preponderance of evidence. Clear and convincing evidence requires that the evidence must be overwhelming enough to clearly indicate the winning party. On the scales of justice, the tilt must weigh heavily in favor of a party to the case.

While the principle is every intendment of the law or fact leans toward the validity of marriage,[19] it must be stressed that the quantum of evidence in a nullity of marriage suit, being a civil case, is preponderance of evidence.[20] Preponderance of evidence is the weight, credit, and value of the aggregate evidence on either side and is considered synonymous with the term "greater weight of credible evidence".[21]

To clarify, the principle always presume marriage – *semper praesumitur pro matrimonio* – was applied in cases that dealt with the establishment of the fact of celebration of marriage or validity of the ceremony by parties who dwelt together in effectual or apparent matrimony.[22] The presumption served as a curative rule leaning towards legalizing matrimony.

On the other hand, in *Antonio v. Reyes*,[23] the Court stated that like in all civil matters, the petitioner in an action for declaration of nullity under Article 36 must be able to establish the cause of action with a preponderance of evidence. This standard of proof was reiterated in *Santos-Gantan v. Gantan*[24] where the Court explained that in a civil case for nullity of marriage under Article 36, the burden of proof lies upon the petitioner to prove his or her case by preponderance of evidence or balance of probabilities. The burden of proof is discharged by the petitioner if he or she is able to prove his or her cause of action more likely than not. I see no reason to deviate from these rulings. To my mind, imposing a higher threshold of evidence would make it more burdensome for a party to be released from marriage void ab initio.

The petition is Daubert compliant.

When a clinical psychologist appears in court, his oral testimony may or may not be admitted in evidence. In the United States, the *Frye v. U.S.*[25] and *Daubert v. Merrell Dow Pharmaceuticals*[26] standards determined the admissibility or inadmissibility of scientific evidence, including those made by experts in clinical psychology. *Frye* relied on general acceptance of the scientific community, while *Daubert* emphasized the role of the judge as "gatekeeper" in screening the evidence presented in court, defining empirical criteria, and recognizing the possible abuse from supposed expert's opinion under the principle of *ipse dixit* or "because I say so". *Frye* and *Daubert* have been recognized in this jurisdiction in the case of *Herrera v. Alba and Cuesta-Vilches*. [27] Justice Leonen eruditely discussed these standards.

Here, Dr. Valentina Del Fonso Garcia (Dr. Garcia), a physician-psychiatrist, employed clinical interview and Mental Status Examination (MSE) used by mental health professionals around the world to gather information for diagnostic purposes. DSM-5[28] was likewise used as a reference. The trial judge was satisfied that Dr. Garcia's reasoning or method is scientifically valid and relevant to the issue. The petition is, therefore, Daubert compliant because it was screened by the trial judge.[29] In the appreciation of the evidence showing Mario's psychological incapacity, the position and role of the trial judge should not be downplayed but accorded due importance and respect.[30]

The qualifications of a clinical psychologist and a psychiatrist must also be clarified. Psychiatrists are medical doctors trained in the medical field and authorized to prescribe medication. Clinical psychologists, on the other hand, are trained to conduct psychological evaluation; they are experts in the administration and evaluation of psychological tests.[31] Psychiatrists use psychiatric evaluation or a clinical interview, known as an MSE, to determine a patient's mental functioning such as mood, insight and judgment, among other things. It is possible for people who are manipulative to fake this type of interview, which already happened in *Antonio v. Reyes*. In that case, the psychiatrist of respondent Yvonne Reyes made use of the Comprehensive Psychopathological Rating Scale (CPRS), a type of MSE, to evaluate her. The psychiatrist came up with the conclusion that she is not psychologically incapacitated. There is a need for the administration of a battery of psychological tests in evaluating the personality profile of the parties. Psychologists can detect masking reality, "faking good", social

desirability, lying, and determine any difference between the interview answers and thoughts of the party examined through certain tests.

In sum, the factual circumstances obtaining in this case warrant the declaration of nullity of Mario and Rosanna's marriage. The totality of evidence presented contemplates Mario's downright inability to comprehend and perform his marital obligations. We cannot condemn Rosanna to stay in a spouseless marriage.[32]

ACCORDINGLY, I vote to GRANT the Petition for Review on Certiorari, to REVERSE the Decision dated February 25, 2010 of the Court of Appeals in CA-G.R. CV No. 90303, and to REINSTATE the Decision dated May 9, 2007 of the Regional Trial Court, Branch 260, Paranaque City, in Civil Cases Nos. 01-0228 and 03-0384.

[1] G.R. No. 108763, February 13, 1997, 335 PHIL 664-693.

[2] G.R. No. 112019, January 4, 1995, 310 PHIL 21-49.

[3] Tani-Dela Fuente v. Dela Fuente, G.R. No. 188400, March 8, 2017, 807 PHIL 31-51.

[4] The term "personality structure" can be found in hundreds of references in the field of psychology. See R. Christie and F. Lindeur, *Annual Review of Psychology*, 1963 14:1, 201-230.

[5] As defined by the American Psychological Association (APA). See APA Dictionary.

[6] The Freudian Theory of Personality.

[7] Categories in the DSM-5 include anxiety disorders, bipolar and related disorders, depressive disorders, feeding and eating disorders, obsessive-compulsive and related disorders, and personality disorders.

[8] Minutes of the Civil Code and Family Law Committee Meeting on July 26, 1986, p. 9.

Justice Puno observed that under the present draft provision, it is enough to show that at the time of the celebration of marriage, one was psychologically incapacitated so that later on if he can already comply with the essential marital obligations, the marriage is still void ab initio.

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

[9] World Health Organization. "Mental Disorders". Available at <https://www.who.int/> (Last Accessed: January 20, 2021).

[10] Amicus Curiae Brief of Dean Melencio S. Sta. Maria, pp. 11-12.

[11] Justice Alicia V. Sempio-Diy, *Psychological Incapacity as a Ground to Dissolve Marriage*, San Beda L.J. 41 (1994). According to J. Sempio-Diy, "the psychologically incapacitated person would not be disqualified from marrying again".

[12] *Ngo Te v. Yu-Te*, G.R. No. 161793, February 13, 2009, 598 PHIL 666-710.

[13] G.R. No. 126010, December 8, 1999, 377 PHIL 919-933.

[14] G.R. No. 136490, October 19, 2000, 397 PHIL 840-852.

[15] Supra note 3.

[16] G.R. No. 185286, August 18, 2010, 642 PHIL 602-634.

[17] Supra note 14.

[18] Supra note 12.

[19] Sevilla v. Cardenas, G.R. No. 167684, July 31, 2006, 529 PHIL 419-436.

[20] Section 1, Rule 133 of the Revised Rules on Evidence provides:

"Section 1. Preponderance of evidence, how determined. – In civil cases, the party having the burden of proof must establish his case by a preponderance of evidence. In determining where the preponderance of evidence or superior weight of evidence on the issues involved lies, the court may consider all the facts and circumstance of the case, the witness' manner of testifying, their intelligence, their means and opportunity of knowing the facts to which they are testifying, the nature of the facts to which they testify, the probability of their testimony, their interest or want of interest, and also their personal credibility so far as the same may legitimately appear upon the trial. The court may also consider the number of witnesses, though the preponderance is not necessarily with the greater number."

[21] Ogawa v. Menigishi, G.R. No. 193089, July 9, 2012, 690 PHIL 359-368.

[22] See Adong v. Cheong Seng Gee, G.R. No. 18081, March 3, 1922 and Avenido v. Avenido, G.R. No. 173540, January 22, 2014.

[23] G.R. No. 155800, March 10, 2006, 519 PHIL 337-371.

[24] G.R. No. 225193, October 14, 2020 (First Division).

[25] 54 App.D.C. 46, 293 F. 1013 (1923).

[26] 509 US 579, 113 S.Ct. 2786 (1993).

[27] G.R. No. 148220, June 15, 2005, 499 PHIL 185-206.

[28] According to the American Psychiatric Association, the new edition of Diagnostic and Statistical Manual of Mental Disorders (DSM–5) is the product of more than 10 years of effort by hundreds of international experts in all aspects of mental health. Used by clinicians and researchers to diagnose and classify mental disorders, the criteria are concise and explicit, intended to facilitate an objective assessment of symptom presentations in a variety of clinical settings - inpatient, outpatient, partial hospital, consultation-liaison, clinical, private practice, and primary care. Available at <https://www.psychiatry.org/psychiatrists/practice/dsm/about-dsm> (Last Accessed: January 8, 2021).

[29] Antero Rosauo V. Arias, Jr., A Thematic Look at Selected Cases of Marital Nullity in the Philippines, IAFOR Journal of Psychology & the Behavioral Sciences Volume 2, Issue 3, Winter 2016. Available at: <https://iafor.org/archives/journals/iafor-journal-of-psychology-and-the-behavioral-sciences/10.22492.ijpbs.2.3.05.pdf> (Last Accessed: January 10, 2021).

[30] Kalaw v. Fernandez, G.R. No. 166357, January 14, 2015.

[31] American Psychiatric Association. What is Psychiatry? Available at: <https://www.psychiatry.org/patients-families/what-is-psychiatry-menu> (Last Accessed: January 10, 2021).

[32] Justice Marvic M.V.F. Leonen's Dissenting Opinion in *Matudan v. Republic*, G.R. No. 203284, November 14, 2016.

SEPARATE OPINION

DELOS SANTOS, J.:

I concur.

Taking together the totality of the evidence presented by petitioner Rosanna L. Tan-Andal (Rosanna), I join the ponencia in his determination that she was able to prove that respondent Mario Victor M. Andal (Mario) was psychologically incapacitated to perform the essential obligations of marriage. Likewise, I concur with the ponencia's disquisitions on their property regime being governed by Article 147 of the Family Code and the matter of custody of their daughter, Ma. Samantha being moot considering that she has already attained majority.

It can be gleaned from the Court of Appeals Decision that its reversal of the trial court's ruling to nullify the parties' marriage hinged on the psychiatric evaluation by the expert witness being based on collateral information. In this case, Dr. Valentina Del Fonso Garcia (Dr. Garcia), a physician-psychiatrist, evaluated Mario based on information obtained from Rosanna, Ma. Samantha, and Rosanna's sister.[1] It is unfortunate that the appellate court makes much of the fact that Dr. Garcia did not obtain information from Mario himself which purportedly makes her conclusions lacking in credibility and "unscientific and unreliable" because she had no "personal knowledge of the facts." [2] While the appellate court conceded that there is no requirement that a party, to be declared to be psychologically incapacitated, must be personally examined, it nonetheless ruled that there was a lack of independent evidence to prove Mario's psychological incapacity.[3] Further, it appears that the appellate court reversed the trial court's judgment because Rosanna emphasized Mario's addiction to narcotics in support of her claim of psychological incapacity which it held was only a ground for legal separation.[4]

To be fair to the Court of Appeals, a psychological report based on information sourced solely from the side of the petitioning spouse may be biased. This raises questions on reliability, accuracy, impartiality and fairness.[5] However, We must nonetheless be mindful that the totality of the behavior of one spouse during cohabitation and marriage is generally and genuinely witnessed by the other.[6] Consequently, the spouse who witnessed the other spouse's behavior may validly relay the pattern of behavior to the psychologist or psychiatrist. Thus, the appellate court erred in discounting Dr. Garcia's expert opinion because Mario himself did not appear for psychiatric evaluation as it is enough that the totality of evidence is strong enough to sustain the finding of psychological incapacity. Likewise, it must be emphasized that there was independent evidence which Dr. Garcia considered in her analysis, that is, a personal history handwritten by Mario himself during his drug rehabilitation at Seagull's Flight Foundation. It is my view that this provided Dr. Garcia with a unique insight into Mario's psyche, considering that it was penned before the initiation of the legal proceedings for custody and nullification of marriage.

I will no longer belabor the reasons why Rosanna was able to establish by clear and convincing evidence that Mario's personality structure rendered him psychologically incapacitated, which has been exhaustively discussed by the ponencia. However with your indulgence, allow me to share some of my thoughts on the case.

The State as the third party of a marriage.

Marriage, while from its very nature is a sacred obligation, is nevertheless a civil contract and is regulated by law. Inasmuch as there are formal and essential requisites that must be complied with before parties can enter into a valid marriage, necessarily, its dissolution may only be accomplished in the manner prescribed and based on the causes specified by law. Hence, in a real sense, there are three (3) parties to a marriage; two (2) willing spouses and the approving State.[7] While I agree with the ponencia that "[t]he right to choose our intimate partners is part of our right to autonomy and liberty,"[8] nonetheless, it must be emphasized that once an individual enters into a marriage, the law steps in and imposes certain duties and responsibilities. Hence, it is no longer a matter of personal choice when a spouse or both spouses decide to dissociate from what has been at the outset, envisioned by the State to be a permanent union. Unlike ordinary civil contracts which may be modified or entirely rescinded upon the consent of the parties, it is not the case with marriage which is a "special contract" vested with public interest.

It is my view that precisely because of the State's interest in marriage that it is only fitting that the higher quantum of proof of clear and convincing evidence should be applied in actions for nullity on the ground of psychological incapacity. Clear and convincing evidence is the standard of proof derived from American common law, which is less than proof beyond reasonable doubt (for criminal cases) but greater than preponderance of evidence (for civil cases).[9] Thus, the degree of believability is higher than that of an ordinary civil case. To recall, no less than the Constitution states that marriage is an inviolable social institution and shall be protected by the State.[10] Guided by this mandate, courts are directed to always presume marriage and that every intendment of law or fact leans toward the validity of marriage.[11] As pointed out by the ponencia, this change in the quantum of proof would harmonize what jurisprudence already states, that is, presumptions can only be rebutted with clear and convincing evidence.[12] There appears no cogent reason why we should retain the lower quantum of proof of preponderant evidence in order to dissolve a marriage on the ground of psychological incapacity, yet a higher standard for all other presumptions.

In my opinion, the guidelines laid down by *Republic v. Molina*[13] continue to be good law but has just been hampered by misapplication. I join Justice Alfredo Benjamin S. Caguioa in his determination that the *Molina* guidelines should serve only as evidentiary guideposts[14] rather than stringent checklist of requisites, that a petitioning spouse must establish in order to successfully nullify his or her marriage on the ground of psychological incapacity.

Thus, aside from the application of clear and convincing evidence as the standard of proof in nullifying marriages on the ground of psychological incapacity, I agree with the ponencia that clarifications need to be made with respect to the second and fourth *Molina* guidelines. For immediate reference, these guidelines are as follows:

(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 physically 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 *eiusdem 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.

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(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. (Underscoring supplied)

A finding of psychological incapacity need not be grounded on a particular personality disorder alone.

Art. 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.

A plain reading of Article 36 of the Family Code provides two (2) distinct requirements, that: (1) the spouse is incapacitated to comply with the essential marital obligations and (2) such psychological incapacity must exist at the time of the celebration of the marriage, i.e., juridical antecedence. Thus, such incapacity must therefore be rooted in the history of the party antedating the marriage although the overt manifestations may emerge only after its celebration. It must be emphasized however, that juridical antecedence need not be grounded on a particular personality disorder.

The case of Santos v. Court of Appeals,[15] first introduced the concept that psychological incapacity should refer to the "most serious cases of personality disorders clearly demonstrative of an utter insensitivity or inability to give meaning and significance to the marriage." Citing Santos, such characterization was later on reiterated in Molina. However, reference to the deliberations by the Family Code Revision Committee (Code Committee) and canon law articles cited in Santos do not reveal the intention to limit psychological incapacity to personality disorders alone, to wit:

Justice [Eduardo] 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.

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

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

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

Justice [Eduardo] Caguioa remarked that they deleted the word "mental" precisely to distinguish it from vice of consent. He explained that "psychological incapacity" refers to lack of understanding of the essential obligations of marriage. (Emphases supplied)

Psychological incapacity is not a vice of consent but the inability to give meaning to such consent. Focus was made on the inability or incapacity of a spouse to fulfill essential marital obligations due to psychological causes

intrinsic to him or her, which he or she assumes as a result of the valid consent given at the time of marriage. It could then be said that the Code Committee emphasized the presence of a natal or supervening disabling factor in the spouse, an adverse integral element in the personality structure that effectively incapacitates him or her from really accepting and thereby complying with the obligations essential to marriage.[16]

Meanwhile, Canon 1095 which states, *inter alia*, that the following persons are incapable of contracting marriage: "3. (those) who, because of causes of a psychological nature, are unable to assume the essential obligations of marriage" provided the model for what is now Article 36 of the Family Code.[17] In his treatise, Fr. Ladislav Orsy, S.J., accounted how the third paragraph of Canon 1095 has been framed, thus:

The history of the drafting of this canon does not leave any doubt that the legislator intended, indeed, to broaden the rule. A strict and narrow norm was proposed first:

Those who cannot assume the essential obligations of marriage because of a grave psycho-sexual anomaly (*ob gravem anomaliam psychosexualem*) are unable to contract marriage (cf. SCH/1975, canon 297, a new canon, *novus*);

then a broader one followed:

... because of a grave psychological anomaly (*ob gravem anomaliam psychicam*) ... (cf. SCH/1980, canon 1049);

then the same wording was retained in the text submitted to the pope (cf. SCH/1982, canon 1095, 3);

finally, a new version was promulgated:

because of causes of a psychological nature (*ob causas naturae psychiae*).

So the progress was from psycho-sexual to psychological anomaly, then the term anomaly was altogether eliminated. It would be, however, incorrect to draw the conclusion that the cause of the incapacity need not be some kind of psychological disorder; after all, normal and healthy person should be able to assume the ordinary obligations of marriage.

Fr. Orsy concedes that the term "psychological incapacity" defies any precise definition since psychological causes can be of an infinite variety.[18] (Emphases supplied)

In fine, while psychological incapacity should contemplate grave psychological causes that render a spouse truly incapable of complying with the essential obligations of marriage, such category is broad enough to include personality disorders but at the same time, not solely limited to it. Further, from a practical point of view, I would venture to state that members of the Code Committee could have easily referred to psychological incapacity to pertain to a diagnosed personality disorder had that been their intention. First, the Diagnostic and Statistical Manual of Mental Disorders (DSM), which is used by clinicians and researchers to diagnose and classify personality disorders, was already in existence during the Code Committee deliberations in 1986. Specifically its 3rd edition (DSM-III), was published in 1980.[19] An innovation of the DSM-III from its predecessor was the inclusion of explicit diagnostic criteria and development of psychiatric interviews for research and clinical uses, among others.[20] Thus, the members could have referred to personality disorders or referenced the application of diagnostic criteria with ease, considering the availability of a widely-accepted scientific standard. Second, the suggestion that a psychiatrist be invited to their deliberations would not have been readily struck down had the Code Committee truly intended that psychological incapacity to pertain to a spouse suffering from a personality disorder, a condition which would be better explained by an expert in the field, thus:

Prof. Romero opined that psychological incapacity is still insanity of a lesser degree. Justice Luciano suggested that they invite a psychiatrist, who is the expert on this matter. Justice Caguioa, however, reiterated that

psychological incapacity is not a defect in the mind but in the understanding of the consequences of marriage, and therefore, a psychiatrist will not be a help.[21] (Underscoring supplied)

Again, focus was made on the inability of the spouse to comply with the essential marital obligations at the time of the celebration of the marriage rather than a scientific approach in understanding a psychological condition, if any. Lastly, I likewise consider significant the Code Committee's refusal to enumerate examples of psychological incapacity to avoid restricting the applicability of Article 36, thus:

It could well be that, in sum, the Family Code Revision Committee in ultimately deciding to adopt the provision with less specificity than expected, has, in fact, so designed the law as to allow some resiliency in its application. Mme. Justice Alicia V. Sempio-Diy, a member of the Code Committee, has been quoted by Mr. Justice Josue N. Bellosillo in *Salita vs. Hon. Magtolis* (G.R. No. 106429, 13 June 1994); thus:

The Committee did not give any examples of psychological incapacity for fear that the giving of examples would limit the applicability of the provision under the principle of *eiusdem generis*. Rather, the Committee would like the judge to interpret the provision on a case-to-case basis, guided by experience, the findings of experts and researchers in psychological disciplines, and by decisions of church tribunals which, although not binding on the civil courts, may be given persuasive effect since the provision was taken from Canon Law.[22] (Underscoring supplied)

The "less specificity than expected" refers to the Code Committee's omission to give any examples of psychological incapacity that would have limited the applicability of the provision. It was held that the Code Committee desired that 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.[23]

Taking together the aforementioned circumstances further convince me of the validity of the ponencia's clarification that psychological incapacity should not in fact, be limited to diagnosed personality disorders.[24] Thus, I find that the ponencia's proposal that proof of a spouse's "personality structure" which makes it impossible for him or her to understand and comply with his or her essential marital obligations is likewise admissible as proof of psychological incapacity as it still falls within the Code Committee's intent to confine the term to psychological causes. Nevertheless, it must still be shown that such personality structure and consequently, the resulting behaviour, manifest clear acts of dysfunction showing downright incapacity or inability, and not a mere refusal, neglect or difficulty, much less ill will.

Incurability should not be assessed from a medical standpoint.

As regards the fourth Molina guideline on incurability, it bears pointing out that while it was not textually adopted in the final version of Article 36, it was clear from the Code Committee deliberations that it was characteristic contemplated by its members in defining psychological incapacity, thus:

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

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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.[25] (Underscoring supplied)

Moreover, in the Separate Opinion of Justice Flerida Ruth P. Romero in *Molina*, who was likewise a member of the Code Committee, she discloses:

One of the guidelines enumerated in the majority opinion for the interpretation and application of Art. 36 is: "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."

The Committee, through Prof. Araceli T. Barrera, considered the inclusion of the phrase "and is incurable" but Prof. Esteban B. Bautista commented that this would give rise to the question of how they will determine curability and Justice Caguioa agreed that it would be more problematic. Yet the possibility that one may be cured after the psychological incapacity becomes manifest after the marriage was not ruled out by Justice Puno and Justice Alice Sempio-Diy. Justice Caguioa suggested that the remedy was to allow the afflicted spouse to remarry. (Underscoring supplied)

"As a general rule of statutory construction, the spirit or intention of a statute prevails over the letter thereof, and whatever is within the spirit of statute is within the statute although it is not within the letter." [26] Thus, it being clear from the foregoing that the characterization that psychological incapacity should be incurable was intended by the Code Committee cannot be cursorily disregarded even if it is not a textual requirement under the law.

It bears pointing out the requirement that psychological incapacity must be shown to be "medically or clinically permanent or incurable" is one that necessarily, cannot be determined without expert opinion.[27] It has been held that courts, which are concededly not endowed with expertise in the field of psychology, must of necessity rely on the opinions of experts in order to inform themselves on the matter.[28] However, considering the Court's own rules[29] and case law[30] categorically stating that there is no requirement that the defendant/respondent spouse should be personally examined by a physician or psychologist as a condition sine qua non for the declaration of nullity of marriage based on psychological incapacity, it would be inconsistent to retain the fourth *Molina* guideline as presently worded. Incurability should therefore be assessed from a legal standpoint. A better approach in construing incurability is to state that a spouse's condition is permanent or incurable when its cure is beyond his or her means. To a certain extent, I find that this legal interpretation has been intimated by the fourth *Molina* guideline insofar as it states that "such incurability may be absolute or even relative only in regard to the other spouse, not necessarily absolutely against everyone of the same sex."

The personality structure of both spouses should be considered in determining psychological incapacity.

Prescinding from the premise that a spouse's personality structure would be acceptable proof of psychological incapacity and only one of the spouses is alleged to be psychologically incapacitated; I propose that in such a case, the other spouse's personality structure should also be evaluated by courts. Amicus curiae Dean Sylvia Estrada-Claudio is of the considered opinion that psychological incapacity may be caused by the interpersonal dynamics of the couple rather than a specific partner's personality disorder. She explains:

[P]sychological 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 (sic) such as his or her partners 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 both the person and their partner make in life as a couple. In short, 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.[31](Emphasis supplied)

To clarify, this is not to state that the personality structure of the spouse alleged to be incapacitated only arose or developed in the course of the couple's marriage. Otherwise, this would be violative of the textual requirement of Article 36 which clearly provides that the spouse should be psychologically incapacitated "at the time of the celebration." However, I agree with Dean Estrada-Claudio's proposition considering that the marital capacity of one spouse is not considered in isolation but in reference to the fundamental relationship to the other spouse.[32] In this manner, the court may better evaluate whether there is truly a natal or supervening disabling factor in the alleged incapacitated spouse, which is not simply a reaction to the "mild characterological peculiarities, mood changes, and occasional emotional outbursts"[33] of the other. To qualify as a basis to nullify a marriage, the incompatibility and incongruity of a couple's personality structures must be established such that the breakdown of their union is inevitable and irreparable.[34]

To conclude, it bears stressing that the fundamentals still hold true:

Psychological incapacity as required by Article 36 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 duties required in marriage. It must be rooted in the history of the party antedating the marriage, although the overt manifestations may only emerge after the marriage. It must be incurable or, even if it were otherwise, the cure would be beyond the means of the party involved.[35]

In spite of the clarifications made by the ponencia as to how the Code Committee intended to construe psychological incapacity, to interpret incurability and how the Molina guidelines should be utilized i.e., evidentiary guideposts; it must be emphasized that these changes should not be taken as a more liberal approach in the application of the said guidelines. Rather, this Court is merely implementing Article 36 of the Family Code as originally intended by the members of the Code Committee. While these clarifications may not altogether ease the burden of nullifying marriages on the ground of psychological incapacity, at the minimum, it can deter the instances where petitions are dismissed primarily due to the failure to identify the root cause of such incapacity and confirm its incurability based on medical or clinical standards.

Whether or not psychological incapacity exists in a given case calling for annulment of a marriage, depends crucially, more than in any field of the law, on the facts of the case.[36] Each case must be judged, not on the basis of a priori assumptions, predilections or generalizations but according to its own facts.[37] As earlier discussed, the Code Committee aimed to "allow some resiliency in its application" and purposely did not give examples of psychological incapacity as to not limit its scope.[38] For this reason, the judicial understanding of psychological incapacity may be informed by evolving standards, taking into account the particulars of each case, current trends in psychological and even canonical thought, and experience.[39] For instance, in the field of psychology, "it is an accepted principle of all major and recognized theoretical schools within psychology that a person's behavior is determined by the interaction of certain genetic predispositions and by his or her environment, working in iterative loops of influence." [40] Consequently, there is no longer a nature versus nurture divide, a finding that is supported by evidence in neuropsychology.[41] Further, it has been determined that 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.[42] Perhaps, this is one of the reasons why despite the participation of psychologists or psychiatrists in nullification cases, they still fall short from a legal standpoint because they are compelled to ascribe a diagnosis in order to provide courts some satisfactory basis upon which psychological

incapacity might be based on even if clinically speaking, a spouse has not met the requisite standard.[43] These professionals are then left with no alternative but to evaluate behavior using medical or clinical terms in an attempt to justify the existence of psychological incapacity, which is essentially, a legal concept. Absent a compulsion to ascribe a personality disorder, it is my hope that courts will be able to discourage the common practice of simply enumerating characteristics of a personality disorder. Rather, focus can be shifted to detailing the history of the spouse to substantiate the alleged psychological incapacity and relate the same to his or her behavior during the marriage.

I share the ponente's observations that under Article 36 of the Family Code, spouses are forced to pathologize each other when what could instead, be a peaceful parting of ways.[44] While I venture to state that this occurrence has been somewhat alleviated by the admission a spouse's personality structure as a basis for a claim of psychological incapacity; it cannot be controverted that ultimately, a petitioning spouse would still have to engage in some sort of "character assassination" to declare his or her marriage void ab initio on the ground of psychological incapacity. It would involve making known to the public one's private life: one's personal history, past indiscretions and possibly, revealing and even reliving past traumas that may have contributed to the development of particular behavior. Past and present conduct shall be linked, nit-picked and not to mention, evaluated in a negative light; and seemingly simple disagreements may, consciously or unconsciously, be exaggerated. Regrettably, this is the only means that the root cause of the purported psychological incapacity may be discovered and subsequent overt manifestations during marriage, linked and explained. While this is a cruel and unfortunate reality, it must be emphasized that the Court is merely applying present law as written and intended by its framers: I submit that the Code Committee may not have foreseen the prevalence of loveless, spouseless, and worse, abusive relationships we see today; which advancements in psychology has intimated, can be traced to psychological causes intrinsic in couples even before marriage. While it is ideal that a crafted law will continue to be relevant even years after its passage, it cannot be gainsaid that it is primarily a reflection of conditions existing at the time of its promulgation. Despite our personal sentiments on marriage and desire to ease the anguish and hardship which accompany the severance of a marital relationship, courts must act within the bounds of law. As it stands, we need to look to legislature and not the judiciary, to provide this remedy.

Premises considered, I vote to GRANT the Petition.

[1] Rollo, p. 81.

[2] Id. at 84.

[3] Id. at 85.

[4] Id. at 86-87.

[5] Santos-Gantan v. Gantan, G.R. No. 225193, October 14, 2020.

[6] Camacho-Reyes v. Reyes, 642 Phil. 602 (2010).

[7] Manuel v. People, 512 Phil. 818 (2005).

[8] Ponencia, p. 30.

[9] Riguer v. Atty Mateo, 811 Phil. 538 (2017).

[10] 1987 CONSTITUTION, Article XV, Section 2.

[11] CIVIL CODE, Article 220:

ARTICLE 220. In case of doubt, all presumptions favor the solidarity of the family. Thus, every intendment of law or facts leans toward the validity of marriage, the indissolubility of the marriage bonds, the legitimacy of children, the community of property during marriage, the authority of parents over their children, and the validity of defense for any member of the family in case of unlawful aggression. (Underscoring supplied)

[12] Ponencia, p. 28.

[13] 335 Phil. 664 (1997).

[14] Separate Opinion of Justice Caguioa, pp. 6-10.

[15] 310 Phil. 21 (1995).

[16] Republic v. Molina, supra note 13.

[17] Ngo Te v. Yu-Te, 598 Phil. 666 (2009).

[18] Santos v. Court of Appeals, supra note 15.

[19] See <https://www.psychiatry.org/psychiatrists/practice/dsm/history-of-the-dsm> (last accessed on May 18, 2021).

[20] Id.

[21] Santos v. Court of Appeals, supra note 15, citing Deliberations of the Family Code Revision Committee.

[22] Id.

[23] Kalaw v. Fernandez, 750 Phil. 482 (2015).

[24] Ponencia, p. 32.

[25] Santos v. Court of Appeals, supra note 15.

[26] Tañada v. Cuenco, 103 Phil. 1051 (1957), citing 82 C.J.S., 613.

[27] Antonio v. Reyes, 519 Phil. 337 (2006).

[28] Kalaw v. Fernandez, supra note 23.

[29] Rule on Declaration of Absolute Nullity of Void Marriages and Annulment of Voidable Marriages, A.M. No. 02-11-10-SC, March 4, 2003.

SECTION 1. Scope. — This Rule shall govern petitions for declaration of absolute nullity of void marriages and annulment of voidable marriages under the Family Code of the Philippines.

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(d) What to allege. — A petition under Article 36 of the Family Code shall specifically allege the complete facts showing that either or both parties were psychologically incapacitated from complying with the essential marital obligations of marriage at the time of the celebration of marriage even if such incapacity becomes manifest only after its celebration.

The complete facts should allege the physical manifestations, if any, as are indicative of psychological incapacity at the time of the celebration of the marriage but expert opinion need not be alleged. (Underscoring supplied)

[30] Suazo v. Suazo, 629 Phil. 157 (2010); Marcos v. Marcos, 397 Phil. 840 (2000).

[31] See Amicus Curiae Brief of Dean Sylvia Estrada-Claudio, M.D., Ph.D., p. 3.

[32] Republic v. Molina, supra note 13.

[33] Id.

[34] Ponencia, p. 34.

[35] Mallilin v. Jamesolamin, 754 Phil. 158 (2015).

[36] Republic v. Dagdag, 404 Phil. 249 (2011).

[37] Id.

[38] Kalaw v. Fernandez, supra note 23.

[39] Yambao v. Republic, 655 Phil. 346 (2011).

[40] Supra note 31, at 2.

[41] Neuropsychology is defined as the "science concerned with the integration of psychological observations on behavior and the mind with neurological observations on the brain and nervous system." See <https://www.merriam-webster.com/dictionary/neuropsychology> (last accessed May 19, 2021).

[42] Reflections of Justice Amy C. Lazaro-Javier, p. 4.

[43] Supra note 31, at 6.

[44] Ponencia, p. 53.

SEPARATE CONCURRING OPINION

GAERLAN, J.:

The 1987 Constitution recognizes the family as the cornerstone of the state,[1] and in turn acknowledges marriage as the foundation of the family.[2] Consistent with these principles, the Family Code of the Philippines defines marriage as a "special contract of permanent union between a man and a woman entered into in accordance with law for the establishment of conjugal and family life." [3] Accordingly, this Court consistently adopted a conservative interpretation of Article 36 of the Family Code which provides:

A marriage contracted by any party who, at the time of the celebration, was psychologically incapacitated to comply with the essential marital obligations of marriage, shall likewise be void even if such incapacity becomes manifest only after its solemnization.[4]

This Court's conservative treatment and interpretation of the foregoing provision was laid down almost 25 years ago in Santos v. Court of Appeals[5] and Republic v. Court of Appeals and Molina.[6] The foregoing rulings would inadvertently produce stringent guidelines by which parties would be required to prove that their spouse is psychologically incapacitated to comply with the essential marital obligations of their marriage.

Nullification of a marriage based on the psychological incapacity of either spouse is allowed only if proof of one's psychological incapacity prior to the marriage is satisfactorily established during trial. As astutely observed by the ponente, marriages have been rarely declared void ab initio on this ground in the last three decades..Even among those cases which happen to reach this Court, only a handful would even meet the strict requirements of Santos and Molina.

Mario Victor M. Andal (respondent) in the present case suffers from a debilitating drug addiction. Records reveal that respondent failed to sustain a livelihood or regular source of income and repeatedly exposed his child to danger as a result of his drug addiction.[7] Clearly, this addiction has prevented respondent not only from performing his responsibility as a husband and father, but also from being a productive member of society.

The Court of Appeals overturned the decision of trial court due to the psychiatrist's failure to personally examine respondent. For this reason, the appellate court opined the evaluation report was "unscientific and unreliable." I agree with the ponente that the marriage in question ought to be declared void ab initio in the presence of satisfactory evidence establishing respondent's psychological incapacity.[8] In connection with this, I find it proper to raise two additional points for the consideration of this Court in assessing appeals of this nature as well as the matters for the Legislature to ponder upon.

First is that family is a fluid and dynamic concept and that amendments to the Family Code attest to this fact. Moreover, Congress has enacted laws which recognize families which do not necessarily conform to traditional structure but nevertheless deserves the State's protection. For example, while illegitimate children were previously required to use the surname of their mothers,[9] an amendment in 2014 now allows illegitimate children to use their father's surname provided that the father has recognized such.[10] By enacting this amendment, the Congress impliedly recognized that a father and his recognized, illegitimate child are family notwithstanding the child's birth outside of marriage. Similarly, the Solo Parent's Act[11] explicitly recognized that not all families are composed of a father, a mother, and their children, and sought to protect these so-called non-traditional families. Accordingly, our interpretation of the provisions of the Family Code should likewise adapt to the ever-changing tides of societal norms.

The contemporary concept of family is no longer as restrictive as it was more than 30 years go. It may do our society good to expand our construction of the constitutional mandate of protecting the family, and exercise greater discernment in ensuring the protection of the family. While I submit that marriage is the foundation of the family, we must also recognize that all of these unions are worthy to be protected as inviolable social institutions especially if continued cohabitation endangers a spouse and the children.

Second is the overlooked imprecision of Article 36 of the Family Code. The ponente noted that psychological incapacity is not a mental disorder recognized by the scientific community.[12] In the absence of a medical definition, this Court, in its previous rulings, defined psychological incapacity in jurisprudence as a condition preventing a spouse from performing his or her essential obligation. It is a medically or clinically identified condition characterized by gravity, incurability, and juridical antecedence. Moreover, for psychological incapacity to be ground for nullification, the underlying condition causing such incapacity must have existed prior to solemnization of marriage. Significantly, this Court upheld the validity of a marriage notwithstanding a spouse's continued night outs and partying,[13] refusal to provide for the family after discovering that the other has a child out of wedlock,[14] or alleged drug addiction[15] as in the present case due to absence of proof that a spouse's underlying condition was extant prior to the marriage.

It appears Article 36 was drafted without much thought or deliberation of its consequences in view of the constitutional mandate to safeguard the family as the foundation of society. To my mind, requiring juridical antecedence or that the spouse's condition which brings about psychological incapacity is onerous, and blatantly inconsistent with the protection of the family. Continued exposure to an environment characterized by hostility, violence, and economic difficulties cannot do any good for either spouse and their children. Not only may such conditions physically endanger the family, but also may affect their mental and psychological health adversely. While I do not want to speculate as to how Article 36 came about, I am of the opinion that Legislature ought to reexamine this provision and reconsider the wisdom of requiring proof that a spouse's psychological incapacity

has been in existence prior to the marriage as a condition to declare a marriage void.

Although the Constitution characterizes family as an inviolable social institution, the State should not be overzealous in protecting it if it would deprive its members of their individual and fundamentally guaranteed rights and freedom. All the more reason if a spouse or spouses suffers from a condition which prevents him/her to understand and fulfill the essential obligations of marriage, the State should likewise extend the same protection to ensure the purity and sanctity of marriage.

WHEREFORE, I vote to GRANT the petition.

[1] Section 1, Article XV of the 1987 Constitution provides that "[t]he State recognizes the Filipino family as the foundation of the nation. Accordingly, it shall strengthen its solidarity and actively promote its total development."

[2] Id. at Section 2, "[m]arriage, as an inviolable social institution, is the foundation of the family and shall be protected by the State."

[3] Article I, Title I of the Executive Order (E.O.) No. 209.

[4] As amended by E.O. No. 227.

[5] 310 Phil. 21 (1995).

[6] 355 Phil. 664 (1997).

[7] Rollo, p. 99.

[8] Ponencia, p. 51.

[9] Article 176, E.O. No. 209.

[10] Republic Act (R.A.) No. 9255. An Act Allowing Illegitimate Children to Use the Surname of their Father, amending for the Purpose Article 176 of Executive Order No 709, otherwise known as the "Family Code of the Philippines."

[11] R.A. No. 8972. An Act Providing for Benefits and Privileges to Solo Parents and their Children, Appropriating Funds therefor, and Other Purposes.

[12] Ponencia, p. 31-32, citing the Amicus Curiae Brief of Dean Sylvia Estrada-Claudio.

[13] See Republic v. Tobora-Tionglico, 823 Phil. 672 (2018).

[14] See Cortez v. Cortez, G.R. No. 224638, April 10, 2019.

[15] See Epina-Dan v. Dan, G.R. No. 209031, 829 Phil. 605 (2018).

CONCURRING OPINION

LOPEZ, J., J.:

I concur in the result as astutely reached by the ponencia.

I also join the rest of my esteemed colleagues in their finding that the totality of evidence presented clearly points

to the psychological incapacity of Mario to comply with his essential marital obligations. The marriage of the parties must necessarily be rendered null and void.

The State's efforts in zealously protecting marriage as an inviolable social institution and the foundation of the family[1] is a constitutional mandate that must be underscored. Marriage in this jurisdiction is not only a civil contract, but it is a new relation, an institution the maintenance of which, the public is deeply interested.[2] It is from this mandate that serves as the spring from which flows several provisions reflective of the State's desire to uphold and promote the sanctity of marriage. This pervasive view on marriage is an indelible part of culture and the human mindset. It has the peculiar capability to transcend borders and jurisdictions. As keenly observed by the United States Supreme Court in *Obergefell v. Hodges*:[3]

From their beginning to their most recent age, the annals of human history reveal the transcendent importance of marriage. The lifelong union of a man and a woman always has promised nobility and dignity of all persons, without regard to their station in life. Marriage is sacred to those who live by their religions and offers unique fulfillment to those who find meaning in the secular realm. Its dynamic allows two people to find a life that could not be found alone, for a marriage becomes greater than just the two persons. Rising from the most basic human needs, marriage is essential to our most profound hopes and aspirations.

The centrality of marriage to the human condition makes it unsurprising that the institution has existed for millenia and across civilizations. x x x

This Court, in its interpretation of the laws, recognizes that the State has surrounded marriage with the necessary safeguards to maintain its purity, continuity, and permanence for the reason that the security and stability of the State are largely dependent on it.[4] Therefore, the institution of marriage, regardless of its religious and secular foundations, has never stood in isolation to the dynamic developments of the law. Its legal evolution is marked by the tension between continuity and change; it has managed to adapt to the generations' understanding of marriage while staying steadfast to the intent of the framers that it remains "legally inviolable," and must be protected from dissolution at the whim of the parties.

At the fore, among such safeguards is the controversial Article 36[5] of the Family Code, which declares a marriage void by reason of psychological incapacity. While this concept owes its underpinnings in Canon Law,[6] it has irrefragably evolved and is practically of legal creation. Justice Eduardo Caguioa, a member of the Civil Code Revision and Family Law Committee (Joint Committee) and one of the proponents for the incorporation of this concept in the Family Code, points out that the term psychological incapacity escapes specific definition and its determination is left solely to the courts:

A code should not have so many definitions, because a definition straight-jackets the concept and, therefore, many cases that should go under it are excluded by the definition. That's why we leave it up to the court to determine the meaning of psychological incapacity.[7]

Justice Alicia Sempio-Diy, also a member of the Joint Committee, emphasized on the rationale behind the members' desire to adopt the provision with less specificity, in order to "allow some resiliency in its application,"[8] thus:

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

At its inception, the provision held much promise; woefully, jurisprudential developments reveal that it has

achieved an almost rigid and mechanical application, thus, allowing this Court to unwittingly allow loveless marriages to remain, to the detriment of all parties involved. In their intention to protect the institution of marriage, the members of the Committee did not contemplate this to mean that parties must be forced to remain in a relationship that diminishes one's dignity and personhood. In the words of the ponencia in his dissent in *Matudan v. Republic*,^[9] "to force partners to stay in a loveless marriage, or a spouseless marriage... only erodes the foundation of the family."

Not one to abdicate from its role to stifle manifest injustice, the present case has timely answered the clarion call to re-examine and once again define the application of Article 36 via the pronouncements in *Republic v. Court of Appeals and Molina*.^[10] While not wholly abandoning the guidelines laid down therein, having served as precedents in ensuring that marriages on the brink of breakdown, are not declared void by reason of a priori assumptions, predelictions, or generalizations, this "comprehensive and nuanced" interpretation serves to enlighten and re-introduce the Bench and the Bar the original intention of Art. 36, in the hope of preventing undue harm to the parties that they have fully sworn to protect.

In the resolution of this case, two pivotal developments emerge that deserve much emphasis and elaboration—first, the quantum of proof in challenging the validity of marriages due to psychological incapacity is now "clear and convincing evidence," and second, the implications of psychological incapacity as a legal and not a medical concept.

The quantum of proof in marriages challenged by reason of psychological incapacity is now "clear and convincing evidence"

Given the directive to protect the institution of marriage, the quantum of proof required in nullity cases must be established. As mentioned by the ponencia, the same is noticeably absent in the guidelines laid down in *Molina*.

In establishing the quantum of proof, one must begin with the principle of the presumption of the validity of marriage which carries with it certain evidentiary implications.

This presumption lends its foundation on the first *Molina* guideline which provides that "any doubt should be resolved in favor of the existence and continuation of the marriage and against its dissolution and nullity."^[11] The principle may have been derived from the old provisions of the Civil Code prior to its repeal by Executive Order No. 209, otherwise known as the "Family Code of the Philippines," viz.:

ART. 220. In case of doubt, all presumptions favor the solidarity of the family. Thus, every intendment of law or fact leans toward the validity of marriage, the indissolubility of the marriage bonds, the legitimacy of children, the community of property during marriage, the authority of parents over their children, and the validity of defense for any member of the family in case of unlawful aggression. (Emphasis ours)

In *Republic v. Duyot*,^[12] as echoed in the 1922 case of *Adong v. Cheong Seng Gee*,^[13] this Court has clarified that when it speaks of a presumption of marriage, it is with reference to the prima facie presumption that a man and a woman deporting themselves as husband and wife have entered into a lawful contract of marriage. Simply, 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. Aside from state policy to protect marriage, the rationale for the presumption is that 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.^[14]

In overturning a prima facie presumption, jurisprudence holds that the quantum of proof must be clear and

convincing, and more than merely preponderant.[15] Evidence is clear and convincing if it produces in the mind of the trier of fact a firm belief or conviction as to allegations sought to be established. It is intermediate, being more than preponderance, but not to the extent of such certainty as is required beyond reasonable doubt as in criminal cases.[16] Similar to the presumption of marriage, the ponencia lists several presumptions that require clear and convincing evidence: presumption of regularity in the issuance of public documents, regularity in the performance of duty, of good faith, or of sufficient consideration.[17]

Despite the ex1stmg rule on the presumption for the validity of marriage, it is disconcerting why the Courts have, in the past, used preponderance of evidence as the quantum of proof in nullity cases, for the myopic reason that such cases are undisputedly civil in nature.[18] In contrast to clear and convincing evidence, a preponderance of evidence means that the evidence as a whole adduced by one side is superior to that of the other. It refers to the weight, credit, and value of the aggregate evidence on either side and is usually considered to be synonymous with the term "greater weight of evidence" or "greater weight of the credible evidence." It is evidence which is more convincing to the court as worthy of belief than that which is offered in opposition thereto.[19]

While it may be true that nullity cases are civil in nature, to provide a higher standard of evidence in other cases that are not otherwise constitutionally protected, is to disregard the sui generis nature of marriages vis-à-vis other civil cases. Aside from the well-founded reasons fleshed out in the Decision, I would add that setting a higher threshold for evidence in nullity cases appears to be more in consonance with existing state policy to preserve the sanctity of marriage.

Such formulation is certainly consistent with American jurisprudence from where such standard is derived. In *Colorado v. Mexico*,[20] the United States Supreme Court established that the standard requires "an abiding conviction that the truth of the factual contentions" at issue are "highly probable." While the standard applies to civil cases, it is particularly reserved for special cases involving important interests that are "more substantial than mere loss of money" and those that affect human relations, such as involuntary civil commitment and petitions to terminate parental rights,[21] and where "moral wrongdoing is implied", such as in libel, fraud, and undue influence.[22]

In fine, the heightened standard shall now require a party, in successfully declaring a marriage void, to proffer evidence with a "higher degree of believability" than that of an ordinary civil case.[23] Moreover, requiring a higher quantum of proof would aid the courts in its determination of whether nullity cases brought before it are truly deserving of consideration.

Psychological incapacity as a legal and not a medical concept

I, likewise, concur in the ponencia's declaration that psychological incapacity is a legal and not strictly a medical concept.

Prefatorily, such recognition as a legal concept inevitably bears certain repercussions, as reflected in the majority Decision. First, the second Molina guideline is clarified: psychological capacity is not only a mental incapacity nor only a personality disorder that must be proven through expert opinion. Now, proof of a person's inability to comprehend and carry out essential marital obligations need not only be given by an expert, which oftentimes, are psychologists or psychiatrists; now, ordinary witnesses who have been present in the life of the spouses before the latter contracted marriage may testify on behaviors that they have consistently observed from the supposedly incapacitated spouse. Second, the third Molina guideline is amended by pronouncing that psychological

incapacity is "incurable" in a legal sense. Not only being an illness in a medical sense, psychological incapacity is not something to be healed and cured. Instead, incurability must be understood as an incapacity that is "so enduring and persistent with respect to a specific partner and contemplates a situation where the couple's respective personality structures are so incompatible and antagonistic that the only result of the union would be the inevitable and irreparable breakdown of the marriage." [24]

Drawing from the deliberations of the Joint Committee, it appears that psychological incapacity was never to be solely understood in a medical sense; in fact, it was meant to broadly "comprehend all such possible cases of psychoses." [25] Given that the concept was initially intended to be free from any precise definition as any psychological cause can be of an "infinite variety," the resolution in *Santos v. Court of Appeals* is perplexing as it runs in direct contravention to the true intention of the Committee, inextricably correlating psychological incapacity with the medical concept of personality disorders. *Santos* expounds, thus:

x x x 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 intensivity or inability to give meaning and significance to the marriage. This psychologic condition must exist at the time the marriage is celebrated. x x x. [26]

Considering that psychological incapacity was erroneously thrust into the medical realm, jurisprudence proves that this Court has inadvertently given much premium to the findings of psychologists and psychiatrists, elevating their report to almost a sine qua non requirement in proving the absolute nullity of marriages. After all, the requirement in *Molina* that the root cause of the psychological incapacity must be "medically or clinically identified" and "sufficiently proven by experts" [27] somehow presupposes the need for an in-depth assessment from such experts. As the ponencia has aptly concluded, this requirement has perpetuated a practice wherein parties are constrained to pathologize each other and create unnecessary stigma if only to escape the clutches of an irreconcilable marriage.

To illustrate, the early case of *Antonio v. Reyes*, [28] respondent was declared psychologically incapacitated to perform the essential obligations of marriage, as her propensity for telling lies about almost anything, coupled with her fantastic ability to invent and fabricate stories and personalities, was found to be abnormal and pathological, and amounts to psychological incapacity.

In the more recent ruling of *Republic v. Javier*, [29] the marriage was declared null and void based on the psychological findings that one of the parties was diagnosed with Narcissistic Personality Disorder with tendencies toward sadism, rooted in the traumatic experiences during his childhood, having grown up around a violent father who was abusive of his mother.

The Court, in *Republic v. Cruz*, [30] affirmed the findings of the CA, declaring the marriage void ab initio as one of the spouse's histrionic personality disorder was the cause of her inability to discharge her marital obligations to love, respect and give concern, support and fidelity to her husband.

On the other hand, *Villalon v. Villalon* [31] demonstrates how parties, in their desire to have their marriage declared void, hinges their claim on the necessity of a personality disorder diagnosis. While the Court did not declare the marriage void, having parsed that petitioner simply lost his love for respondent and has consequently refused to stay married to her, petitioner anchored his claim of psychological incapacity to a supposed finding of Narcissistic Histrionic Personality Disorder with Casanova Complex.

The majority Decision was not on all fours with some of its earlier predecessors, deciding the case not solely on the expert report, but on the totality of evidence presented by petitioner. While the principle is not new, the ponencia serves to pivot the minds of the Bench and the Bar in deciding and in advocating future nullity cases by

refocusing on already established rulings that have been overshadowed by a precarious fixation on purely expert medical evidence. In considering the credibility of other pieces of evidence, the distinction between psychological incapacity vis-à-vis personality disorders are made all the more manifest. Indeed, to be declared clinically or medically incurable is one thing; to refuse or be reluctant to perform one's duties is another.[32]

Thus, it is high time that the misplaced prominence given to the expert opinion by psychologists and psychiatrists be rectified.

In this regard, several cases are worth mentioning.

To hark back to this Court's ruling in *Castillo v. Republic*,[33] the presentation of any form of medical or psychological evidence to show the psychological incapacity does not mean that the same would have automatically ensured the granting of the petition for declaration of nullity of marriage. It is incumbent that trial courts, as in all the other cases they try, must always base their judgments not solely on the expert opinions presented by the parties but on the totality of evidence adduced in the course of their proceedings.

As iterated by this Court in *Ngo Te v. Gutierrez Yu-Te*,[34] there is a need to highlight other perspectives as well which should govern the disposition of petitions for declaration of nullity under Art. 36. After all, a clinical psychologist's or psychiatrist's diagnoses that a person has a certain personality disorder does not exclude a finding that a marriage is valid and subsisting, and not beset by one of the parties' or both parties' psychological incapacity.[35]

The Court, in an almost contradictory manner, ruled in *Marcos v. Marcos*[36] that the guidelines laid down in *Molina* and *Santos* do not require that a physician examine the person to be declared psychologically incapacitated; instead, what appears to be more important is the presence of evidence that can adequately establish the party's psychological condition indeed, if the totality of evidence presented is enough to sustain a finding of psychological incapacity, then actual medical examination of the person concerned need not be resorted to.

The Court further de-emphasized the need for expert opinions furnished by psychologists or psychiatrists in *Ting v. Velez-Ting*,[37] to wit:

By the very nature of cases involving the application of Article 36, it is logical and understandable to give weight to the expert opinions furnished by psychologists regarding the psychological temperament of parties in order to determine the root cause, juridical antecedence, gravity and incurability of the psychological incapacity. However, such opinions, while highly advisable, are not conditions sine qua non in granting petitions for declaration of nullity of marriage. At best, courts must treat such opinions as decisive but not indispensable evidence in determining the merits of a given case. In fact, if the totality of evidence presented is enough to sustain a finding of psychological incapacity, then actual medical or psychological examination of the person concerned need not be resorted to. The trial court, as in any other given case presented before it, must always base its decision not solely on the expert opinions furnished by the parties but also on the totality of evidence adduced in the course of the proceedings.

Hence, the majority Decision adhered to assessing the totality of the evidence proffered, in ruling for the nullity of the marriage of the parties. Verily, the totality of evidence presented by Rosanna (petitioner), which consisted of her direct examination, the personal history handwritten by respondent while he was staying at the drug rehabilitation center, interviews from family members, along with the findings of an expert witness, clearly and convincingly proved that Mario's (respondent) "persistent failure to have himself rehabilitated, even bringing his child into a room where he did drugs, indicates a level of dysfunctionality that shows utter disregard not only of his obligations to his wife but to his child." [38] To echo the principle elucidated in *Espina-Dan v. Dan*: [39]

x x x what is important is the presence of evidence that can adequately establish the party's psychological

condition. The complete facts should allege the physical manifestations, if any, as are indicative of psychological incapacity at the time of the celebration of the marriage such that if the totality of evidence presented is enough to sustain a finding of psychological incapacity, then actual medical examination of the person concerned need not be resorted to.

Such adherence likewise allows the law to apply within practical realities and public policy considerations. Reliance on the totality of evidence facilitates access to justice, as those without the capacity to afford the costly fees of procuring a psychologist or psychiatrist can still hope to prove their already eroded marital bond as null and void; moreover, this Court cannot close its eyes to the near impossibility of compelling the supposedly psychologically incapacitated person to undergo tests to diagnose the presence of a grave and permanent malady tantamount to the deprivation of his or her awareness of the marital duties and responsibilities. Moving forward, courts are forewarned to avoid haphazardly ruling that conclusions and generalizations on a spouse's psychological condition based on the information from only one side constitutes hearsay evidence.

Psychological incapacity with respect to a specific spouse

To further emphasize the characteristic of psychological incapacity as a legal concept, the ponencia introduced the concept of personality structure that makes it impossible for a spouse to understand, and more importantly, to comply with his or her essential marital obligations.[40] This serves as an additional yardstick in assessing the existence of psychological incapacity to declare a marriage void. Thus, courts would no longer need to look into the existence of personality disorders or any psychological report detailing the mental condition of either the spouses.

I concur with the introduction of this yardstick in determining the existence of psychological incapacity. Jurisprudence has characterized psychological incapacity with gravity, juridical antecedence, and incurability.[41] Of these three, it is the requirement of juridical antecedence that finds explicit legal mandate, which is found under Article 36 of the Family Code, requiring that psychological incapacity to comply with the essential marital obligations of marriage must exist at the time of the celebration of marriage, even if such incapacity becomes manifest only after its solemnization.

The difficulty in assessing the presence or absence of juridical antecedence lies in the fact that marital obligations arise only after the celebration of marriage. A spouse may be made aware of the marital obligations he or she must perform as he or she has observed in his or her own family and throughout the seminars that accompany preparations for marriage. However, once he or she gets a first-hand experience of living together with his or her spouse, several discoveries in marital life are brought to light. A person's ability or inability to comply with marital obligations becomes manifest only at such time when the spouses start living together. However, as a void marriage is not a divorce that cuts the marital bond at the time the grounds for divorce manifest themselves,[42] it is important to trace the existence of the psychological incapacity before or at the time of the celebration of the marriage. It is at this point that personality structure as pointed out by the ponencia becomes relevant.

Each individual, being unique and having their respective personality, brought about by the culture, upbringing, and influence of the environment surrounding them, when paired with another, does not always result in a utopian partnership. There are personalities that can easily adopt with each other and bring out the good in each of them, producing a healthy and harmonious relationship, while others become oppositely repulsive as they live together as husband and wife. Verily, it is only when the spouses live together under one roof that the personalities of each of the spouses are freely exposed and discovered. Consequently, their reaction towards this new discovery would

manifest their respective personalities, which could either be good for the marriage or may serve as a trigger to reveal an inherent inability to perform marital obligations.

Being embedded in the individuality of every human being, the personality structure of a married person is continuously unearthed by the constant interaction with the marriage itself and with the personality of his or her spouse. Throughout the interaction, when the personality structures of each of the spouses result in clashes, leading towards a grave incompatibility that is equivalent to the inability to perform the essential obligations of marriage, then it can be said that a defect in the marriage exists. The clashes in the personality structures must, however, be interrelated with behavioral patterns, experiences or actions taken by one of the spouses, which existed prior to the marriage. With this approach, the testimony of relatives, friends, and neighbors who had an encounter, or observed the spouse alleged to be psychologically incapacitated, will be given sufficient weight. The behaviors and actuations of a party to a petition for nullity of marriage may thus be examined without the need for an expert testimony.

It must, nevertheless, be emphasized that in order to qualify under Article 36, the psychological incapacity must refer to the inability to perform the ordinary duties required in a marriage,[43] and must not simply refer to difficulty, refusal, or neglect in the performance of marital obligations or ill will.[44] This means that the psychological incapacity must be characterized with gravity and must be measured by a repetitive behavior, not simply by occasional emotional outbursts, that ultimately result to insensitivity towards the marriage and the accompanying obligations thereto.

Concomitant to the concept of personality structure in marriage is its inter-relation, which entangles the personality structure of a person towards that of his or her spouse. Two personality structures are involved and carefully analyzed if the clashes between the two has indeed resulted in the inability of one of the spouses to perform the essential obligations of marriage. As a specific personality structure is examined based on how one interacts with another, this means that any inability of one of the spouses to perform marital obligations came to light because of the interaction of these specific personality structures. Any declaration that a person is psychologically incapacitated to perform marital obligations must thus be limited to his or her marriage with the specific spouse with whom he contracted the void marriage. It should not be considered as an innate inability on the part of the person determined to be psychologically incapacitated to enter into a marriage with another person with a different personality structure. The psychological incapacity under Art. 36 must not, therefore, be characterized with incurability, which is equated to be medically permanent.

I hereto agree with the re-examination of the requirement of incurability. Personality structures that leads to clashes and marital defects triggered by these clashes should not be characterized with permanence that applies to all kinds of relationship. A finding of psychological incapacity should be limited to the specific spouse with whom the void marriage was contracted. Further, as pointed out by Associate Justice Mario Lopez, and adopted by the ponencia, characterizing psychological incapacity as incurable is antithetical because the law does not prohibit a person whose former marriage was nullified under Article 36 to remarry. If psychological incapacity is truly incurable, then remarriage should not be allowed as it would result in another void marriage.[45] The ponencia then declared that incapacity must be enduring and persistent with respect to a specific partner, and contemplates a situation where the couple's respective personality structures are so incompatible and antagonistic that the only result of the union would be the inevitable and irreparable breakdown of the marriage.[46] An undeniable pattern of such persisting failure [to be present, loving, faithful, respectful, supportive spouse] must be established so as to demonstrate that there is indeed a psychological anomaly or incongruity in the spouse relative to the other.[47]

The obligations accompanying marriage, which are to live together, observe mutual love, respect and fidelity, and

render mutual help and support,[48] are basic obligations that preserve the bond that has been united by marriage. These are essential not only to enjoy conjugal living but also to protect the sanctity of marriage. Absent an understanding of these obligations and a grave inability to comply therewith, which existed at the time of the celebration of the marriage, the outcome of a marriage once splendidly solemnized would be its irreparable breakdown, that can only be recognized to be null and void.

A final note

The ponencia seizes the opportunity to remind the public that the State has a high stake in the preservation of marriage.[49] Carrying out this mandate necessarily includes the proper classification of marriages contracted by a psychologically incapacitated person as a nullity. After all, in dissolving marital bonds under Article 36, the Court is not demolishing the foundation of families, but is actually protecting its sanctity, as it refuses to allow a person who cannot assume marital obligations to remain in that sacred bond.[50]

In fine, the outcome of this case is a welcome clarification to the otherwise ambiguous rules in carrying out the State's policy towards marriage, especially in terms of laying down the threshold of evidence that is demonstrative of the degree of protection accorded to marriage, as well as the de-emphasis on the role of an assessment of a psychologist or psychiatrist, given that psychological incapacity is a legal, and not a medical, concept.

Ultimately, however, its significance lies in its apt reiteration that the Molina and Santos guidelines, given its nomenclature, are simply that: guidelines that are not set in stone and must be malleable enough to adjust to the factual milieu of every case it confronts.

Accordingly, I vote to GRANT the Petition for Review on Certiorari, to REVERSE and SET ASIDE the February 25, 2010 Decision of the Court of Appeals in CA-GR. CV No. 90303, and to REINSTATE the May 9, 2007 Decision of the Regional Trial Court, Branch 260, Parañaque City in Civil Cases No. 01-0228 and 03-0384.

[1] 1987 CONSTITUTION, Article XV, Section 2.

[2] *Tilar v. Tilar*, 813 Phil. 734, 740 (2017).

[3] 576 U.S. 644 (2015).

[4] *Jimenez v. Republic of the Philippines*, 109 Phil. 273, 276 (1960).

[5] The provision states:

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. (n) (As amended by Executive Order Number 227 dated July 17, 1987).

[6] See Decision, p. 22.

[7] Congressional Hearing before the Senate Committee on Women and Family Relations, February 3, 1988, as cited in Sta. Maria, *Persons and Family Relations Law* (2004 ed.), p. 191.

[8] *Santos v. Court of Appeals*, 310 Phil. 21, 36 (1995).

[9] 799 Phil. 449, 481 (2016).

[10] 335 Phil. 664 (1997).

- [11] Id. at 676.
- [12] 573 Phil. 553, 573 (2008).
- [13] 43 Phil. 43, 56 (1922).
- [14] Id.
- [15] Gatan, et al. v. Vinarao, et al., 820 Phil. 257, 271 (2017).
- [16] Riano, Evidence, The Bar Lecture Series (2013 ed.), p. 142, citing Black's Law Dictionary, 5[th] ed., p. 227.
- [17] See Decision, p. 28.
- [18] Tan v. Hosana, 780 Phil. 258, 266 (2016).
- [19] BP Oil and Chemicals International Philippines, Inc. v. Total Distribution & Logistic Systems, Inc., 805 Phil. 244, 262 (2017).

[20] 467 U.S. 310, 316 (1984).

- [21] See Addington v. Texas, 441 U.S. 418, 432-433 (1979); Santosky v Kramer; 445 U.S. 745, 747-48 (1982).
- [22] See Gertz v. Robert Welch, Inc., 418 U.S. 323, 331-32; Woodby v. INS, 385 U.S. 276, 285 (1966).
- [23] Riguer v. Atty. Mateo, 811 Phil. 538, 547 (2017).
- [24] See Decision, p. 34.
- [25] Santos v. Court of Appeals, supra note 8, at 39.
- [26] Id. at 40. (Emphasis ours).
- [27] Republic v. Court of Appeals, supra note 10, at 677.
- [28] 519 Phil. 337 (2006).
- [29] 830 Phil. 213 (2018).
- [30] 836 Phil. 1266 (2018).
- [31] 512 Phil. 219 (2005).
- [32] Republic of the Philippines v. De Gracia, 726 Phil. 502, 513 (2014).
- [33] 805 Phil. 209, 221 (2017).
- [34] 598 Phil. 666, 699 (2009). (Citation omitted).
- [35] Camacho-Reyes v. Reyes, 624 Phil. 603 (2010).
- [36] 397 Phil. 840, 850 (2000).
- [37] 601 Phil. 676, 691 (2009). (Emphasis ours).
- [38] See Decision, p. 48.
- [39] 829 Phil. 605, 620-621 (2018). (Emphasis ours).
- [40] Decision, p. 32.

[41] Santos v. Court of Appeals, *supra* note 8, at 39.

[42] Del Rosario v. Del Rosario, et al., 805 Phil. 978, 993-994 (2017).

[43] Epina-Dan v. Dan, *supra* note 38, at 623, citing Santos v. Court of Appeals, *supra* note 8, at 39.

[44] Singson v. Singson, 823 Phil. 19, 38 (2018), citing Republic v. Court of Appeals, 698 Phil. 257, 265 (2012).

[45] Decision p. 34, citing J. Mario Lopez's Reflections.

[46] Decision, p. 34.

[47] Decision, p. 34, citing J. Perlas-Bernabe's Reflections.

[48] Art. 68, Family Code.

[49] Carating-Siayngco v. Siayngco, 484 Phil. 396, 411 (2004).

[50] See Kalaw v. Fernandez, 750 Phil. 482, 514 (2015).

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