

Re-Examining the Concept of Psychological Incapacity: Towards a More Accurate Reflection of Legislative Intent

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I. INTRODUCTION

Marriage is the cornerstone of Philippine society. Marriage in the Philippines is viewed as a lifelong commitment. In fact, couples at the threshold of marriage are often advised that marriage is not like *kaning isusubo na madaling iluluwa* (rice that is eaten and easily spat out). Marriage has been described as a sacrosanct social institution¹ in the Philippines, mainly because it is upon this cornerstone that the Filipino family, the foundation of the nation, rests.² Thus, Philippine law commits itself to strengthening the solidarity of the family and actively promoting its total development.³ The Family Code of the Philippines⁴ defines marriage as a special contract of permanent union, which can only be dissolved by death of either spouse, by annulment, or by the declaration of nullity by the courts.⁵ Unlike in ordinary contracts where

1. *Domingo v. Court of Appeals*, 226 SCRA 572 (1993).
2. PHIL. CONST. art XV, § 2 (“[m]arriage is an inviolable social institution, is the foundation of the family and shall be protected by the State.”).
3. PHIL. CONST. art XV, § 1.
4. The Family Code of the Philippines [FAMILY CODE].
5. *Id.* art. 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.

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the agreement of the parties has the force of law between them, in marriage the rights and obligations of the parties, as well as the nature, consequences, and incidents of the relation, are generally fixed by law and are not subject to stipulation.

Philippine laws on marriage are based on this background of strong and permanent marital ties. Marriage, being an inviolable social institution, is protected from being dissolved merely by the parties' whim. Separation, annulment, or declaration of nullity of marriage can only be based on grounds stated by law.⁶ Hence, Filipino couples in rocky marriages find that the process of getting out of said relationships would be like the proverbial camel passing through the eye of the needle, because of the restrictive grounds provided for in articles 35, 37, 38 and 45 of the Family Code.⁷

Recently, however, with the passing of the Family Code of the Philippines on 3 August 1988 and its subsequent amendment by Executive Order No. 227, the "eye of the needle" was made a bit wider, thereby allowing married couples to avail of its more lenient provisions in order to avoid their marriages. Article 36 of the Family Code provides:

[a] marriage contracted by any party who, at the time of 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.⁸

Article 36 provides a more liberal ground for declaration of nullity of marriage. The widening of the needle's eye may be due in part to the definition of psychological incapacity, which is not provided for in the Code itself. The Civil Code Revision Committee did not give a definition of psychological incapacity, nor did it give any examples since they feared that doing so would unduly limit the meaning of the concept and its application under *eiusdem generis*.⁹ Justice Josue N. Bellosillo was quoted as having said:

[t]he Committee did not give any examples of psychological incapacity for fear that 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

Id. (emphasis supplied).

6. Katherine F. Lopez, *Psychological Incapacity: Whether or Not Persons Claiming to be Psychologically Incapacitated Can Themselves File for Nullity of Marriage as the Basis of Such Under Article 36 of the Family Code* 2 (2004), Juris Doctor Thesis, Ateneo de Manila University School of Law.
7. Jonathan O. Temporal, *Republic v. Court of Appeals and Molina: Providing Definite Standards for the Interpretation and Application of Article 36 of the Family Code*, 43 ATENEO L.J. 384 (1998).
8. FAMILY CODE, art. 36.
9. Temporal, *supra* note 7, at 383.

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.¹⁰

Furthermore, psychological incapacity is itself a nebulous idea for persons having little background in psychology. Being a concept which at first glance may well be within the grasp only of persons trained in the psychological and behavioral sciences, it is no wonder that judicial discretion with regard to declaring whether or not there is psychological incapacity in a given case may be described as almost unbridled.

From the text of article 36, we may gather the following elements of psychological incapacity: (a) a celebration of marriage; (b) non-performance of marital obligations; (c) the marital obligations which are not performed are essential obligations; (d) non-performance is due to causes psychological in nature and it is chronic: constant and habitual; (e) the cause/s are present during the celebration of marriage although they may not be manifest or evident at that point; and (f) the cause/s surface after the celebration of marriage.¹¹

The essential marital obligations between husband and wife are listed in the Family Code¹² and enunciated in the *Molina* guidelines.¹³ With regard to

10. *Salita v. Hon. Magtolis and Espinosa*, 233 SCRA 100 (1994); Justice Alicia V. Sempio-Diy, *Psychological Incapacity as a Ground to Dissolve Marriage*, SAN BEDA L.J. 41 (1994).

11. Temporal, *supra* note 7, at 387.

12. FAMILY CODE, arts. 68-71.

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

Art. 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.

Art. 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.

Art. 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.

13. *Republic v. Court of Appeals and Molina*, 268 SCRA 198 (1997).

the obligations of the spouses as parents to their children, the pertinent provisions of the Family Code are listed as articles 220, 221 and 225.¹⁴

14. FAMILY CODE, arts. 220, 221, and 225.

Art. 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.

Art. 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.

Art. 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

It is necessary to note the *essential* marital obligations, since it is the non-performance of this class of obligations which will lead to a declaration of nullity of marriage due to psychological incapacity. It is also important to note that not all marital obligations are essential marital obligations. Non-compliance with these non-essential marital obligations has no effect on the validity of the marriage.¹⁵

This Paper will clarify the nature of psychological incapacity as intended by the framers of article 36 in the Family Code of the Philippines, with the ultimate hope that the legislative intent be reflected accurately by the judicial interpretation and construction given to the concept. A re-examination of the concept of psychological incapacity as interpreted by the courts will be the focus of analysis. In this re-examination, the aspects of psychological incapacity in current jurisprudence which are divergent from the intent of the framers as well as possible causes of discrepancies are allowed to surface and are analyzed.

II. HISTORY OF ARTICLE 36 — THE INTENTION OF THE FRAMERS

A. Article 36 was Derived from Canon 1095

Article 36 of the Family Code introduced a totally new ground for the declaration of nullity of marriage.¹⁶ This provision was taken from Canon 1095 of the New Canon Law¹⁷ adopted by the Roman Catholic Church, which took effect on 27 November 1983:

The following are incapable of contracting marriage:

1. Those who lack sufficient use of reason;
2. Those who suffer from a grave lack of discretionary judgment concerning the essential matrimonial rights and obligations to be mutually given and accepted;

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.

15. Gabriel M.L. Angeles, "Til Death Do Us Part..." 28 (2003), Juris Doctor Thesis, Ateneo de Manila University School of Law.

16. Temporal, *supra* note 7, at 382.

17. The New Code of Canon Law, Can. 1095 (1983) [hereinafter Canon Law].

3. *Those who, because of causes of a psychological nature, are unable to assume the essential obligations of marriage.*¹⁸

Psychological incapacity was adopted as an additional ground for declaration of nullity of marriage in order to serve as a solution to the problem of Church-annulled marriages on grounds not recognized under Philippine Civil Law, and to serve as an additional remedy for burdened spouses. It was believed that many hopelessly broken marriages in our country today may already be dissolved or annulled on the grounds proposed by the Joint Committee on declaration of nullity as well as annulment of marriages, thus rendering an absolute divorce law unnecessary.¹⁹ The inclusion of psychological incapacity in our statute books allowed individuals who erred in their choice of spouses the ability to dissolve the marriage bond — at the same time keeping traditionalists contented by technically not allowing divorce in our laws — since divorce is not acceptable in Filipino culture which is deeply rooted in Christian values. Psychological incapacity provided an acceptable alternative to divorce, — an idea openly abhorred by the Catholic Church.²⁰

It is therefore evident from the enumerated purposes that the general aim was to add psychological incapacity as an additional ground in order to lower the bar that married spouses seeking to nullify their marriages have to hurdle. Justice Padilla opined similarly in *Santos v. Bedia-Santos*²¹ that “the intent of the framers of the Code is evidently to expand and liberalize the grounds for nullifying a marriage”²² whereas Justice Romero stated that the framers of the provision “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.”²³

B. Definition of Psychological Incapacity

As earlier stated, the Code did not provide for a definition of the concept of psychological incapacity nor any examples to illustrate the concept. Initially, not all the members opted to leave the concept undefined. However, proposals to define psychological incapacity were brushed aside by Justice Ricardo Puno by stating that judges and concerned parties can always refer to the minutes of the Committee meetings or consult the Committee

18. *Id.* (emphasis supplied).

19. *Santos v. Bedia-Santos*, 240 SCRA 20 (1995); (See, *id.* Concurring Opinion of Justice Romero); see also, Sempio-Diy, *supra* note 10, at 40.

20. Jose Ramon R. Pascual, *Understanding the Nature of “Psychological Incapacity”*, Philippine L.J. 141 (1997); Angeles, *supra* note 15, at 2.

21. *Santos v. Bedia-Santos*, 240 SCRA 20, 35 (1995).

22. *Id.* at 35.

23. *Id.* (Concurring Opinion of Justice Romero) (emphasis supplied).

members on this matter.²⁴ It may therefore be noted that in leaving out a more precise definition of the concept of psychological incapacity from the Family Code, the intention was for a reference to the Committee meetings to be made by persons seeking to interpret the meaning of psychological incapacity.

A possible danger that may be encountered due to this lack of definition of the concept of psychological incapacity in the Family Code is that it may be broadened to encompass any and all circumstances of incompatibility of the spouses. This may result in a situation where almost anyone can have their marriage dissolved, thus running counter to the State policy declaring marriage as an inviolable social institution.²⁵ On the other hand, it could also grant judges too much discretion in determining when declaration of nullity by virtue of psychological incapacity is applicable. This results in a lack of standards in the application of the law and could possibly lead to violations of the equal protection clause of the Constitution.²⁶ Thus, according to Justice Alicia Sempio-Diy, “some judges are very liberal in applying article 36 while others are unduly strict.”²⁷

Owing to the fact that the ground of ‘psychological incapacity’ is both novel and technical, it can be defined by persons specializing in widely divergent fields, such as psychologists, medical practitioners, legal professionals, as well as the Church in their interpretation of Canon Law. Each of these groups has a different standard by which they classify a person to be psychologically incapacitated. This variable definition therefore creates confusion as to the proper interpretation of the phrase. Is the correct interpretation that given by the Church in its interpretation of Canon law from which the phrase was derived? Do we look towards the medical and behavioral scientists for guidance regarding this matter? Or does the phrase have a different meaning altogether when it is used in the legal sense? It is the aim of this essay to determine the accurate meaning of psychological incapacity from the legal point of view.

C. Deliberations of the Family Code Revision Committee

The sessions of the Family Code Revision Committee concerning article 36 and psychological incapacity may provide clues as to the real intention of the framers. The Committee sometimes referred to psychological incapacity as a lack of understanding or appreciation of one’s marital obligations.

24. Temporal, *supra* note 7, at 383.

25. Angeles, *supra* note 15, at 1.

26. *Id.* at 50.

27. Sempio-Diy, *supra* note 10, at 45.

1. Psychological incapacity is not a vice of consent

In the deliberations of the Family Code Revision Committee,²⁸ Justice Caguioa clarified that the provision (which was to become article 36) refers to a lack of appreciation of one's marital obligations, rather than to defects in the mental faculties vitiating consent. He explained that "'psychological incapacity' refers to *lack of understanding of the essential obligations of marriage.*"²⁹

In explaining why insanity is only a ground for annulment, whereas psychological incapacity is a ground for declaration of nullity, Justice Caguioa points out that in insanity, there is the appearance of consent, which is the reason why it is a ground for voidable marriages, while psychological incapacity does not refer to consent but to the very essence of marital obligations.³⁰ When Justice Luciano suggested that they invite a psychiatrist who is an expert on the matter, Justice Caguioa reiterated that psychological incapacity is not a defect of the mind but in the understanding of the consequences of marriage, and therefore, a psychiatrist will not be of help.³¹ With regard to Judge Diy's suggestion that mental and physical incapacities also be included as additional grounds, Justice Caguioa countered that mental and physical incapacities are vices of consent while psychological incapacity is not a species of vice of consent.³²

2. Psychological incapacity should be existing at the time of marriage

The Committee deliberations also established that the psychological incapacity should be existing at the time of marriage for it to be a ground for declaration of nullity of the marriage. Professor Bautista stated during the Committee deliberations that there would be momentary periods in cases of psychological incapacity when there is an understanding of the consequences of marriage. To this, Justice Reyes and Dean Gupit remarked that the ground of psychological incapacity will not apply if the marriage was

28. MINUTES OF THE CIVIL CODE AND FAMILY LAW COMMITTEE MEETINGS (1986) [hereinafter CIVIL CODE AND FAMILY LAW COMMITTEE].

29. *Id.* at 10 (Aug. 9, 1986) (emphasis supplied).

30. *Id.* at 8 (July 26, 1986).

31. *Id.* at 13.

32. *Id.* According to Justice Alicia V. Sempio-Diy:

[i]s psychological incapacity a vice of consent? The answer is no. For a person might have given free, voluntary consent to a marriage — that is, he understood what marriage is all about and all the obligations arising therefrom when he entered into such marriage — but his will may be radically incapable of assuming its obligations. In other words, psychological incapacity is not a question of defective consent but one of fulfillment of the essential obligations arising from such consent.

contracted at the time when there is an understanding of the consequences of marriage.³³

Thus, Justice Puno observed that it is enough to show that at the time of the celebration of the marriage, one was psychologically incapacitated so that later on, if one can already comply with the essential marital obligations the marriage is still void *ab initio*.³⁴

3. Psychological incapacity in Civil Law is not the exact equivalent of psychological incapacity in Canon Law

Professor Romero queried whether there should be a provision in the Family Code to the effect that marriages annulled or declared void by the church on the ground of psychological incapacity be automatically annulled in Civil Law because of the fact that they have a common provision in Civil Law and Canon Law. The other members of the Revision Committee replied negatively.³⁵

One of the purposes for the adoption of the provision was to provide an answer to Church-annulled marriages still subsisting under Civil Law. In this matter, Judge Diy opined that the provision should have retroactive application.³⁶ On the other hand, Justice Reyes and Justice Puno were concerned about the avalanche of cases.³⁷

4. The requirement that psychological incapacity be incurable is questionable

At best, the Minutes of the Civil Code and Family Law Revision Committee Meetings show the ambivalence of the committee with regard to the quality of incurability with respect to psychological incapacity.

33. *Id.* at 9-10.

34. CIVIL CODE AND FAMILY LAW COMMITTEE, 10 (July 26, 1986).

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 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 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.

35. *Id.* at 10 (Aug. 9, 1986).

36. *Id.*

37. *Id.*

According to Justice Caguioa, insanity is merely a ground for annulment because insanity is curable and there are lucid intervals, whereas psychological incapacity is a ground for declaration of nullity because psychological incapacity is not curable.³⁸

Thus, although one might come to the conclusion that psychological incapacity must be incurable, contradictory statements might be culled from the Minutes of the Civil Code and Family Law Revision Committee Meetings. This may be seen from the following statements:

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 already he can comply with the essential marital obligations, the marriage is still void ab initio.*

x x x

Justice Puno and Judge Diy, however, pointed out that *it is possible that after the marriage, one's psychological incapacity become manifest but later on he was cured.* Justice Reyes and Justice Caguioa opined that the remedy in this case is to allow him to remarry.³⁹

These statements imply that psychological incapacity existent at the time of celebration of the marriage makes the marriage void, and that even though the incapacity itself later becomes cured, the marriage still remains void. This would imply that psychological incapacity may be cured, and hence, does not really need to be incurable to render the marriage void.

The fact that the provision does not specify the requirement of incurability despite suggestions during the deliberations that it contain such a statement, would lead one to conclude that incurability as a requirement might not have been arrived at unequivocally. Thus:

Prof. Baviera suggested that the phrase "*and is incurable*" be added at the end of subparagraph (7). Prof. Bautista commented that this will give rise to the question of how they will determine curability. Justice Caguioa agreed that it will be more problematic.⁴⁰

At best, the Minutes of the Civil Code and Family Law Revision Committee Meetings show the ambivalence of the committee with regard to the quality of incurability with respect to psychological incapacity.

38. *Id.* at 9 (July 26, 1986) (Justice Reyes asked why "insanity" 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.).

39. *Id.* (emphasis supplied).

40. CIVIL CODE AND FAMILY LAW COMMITTEE, 9 (July 26, 1986) (emphasis supplied).

5. The Committee deliberations indicate that psychological incapacity may be relative

Justice Alicia Sempio-Diy stated that the Code Committee believes that the psychologically incapacitated person should not be disqualified from getting married again because his or her psychological incapacity would be revealed when he applies for a marriage license for the second marriage, and the other party is thus placed on guard to conduct discreet investigation about the matter.⁴¹ This implies that the Civil Code and Family Law Revision Committee believes that psychological incapacity may be relative or specific only to the spouse, and may not manifest itself with respect to another spouse or person. Psychological incapacity may thus be selective in its operation. In explaining that psychological incapacity may be selective in its operation, the following statement should be noted:

Justice Caguioa remarked that subparagraph (7) refers to psychological impotence. Justice (Ricardo) Puno stated that *sometimes a person maybe psychologically impotent with one but not with another.* Justice Leonor Ines-Luciano said that *it is called selective impotency.*⁴²

III. PSYCHOLOGICAL INCAPACITY IN CANON LAW

A. The Church has Played a Big Role in the Institution of Marriage

Even before the introduction of Catholicism, the sanction of religion with respect to marriage has always been recognized in the Philippines. The concept that marriage is more than a contract and should be treated as a sacrament⁴³ is a teaching of the Catholic Church since the Twelfth Century.⁴⁴ Marriage is a natural institution elevated in the realm of grace and

41. Sempio-Diy, *supra* note 10, at 41.

42. CIVIL CODE AND FAMILY LAW COMMITTEE, 8 (July 26, 1986).

43. Canon Law, Can. 1055:

The matrimonial covenant, by which a man and a woman establish between themselves a partnership of the whole of life, is by its nature ordered toward the good of the spouses and the procreation and education of offspring; this covenant between baptized persons have been raised by Christ the Lord to the dignity of a sacrament.

For this reason a matrimonial contract cannot validly exist between baptized persons unless it is also a sacrament by that fact.

44. ADOLFO N. DACANAY, S.J., CANON LAW ON MARRIAGE: INTRODUCTORY NOTES AND COMMENTS 3 (2000) [hereinafter DACANAY]; RALPH BROWN, MARRIAGE ANNULMENT IN THE CATHOLIC CHURCH 11, 28 (1990) [hereinafter BROWN].

included in the "economy of salvation."⁴⁵ Marriage has thus been elevated into the level of a sacrament.⁴⁶ Because of its sacramental character,⁴⁷ marriages between Catholics are governed by Church law. The New Code of Canon Law of the Catholic Church, promulgated on 25 January 1983,⁴⁸ prescribes conditions⁴⁹ necessary to safeguard the spiritual and sacramental character and effects of marriage.⁵⁰

The marriage bond is formed by the exchange of consent.⁵¹ Two distinct events arise at the same moment when a marriage is actualized: (1) the matrimonial consent which consists in the act of knowing, deliberating, and opting for marriage — the marriage *in fieri*, or the marriage "in the making," and (2) the matrimonial bond to which the matrimonial consent gives rise which consists of the act of honoring, observing, and living the marriage — the marriage *in facto esse*, or the marriage "already made."⁵² The core content of the marriage rite is the exchange of matrimonial consent. According to the teaching of the Church, the bride and groom are the ministers of the sacrament whereby they provide not only the "matter" for the sacrament — their own persons — but also the "form" of the sacrament — their mutual matrimonial consent.⁵³

Consent is an essential ingredient in a Catholic marriage.⁵⁴ The marriage bond is formed by an act of will manifested in a legitimate manner, with

45. ARCHBISHOP OSCAR V. CRUZ, J.C.D., D.D., ANNOTATIONS ON ROTAL JURISPRUDENCE ON CANON 1095 CIC, 26.

46. *Id.* c. Stankiewicz (Mar. 9, 1995).

47. See generally, GEOFFREY ROBINSON, MARRIAGE DIVORCE AND NULLITY: A GUIDE TO THE ANNULMENT PROCESS IN THE CATHOLIC CHURCH (1984).

48. BROWN, *supra* note 44, at 16.

49. Canon Law, Can. 1059:

Even if only one party is baptized, the marriage of Catholics is regulated not only by divine law but also by canon law, with due regards for the competence of civil authority concerning the merely civil effects of such a marriage.

50. JORGE COQUIA, CHURCH AND STATE LAW IN THE PHILIPPINES 306 (1959).

51. BROWN, *supra* note 44, at 19.

52. CRUZ, *supra* note 45, at 102.

53. *Id.* at 9.

54. Canon Law, Can. 1057:

Marriage is brought about through the consent of the parties, legitimately manifested between persons who are capable according to law of giving consent; no human power can replace this consent.

Matrimonial consent is an act of the will by which a man and a woman, through an irrevocable covenant, mutually give and accept each other in order to establish a marriage.

respect to the mutual donation and reciprocal acceptance of each other. Thus, in *c. Giannecchini* (21 Feb. 1995), consent has been described as an act of will and an irrevocable covenant.⁵⁵

Grounds for nullity dealt with in the New Code of Canon Law are placed under the chapter dealing with 'Marital Consent.'⁵⁶ According to Ralph Brown in his book *Marriage Annulment in the Catholic Church*:

Marriage is made by the consent of the parties — in a meeting of minds and wills of the parties ... Consent, put at its simplest, has two central aspects. One consents to something; and one consents with something. The something to which one consents is called the 'object of consent'; and what one consents with are those powers and personal requirements which allow one to consent to the object ... The person needs, obviously to be sane and possessed of a degree of judgmental ability to decide upon marriage; as well as to have at least a minimal ability to form and sustain the partnership of which the Code speaks.⁵⁷

Matrimonial consent is the primary constitutive element of marriage in Canon Law, and it is one of the most common grounds in impugning a marriage as null and void *ab initio* in Marriage Tribunals of the Catholic Church.⁵⁸

B. Nullity of Marriage in Canon Law

Marriages are generally considered indissoluble under Canon Law. Canon Law speaks of the marriage bond as being permanent and exclusive.⁵⁹ These are correlated with the two essential characteristics of marriage: unity and indissolubility.⁶⁰ The Church takes marriage as a symbol of the indissoluble union between Christ and the Church, and as such, considers the Christian

55. CRUZ, *supra* note 45, at 87. Matrimonial consent is an act of the will — an option made by the integrated operation of the intellectual (knowing, discerning, deciding) and volitional (selecting, willing, pursuing) faculties — whereby a man and a woman mutually give and accept themselves in an irrevocable covenant, i.e. a lifelong spousal partnership which by nature is ordained for their own good as spouses and for the welfare of the children born of their union.

56. BROWN, *supra* note 44, at 20.

57. *Id.* at 26-27 (emphasis supplied).

58. *Id.* at 11.

59. DACANAY, *supra* note 44, at 13.

60. Canon Law, Can. 1056 ("[t]he essential properties of marriage are unity and indissolubility, which in Christian marriage obtain a special firmness in virtue of the sacrament.").

marriage as indissoluble.⁶¹ Thus, a Christian marriage that has been consummated is absolutely indissoluble.⁶²

In Canon Law, there are only two kinds of marriages — the “valid” and the “void” marriage. The remedy to declare the nullity of a marriage is called “annulment.” The term is somewhat inaccurate, however, since there is an implication that there was a valid marriage to start with. In annulments under Canon Law, the Church does not dissolve an existing and validly contracted marriage.⁶³ Church annulment is merely declarative of the fact that although there is the appearance of marriage, the substance of such marriage is not present.⁶⁴ The annulment of marriage in Canon Law is to be differentiated from its usage in Civil Law where there is a third category — the “annullable” marriage — which is the proper subject of an annulment case, whereas the remedy against a void marriage is termed an action for declaration of nullity of a marriage.⁶⁵

Generally, there are three grounds by which the validity of a marriage can be challenged: (1) the presence of impediment,⁶⁶ (2) defective consent; and (3) defective canonical form.⁶⁷

Impediments are conditions defined in Canon Law afflicting the person by himself (such as in the case of impotence) or with respect to others (such

61. *Id.* Can. 1141 (“[a] ratified and consummated marriage cannot be dissolved by any human power or for any reason other than death.”).

62. DACANAY, *supra* note 44, at 14.

63. Canon Law, Can. 1075, §§1-2.

§1. The Supreme authority of the Church alone has the competency to declare authentically when divine law prohibits or voids a marriage.

§2. Only the supreme authority has the right to establish other impediments for the baptized.

64. DACANAY, *supra* note 44, at 15.

65. Sempio-Diy, *supra* note 10, at 40.

66. Canon Law, Can. 1073 (“[a] diriment impediment renders a person incapable of contracting marriage validly.”).

67. *Id.* Can. 1108, §§1-2.

§1. Only those marriages are valid which are contracted in the presence of the local ordinary or the pastor or a priest or deacon delegated by either of them, who assist, and in the presence of two witnesses, according to the rules expressed in the following canons, with due regard for the exceptions mentioned in cann. 144, 1112, §1, 1116 and 1127, §2 and §3.

§2. The one assisting at a marriage is understood to be only that person who, present at the ceremony, asks for the contractants’ manifestation of consent and receives it in the name of the Church.

as consanguinity) which renders a person incapable of contracting a valid marriage. The general effect of an impediment is that the consent proceeding therefrom is juridically ineffective, thereby invalidating the marriage arising from such consent.⁶⁸ The condition, however, does not render the consent invalid since the person would otherwise be capable of eliciting a naturally valid consent.⁶⁹ Twelve impediments are listed in Canon Law — age, orders, vows, consanguinity in the collateral line, consanguinity in the direct line, affinity, public propriety, legal relationship, abduction, crime, disparity of cult, impotence, and ligamen.⁷⁰

Defective consent, on the other hand, must be distinguished from impediments. Whereas in impediments, the origin of the consent is defective, here the consent itself is defective. Canon 1057 speaks about consent as an essential requirement in marriage.⁷¹ Either the cognitive, volitive, or psychosomatic constituent elements of consent itself may be defective.⁷² The Church defines marriage as “an intimate partnership of life and love, established by the Creator and qualified by his laws.”⁷³ Matrimonial consent therefore, must have this intimate partnership as its immediate object.⁷⁴ Matrimonial consent does not just consist of the mutual exchange of rights to each other’s body. The kind of consent given must be proportionate to its object. This consent must include three elements: (1) truth; (2) correct intention and freedom; and (3) maturity. These correspond to the cognitive, volitive, and somatic elements.⁷⁵

68. *Id.* at 19.

69. *Id.*

70. *Id.* Can. 1083, 1087-95; DACANAY, *supra* note 44, at 20.

71. Canon Law, Can. 1057, §§1-2.

§1. Marriage is brought about through the consent of the parties; legitimately manifested between two persons who are capable according to law of giving consent; no human power can replace this consent.

§2. Matrimonial consent is an act of the will by which a man and a woman, through an irrevocable covenant, mutually give and accept each other in order to establish marriage.

72. DACANAY, *supra* note 44, at 74.

73. *Id.*

74. Canon Law, Can. 1096, §1.

For matrimonial consent to be valid it is necessary that the contracting parties at least not be ignorant that marriage is a permanent consortium between a man and a woman which is ordered towards the procreation of offspring by means of some sexual cooperation.

75. DACANAY, *supra* note 44, at 74.

Defective form is a third ground for invalidity of a marriage under Church Law. This speaks of the juridical solemnities required, since in a marriage where at least one of the parties is a Catholic, such marriage is governed by Church Law.⁷⁶

C. The Concept of Psychological Incapacity was Derived from Canon Law

The ground of psychological incapacity was derived from Canon 1095 of the New Code of Canon Law.⁷⁷ Decades before codification of this provision, marriage nullity has been declared by the Catholic Church on the same grounds. Hence, the substance forming the basis of the grounds for invalidity of a marriage provided by Canon 1095 is not really new since the specific formulation is culled from decades of matrimonial jurisprudence.⁷⁸ As stated in *c. Huber* (26 July 1996), Canon Law had for centuries accepted the fact that there were individuals who were not meant for marriage on account of serious behavioral anomalies which were then processed under the rubric of "insanity." As progress was made in the behavioral sciences, matrimonial jurisprudence developed until it was enunciated in Canon 1095. The incapacity to assume the essential marital obligations is premised on the principle that one cannot be bound to the impossible, so that a person cannot promise what he/she has no dominion upon, such as those behaviors due to his/her obsessions, compulsions, and similar psychological phenomena which can gravely impede reason, functions, and deliberate actions.⁷⁹ However, even Canon Law does not define the term "psychological incapacity," due to the uniqueness of every marital relationship given variations in background, personalities, and culture of married couples.⁸⁰ Thus, according to Archbishop Oscar V. Cruz, J.C.D., D.D., in his book *Annotations on Rotal Jurisprudence on Canon 1095 CIC*:

The law on consensual incapacity ex professo simply states what personal circumstances and/or natural factors undermine — the capacity of persons to elicit integral and thereby effective matrimonial consent — *without providing what concretely are such circumstances and/or factors* in terms neither of its diagnostic understanding nor its scientific nomenclature which are materials for experts or professionals in the behavioral sciences. It is enough for the law to say what disables persons for marriage, one, due to mental incapacity, two, on account of judgment incapacity, and three, by reason of

76. *Id.* at 16.

77. Canon Law, Can. 1095.

78. CRUZ, *supra* note 45, at 99.

79. *Id.* at 108.

80. Sempio-Diy, *supra* note 10 at 41.

psychical incapacity. The law is then judicially analysed and applied, taking into consideration the pronouncement of said experts or professionals.⁸¹

Canon 1095 deals with the three faculties required for consensual capacity: (1) the ability to make a responsible human act; (2) the ability to evaluate sufficiently the nature of marriage and consequently to choose it freely; and (3) the ability to assume its essential obligations.

The ability to make a responsible human act is required for consent. One possible reason why a person may be incapable of a human act is that he is deprived of the use of reason at the time consent was given. Without the use of the reasoning faculties, a person will not know what he/she is undertaking in getting married. This inability may either be permanent in the case of severe mental handicap, psychotic illness or brain damage, or it could be temporary as that caused by drug abuse.⁸²

The ability to sufficiently evaluate the nature of marriage and freely choose the marital state is referred to as due discretion. Those suffering from a grave lack of judgment concerning the essential matrimonial rights and obligations to be mutually given and accepted are not capable of contracting a marriage. This is not related to one's ability to contract, but rather refers to the inability to bind oneself to the rights and obligations of marriage.⁸³

This ability has been called "due discretion," the definition of which Fr. Dacanay states in his book:

The exercise of due discretion of judgment is intelligence brought to bear on a particular choice to be made, and that this basis of nullity has to do with the harmonious integration of intellect and will from which proceeds a conscious and free determination directed towards a certain object. Marital consent then derives from a combined action of cognitive, deliberative/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.

For a valid act of consent, one must therefore have a rudimentary knowledge of marriage and must freely accept its responsibilities, and in addition he/she must have the judgmental capacity to evaluate what is being consented to, to elicit the act of consent and to fulfill what is involved demanded by marriage. One must be able to, in a sense, "look to the future..."⁸⁴

81. CRUZ, *supra* note 45, at 28-29 (emphasis supplied).

82. BROWN, *supra* note 44, at 22; DACANAY, *supra* note 44, at 97.

83. *Id.* at 98.

84. *Id.* at 100.

essential obligations of marriage even though he may have sufficient use of reason plus due discretion in judgment.⁹⁷

Since the provision on psychological incapacity was taken from Canon Law, decisions of church tribunals, although not binding on the civil courts, are given persuasive effect.⁹⁸ Although not decisive for having no judicial or secular effect, jurisprudence prevailing under Canon Law at the time of the enactment of the Family Code is pertinent as an aid to the interpretation and construction of the codal provision.⁹⁹

The Roman Rota is one of the main sources of jurisprudence regarding provisions of the Canon Law. The importance of the Roman Rotal jurisprudence is highlighted by Archbishop Oscar V. Cruz:

In the event that there is a lack of law (*lacuna legis*) such as in matrimonial legislation, it should be noted and remembered that only Tribunals of the Apostolic See such as the Roman Rota — not any lower local, regional or national Tribunals — are officially acknowledged as the source of legal suppletion (*suppletio legis*) precisely by their jurisprudence as expressly provided by Canon 19 CIC.

Rotal Jurisprudence is wherefore an official judicial directory — with great referential value as a basis and source of the correct understanding, interpretation and application of Matrimonial Law.¹⁰⁰

C. Canon 1095 Intended a Broad Application of the Concept of Psychological Incapacity

A brief account of the drafting of the Canon Law provision, according to Ladislav Orsy, S.J., was summed up in *Santos v. Bedia-Santos* as follows:

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 gravamen 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 gravamen 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 psychological nature (*ob causas naturae*

97. *Id.* at 99.

98. *Salita v. Hon. Magtolis and Espinosa*, 233 SCRA 100 (1994).

99. *Santos v. Bedia-Santos*, 240 SCRA 20, 34 (1995).

100. CRUZ, *supra* note 45, at 115-16.

psychiae). So the progress was from psychosexual to psychological anomaly, then the term anomaly was altogether eliminated.¹⁰¹

Fr. Orsy conceded that since psychological causes can be of an infinite variety, the term psychological incapacity defies any precise definition.¹⁰²

Psychological incapacity in Canon Law refers to the inability to commit oneself to the essential obligations of marriage. The book entitled *Canons and Commentaries on Marriage* written by Ignatius Gramunt, Javier Hervada and LeRoy Wauck, was cited in *Santos v. Bedia-Santos* in explaining the concept of psychological incapacity stating that, "if the marriage is to be declared invalid under this incapacity, it must be proved not only that the person is afflicted by a psychological defect, but that the defect did in fact deprive the person, at the moment of giving consent, of the ability to assume the essential duties of marriage and consequently of the possibility of being bound by these duties."¹⁰³

Justice Alicia V. Sempio-Diy further cites Father Gerald Healy, S.J. and Archbishop Oscar Cruz, J.C.D., who were invited as resource persons by the Code Committee and who gave a list of possible manifestations of psychological incapacity, as follows: the refusal of a wife to dwell with the husband without fault on the part of the latter or to have sex with him or to have children, compulsive gambling, excessive irrational jealousy on the part of either spouse making common life impossible or unbearable, socio-pathic anomalies in husbands such as sadism or physical violence on the wife, constitutional laziness or indolence, drug addiction, or some kind of psychosexual anomaly.¹⁰⁴

In *c. Lanversin* (18 Jan. 1995), it was stated that the incapacity should make the party disabled from rendering what is due in the marriage, within the context of justice, not merely in the sphere of good will. It is immaterial whether the incapacity refers to all, some, or most essential marital obligations. The requirement for invalidity is that there is invalidity relevant to any or all constitutive marital obligations, and this is due to a psychic anomaly.¹⁰⁵ *C. Turnaturi* (14 Mar. 1996) states that incapacity for marriage refers to the inherent inaptitude of a party to "live the strictly mandatory and accordingly expected interpersonal matrimonial relationship that as a matter of course is ordained for the good of the spouses — and the children, if any, born of their union."¹⁰⁶

101. *Santos*, 240 SCRA at 20, 34 (emphasis supplied).

102. *Id.*

103. *Id.* (emphasis supplied).

104. *Id.*

105. CRUZ, *supra* note 45, at 84.

106. *Id.* at 103.

1. Psychological incapacity deals with positing the object of consent

The act of consenting is composed of two elements: (1) the act of the consenting person, and (2) the object of consent. Psychological incapacity for marriage withdraws the object of matrimonial consent which is thus rendered defective.¹⁰⁷ To consent to something beyond one's capacity is equivalent to consenting to nothing; it means that there is lack of consent, not because the person himself is incapable of consenting but because he consents to something beyond his capacity to fulfill.¹⁰⁸ This has been explained in *c. Giannecchini* (21 Feb. 1995) as follows:

In the event of psychical incapacity to assume the obligations essential to marriage, what in truth happens is that such an adverse personal condition on the part of the subject party concerned actually voids marriage of its substance, extinguishes the essence of the conjugal covenant. *Thus, the said party assumes nothing, commits nothing and thus eventually contracts nothing.*¹⁰⁹

Psychological incapacity deals not with the positing of consent but rather with positing the object of consent.¹¹⁰ For example, in certain sexual anomalies such as nymphomania, satyriasis, sadism, masochism, and homosexuality, it is possible that higher faculties remain intact such that the person afflicted has an understanding of the nature and responsibilities of marriage. The question is whether the person can assume the responsibilities he cannot fulfill, even though he understands them. Thus, although the consent is freely given, it is juridically ineffective because the party is consenting to an object he cannot deliver.¹¹¹

The consensual incapacity dealt with by Canon 1095 deals only in conjunction with marriage, and not to other areas of human endeavor. The Church recognizes that every individual has the capacity to accomplish something — save those altogether mentally deranged. However, not all are capable of giving valid matrimonial consent. Thus, there are some who have obtained achievements in different fields of human endeavor who are also incapacitated to assume the essential obligations of marriage.¹¹²

2. The cause of incapacity must be psychological

Canon law points to the incapacity to assume essential marital obligations as having causes of a psychological nature. There must be reference to the

107. *Id.* at 88.

108. *Id.* at 34.

109. *Id.* at 88 (emphasis supplied).

110. DACANAY, *supra* note 44, at 110.

111. *Id.* at 111; CRUZ, *supra* note 45, at 34.

112. *Id.* at 25.

psychic part of the person, or his personality. There must be something in the psychic constitution or psyche of the person which impedes his capacity to assume the essential marital obligations. Thus, according to Archbishop Oscar V. Cruz, for psychological incapacity to exist, it is required that "*there is a verified existence of a psychical incapacitating factor...*"¹¹³ Thus, in *c. Giannecchini* (21 Feb. 1995), the significance of the psychological nexus was highlighted in its statement that "*such incapacity should be traced to an impairing cause in the human psyche.*"¹¹⁴ This psychological cause is of prime importance in establishing with certitude the incapacity to assume the essential marital obligations. A deeply ingrained bad habit does not qualify as a source of this incapacity. There is still some freedom in the development of a habit unlike one's psychic constitution, which must be accepted as a given.¹¹⁵

Psychological incapacity as interpreted by the Catholic Marriage Tribunal must be characterized by gravity, juridical antecedence and incurability. Dr. Gerardo Veloso, a former presiding judge of the Metropolitan Marriage Tribunal of the Catholic Archdioceses of Manila (Branch 1) was cited in *Santos v. Bedia-Santos* as having opined 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.¹¹⁶

Examples of disorders taken by Church decisions as rendering a person psychologically incapable to assume the essential obligations of marriage. Justice Alicia Sempio-Diy¹¹⁷ cites Dr. Gerardo Ty Veloso's booklet on Catholic Church annulments of marriages where he states that aside from the classical neuroses, psychoses, and other personality disorders that render a person psychologically unfit to assume and perform the essential obligations of marriage, other examples of disorders rendering a person psychologically incapable of assuming the essential marital obligations are homosexuality in men or lesbianism in women, satyriasis in men or nymphomania in women, extremely low intelligence, epilepsy, habitual alcoholism or the condition by which a person lives for the next drink, criminality or the condition by

113. *Id.* at 35.

114. *Id.* at 88.

115. *Id.* at 119.

116. Santos v. Bedia-Santos, 240 SCRA 20, 33 (1995) (emphasis supplied).

117. Sempio-Diy, *supra* note 10, at 42.

which a person consistently gets in trouble with the law or with socially established norms of conduct, and immaturity.¹¹⁸

Incapacity to assume the essential obligations of marriage can result from an illness or other psychic abnormality. Among the disorders and abnormalities considered by the Roman Rota that may result in incapacity to assume the essential obligations of marriage are: psychopathic personality, hyper sexuality-nymphomania and satyriasis, homosexuality and lesbianism, schizoid personality, transsexualism-transvestitism, hysterical personality, paranoid personality, psychoneurosis, affective immaturity/immature personality, passive-dependent personality, manic-depressive psychosis, obsessive-compulsive neurosis, antisocial personality, sexual disorders, sexual neurosis, borderline personality, anorexia nervosa, psychoneurosis, alcoholism and gambling, schizophrenia, and depressive personality.¹¹⁹

3. Incapacity to assume the essential matrimonial obligations should be existing at the time of marriage

The incapacity to assume the essential marital obligations must be antecedent, and not subsequent, to the marital contract such that "the judges must be satisfied that the problem itself was not caused by the experience of married life, and it is not a later reaction to the marital situation."¹²⁰ Hence, "[i]ncapacity must be proven an antecedent and co-incident with consent"¹²¹ and should thus be "factually existent at the time of the wedding,"¹²² although it may clearly manifest itself in the external form only sometime thereafter.¹²³ Incapacity should be concomitant or co-existing with the pronouncement of matrimonial consent for it to become a factor which invalidates a marriage.¹²⁴ According to Fr. Dacanay, "the doctrinal point of law should not be lost: incapacity is not something that arises subsequently. Rather, it is something that can be seen and traced to the moment of contract."¹²⁵ The marriage contract has been described such that "a substantial defect concomitant with the negotiations renders the contract null from the beginning, but if subsequent to the negotiation it does not

118. *Id.*

119. AUGUSTINE MENDONCA, *ROTAL ANTHOLOGY: AN ANNOTATED INDEX OF ROTAL DECISIONS FROM 1971 TO 1988*, 86-110 (1996).

120. BROWN, *supra* note 44, at 103.

121. HUGH F. DOOGAN, *CATHOLIC TRIBUNALS: MARRIAGE, ANNULMENT AND DISSOLUTION* 163 (1990).

122. CRUZ, *supra* note 45, at 35.

123. *Id.* at 94.

124. *Id.* at 26.

125. DACANAY, *supra* note 44, at 110.

dissolve the valid contract."¹²⁶ A string of Church jurisprudence all point to the summation found in *c. Lanversin* (18 Jan. 1995), where it was held that it becomes irrelevant to marriage validity if the psychological cause only had a post-marriage onset.¹²⁷

Thus, the condition of the parties at the moment of contract determines validity of the contract. In practice, however, one ascertains indirectly whether or not a person is unable to assume the essential obligations of marriage. The judge investigates the ability to fulfill the essential obligations. If the conclusion reached is that the parties did not and could not fulfill the duties, then it is concluded that the party was unable to assume the obligation. However, it must always be ascertained that incapacity should be traced to the moment of contract, and is not something that arises subsequently.¹²⁸ Hence, we must note that "the incapacity to integrate must preexist the union objectively and that the heart of the problem is in demonstrating this."¹²⁹

4. Incapacity to assume the essential matrimonial obligations should be caused by grave disorders or abnormalities

C. Raad (20 Mar. 1980) was cited by Hugh F. Doogan in his book *Catholic Tribunals: Marriage Annulment and Dissolution* as stating that: "[t]o render a marriage invalid, mental or psychic incapacity to elicit consent or to assume the obligations must be present at the time of the ceremony and must be grave. Quirks of temperament, such as egoism, laziness, unskillfulness, wantonness, clumsiness, uncleanliness and the like are not to be confused with psychic anomalies properly so-called."¹³⁰

C. Di Felice (25 Oct. 1978) discusses that incapacity for communion of life can result in two ways: (1) when a person's psychic and physical state is so affected that a valid marriage cannot be contracted, and (2) when there are only light character defects that can later be perfected. The second type can only impede the full and perfect conjugal life and it can be perfected in the future. Slight character flaws do not render a person incapable of marriage.¹³¹ In *c. Lanversin* (18 January 1995), the union-in-fact was intolerable to the other party right from the start. If the case was brought to judicial attention long after, there should be clear indications that the other party patiently

126. DOOGAN, *supra* note 121, at 91.

127. CRUZ, *supra* note 45, at 85.

128. DACANAY, *supra* note 44, at 109-10.

129. DOOGAN, *supra* note 121, at 103.

130. *Id.* at 97 (emphasis supplied).

131. MENDONCA, *supra* note 119, at 94.

bore the unbearable until there was no more recourse left but to submit to a judicial plea of nullity.¹³²

Conflicting decisions indicate that psychological incapacity may refer even to a clinically undefined abnormality of the psyche. Conflicting decisions of the Church, however, seem to point out that gravity need not refer to a psychological disorder, but rather to any abnormality of the psyche which may even be clinically undefined, thus: "the incapacity can be derived from any grave psychic anomaly, with the term 'psychic' not only embracing 'morbum quaedam' (any clinically defined illness of the psyche) but extending to any (grave) 'morbosam abnormitatem' (any clinically undefined abnormality which affects the psyche adversely)."¹³³

Some Church decisions state that incapacity to assume the essential matrimonial obligations should be incurable. Incapacity to assume the essential marital obligations is usually not just antecedent to the wedding, but subsists for a long time after the wedding, and may even last for a long time as to be incurable.¹³⁴ Incurability, as referred to canonically, means immunity to cure by ordinary means and within the opportune time.¹³⁵ Some Church decisions seem to point out that incurability of the condition is a requirement for the declaration of nullity of a marriage. In *c. Pinto* (15 July 1977), a negative decision was given since it was said that vaginismus cannot be proven to be incurable.¹³⁶ In *c. Stankiewicz* (24 Nov. 1983), it was stated that homosexuality may be a source of nullity of marriage if it is irreversible and it renders impossible heterosexual union.¹³⁷ In *c. Stankiewicz* (14 Nov. 1985), it was held that the psychic disorder must be present at the time of consenting, must be grave and with a poor prognosis.¹³⁸ *C. Lanversin* (18 Jan. 1995), states that the condition should be permanent in a way that it is considered irremediable through ordinary curative means within a reasonable time.¹³⁹

Conflicting Church decisions state that the psychic causes of incapacity to assume essential marital obligations do not need to be incurable. There is dispute as to the post-consensual duration of the incapacity. Incapacity was initially seen as analogous to physical impotence, which is the reason why it was designated then as "moral impotence" and the requirement for

132. CRUZ, *supra* note 45, at 86.

133. DOOGAN, *supra* note 121, at 96 (emphasis supplied).

134. *Id.* at 26.

135. *Id.* at 35.

136. *Id.* at 92.

137. *Id.* at 105.

138. *Id.* at 105.

139. CRUZ, *supra* note 45, at 86.

permanence in physical impotence was adopted in incapacity cases.¹⁴⁰ Lefebvre differentiates that permanency is not required when there is an incapacity for exclusiveness, but requires permanence with respect to an incapacity for community of life. Pinto also concedes that permanence is not required.¹⁴¹ Church jurisprudence states that there may be serious psychic anomalies, which do not necessarily have to be incurable, which may give rise to the incapacity to assume any, some or all of the marital obligations.¹⁴² For example, in *c. Pompedda* (19 Feb. 1982), it was stated that "the cause of such incapacity must be present at the time of contracting marriage, but it does not necessarily have to be perpetual."¹⁴³ According to the decision in *c. Lanversin* (17 Jan. 1996), the incapacity to assume the essential marital obligations "need not be either absolutely incurable or perpetually irremediable in order to become an invalidating marriage factor."¹⁴⁴ Hence, with regard to the matter of incurability, it appears that the Church does not elevate incurability to the status of being a requirement in cases for declaration of nullity of marriage.

Even if the condition is indeed curable, subsequent cure of the incapacity nevertheless does not render a marriage valid. Thus, according to *c. Parisella* (26 Oct. 1978), "[t]hose things which happen after marriage cannot make a marriage valid if it was invalidly contracted."¹⁴⁵

Church jurisprudence states that the opinions of psychiatric or psychological experts should be considered in light of other evidence. There should be moral certitude with regard to the existence of the incapacity at the time of the wedding. Thus, *c. Defilippi* (5 Mar. 1966) held that doubtful incapacity to assume the essential marital obligations can not be used as a ground for invalidating a marriage. As standard judicial practice, behavioral experts must be consulted to resolve any doubts and thus arrive at certitude.¹⁴⁶ The Church requires an extensive evaluation of the parties to the marriage which is considered for annulment in order to make a declaration of nullity. This was stressed in Paul VI's address to the Rota on 29 January 1977, which stated the need for "a rigorous evaluation of the subject under judgment," hence, the modern procedure in both the canonical and civil field, which takes into account the psychology of the parties and subjective elements, and evaluates also the environmental, family

140. DOOGAN, *supra* note 121, at 99.

141. *Id.*

142. DACANAY, *supra* note 44, at 117.

143. MENDONCA, *supra* note 119, at 101.

144. CRUZ, *supra* note 45, at 94.

145. DOOGAN, *supra* note 121, at 99.

146. CRUZ, *supra* note 45, at 100.

and sociological circumstances.¹⁴⁷ In the Rotal decision of *c. Faltin* (20 Mar. 1996), it stated:

In cases where the principles and conclusions of behavioral sciences are involved such as in the psychology and psychiatry, it is the standing procedural assumption that whereas the judge concerned is a professional in matrimonial law and jurisprudence but not in the said sciences, the intervention of expert(s) therein should be sought in said cases — even if the judge concerned has also obtained expertise in the said sciences whereas his own personal expert opinion may then be confirmed or infirmed by the opinion of another expert. But the judgment still rightfully belongs to the judge.¹⁴⁸

The Rotal decision of *c. Bruno* (6 Dec. 1996), on the other hand, showed the importance of the psychological assessment of the experts in order to distinguish whether the issue is a true psychological incapacity or merely a relative difficulty in compliance. The assessment is to be based on the facts of the case and the pronouncements of the experts and that “such an assessment will provide the certitude required by law.”¹⁴⁹

The Church does not impose an absolute prohibition against remarriage with regard to a psychologically incapacitated person. Canonists differentiate absolute from relative incapacity to assume essential marital obligations. Absolute incapacity refers to the situation where a person is incapable of fulfilling the essential marital obligations with respect to anyone, whereas relative incapacity refers to a person incapable of fulfilling the essential marital obligations with respect only to certain specified individuals. Justice Alicia V. Sempio-Diy cites Father Healy in saying that “the Church does not impose an absolute prohibition for a person proven to have a psychological defect, to marry again because he or she may get the right partner who understands his [or her] problem.”¹⁵⁰ The right to marriage is seen by the Church as a fundamental human right, which cannot be restricted except in individual and clear cases.¹⁵¹ Thus, marriage being of the natural order, should fall within the standard natural competence of persons in terms of capability to consent to it, honor their commitment to it, and live out said marriage according to their commitment. No super-human qualification is necessary to elicit a valid consent to the matrimonial state.¹⁵² It is only in certain exceptional cases where the Church recognizes that some people are

147. DOOGAN, *supra* note 121, at 97 (emphasis supplied).

148. CRUZ, *supra* note 45, at 106-07 (emphasis supplied).

149. *Id.* at 112.

150. Sempio-Diy, *supra* note 10, at 44.

151. Canon Law, Can. 1058 (“[a]ll persons who are not prohibited by law can contract marriage.”).

152. CRUZ, *supra* note 45, at 27-28.

not meant for marriage due to lack of reason, lack of judgment, or lack of capacity to assume the essential marital obligations.¹⁵³

C. Ragni (6 Feb. 1996) stated that the right to marriage is seen as a natural right — part of the human constitution and inclination. This right is normally recognized, provided however, that there should be the natural aptitude or capacity for the assumption of the marital obligations in accordance with the substance and consequences of the marital covenant.¹⁵⁴ In *c. Tumaturi* (14 Mar. 1996), it was held that two extremes must be avoided: one is to extol marriage to such a level of excellence that very few people can be considered capacitated for it and the other is to diminish the significance and gravity of marriage such that everyone is held capacitated for it.¹⁵⁵ In fact, the *vetitum* — the restrictive clause that is sometimes attached to a declaration of nullity — does not really prevent a person from exercising his/her right to marry, but only serves to warn the prospective partner.¹⁵⁶ The restrictive clause states that the Party Contractant thus proven to be incapacitated for marriage is restricted from entering another canonical marriage unless the consent of the Matrimonial Tribunal is obtained, in consultation with behavioral science experts.¹⁵⁷ It is important to note, however, that this restrictive clause only restricts entering into another Christian marriage without the consent of the Tribunal of the First Instance, but it does not absolutely forbid such marriage. The ecclesiastical approach recognizes that everyone, even the weak, have a right to remarry and that their marriage, once contracted, enjoys the favor of the law.¹⁵⁸

IV. THE CLINICAL DEFINITION OF PSYCHOLOGICAL INCAPACITY

There is no exact clinical equivalent of psychological incapacity in the psychiatric sciences. According to Dr. Luz Casimiro-Querubin, Psychiatrist and Residents' Training Officer at The Medical City, there is really no concept of psychological incapacity in psychiatry, apart from the concept provided in the law. There is no exact clinical equivalent of psychological incapacity, the way the law defines it. The law seems to limit the concept to that of an inability to assume marital obligations within the marital relationship. This would make the concept very specific and limited as a psychological concept. The marital relationship comprises only a small portion of the individual's personality. If incapacity is defined only in terms

153. DOOGAN, *supra* note 121, at 92.

154. *Id.* at 96.

155. *Id.* at 104.

156. DACANAY, *supra* note 44, at 14.

157. CRUZ, *supra* note 45, at 26-27.

158. DOOGAN, *supra* note 121, at 102.

of the aspect of a person's incapacity to discharge marital obligations, it would seem as if one is not referring to an integrated human being. This would be contradictory to the concept of personality being pervasive.¹⁵⁹ Modern psychology considers that "an adequate understanding of individual behavior can be achieved only when it is studied in the broad context that includes the total, functioning person."¹⁶⁰

According to Dr. Luz Casimiro-Querubin, in the case of psychological incapacity to assume the essential obligations of marriage, psychiatrists become forced to assign a medical or clinical concept to a legal concept. There is thus pressure to find a match for the clinical definition with the legal definition. It is however very difficult for behavioral experts to "straight-jacket" the concept this way, and be forced to peg a clinical handle to the legal concept. She opines that instead of looking at the clinical handle, it would be more appropriate to look at psychological incapacity in terms of the interpersonal dynamics of the couple rather than looking at the defects or disorders of the individual.¹⁶¹ Thus, it is recommended that when a person presents a partner-relational problem, there must be a psychiatric assessment as to whether the problems arise from the relationship or whether it is part of mental illness, disorder, or defects of the person.

Initially, the nearest clinical equivalent that could "fit the bill" as required by the law whereby a person would be incapacitated to assume the marital obligations, would be psychotic disorders, schizophrenia, bipolar disorders, as well as the personality disorders. But with the requirement that it should not be insanity, schizophrenia would be excluded. However, if the triple requirements of gravity, antecedence, and incurability are considered, according to expert opinion, what would fit the bill would be the classification termed personality disorders.¹⁶²

Personality disorders are grouped under the classification mental disorder. The Diagnostic and Statistical Manual of Mental Disorders (DSM-IV) defines a mental disorder as "a clinically significant behavioral or psychological syndrome associated with distress or disability, not just an expected response to a particular event or limited to relations between the person and society." It describes a mental disorder as follows:

[E]ach of the mental disorders is conceptualized as a clinically significant behavioral or psychological syndrome or pattern that occurs in an individual and that is associated with the present distress (e.g., a painful

159. Interview with Dr. Luz Casimiro-Querubin, Psychiatrist and Residents' Training Officer of the Medical City, in Pasig City (July 19, 2005).

160. CALVIN S. HALL & GARDNER LINDZEY, THEORIES OF PERSONALITY 7 (1978).

161. Casimiro-Querubin, *supra* note 159.

162. *Id.*

symptom) or disability (i.e., impairment in one or more important areas of functioning) or with a significantly increased risk of suffering, death, pain, disability, or an important loss of freedom. In addition, this syndrome or pattern must not be merely an expectable and culturally sanctioned response to a particular event, for example, the death of a loved one. Whatever its original cause, it must be currently considered a manifestation of a behavioral, psychological, or biological dysfunction in the individual. Neither deviant behavior (e.g., political, religious, or sexual), nor conflicts that are primarily between the individual and society are mental disorders unless the deviance or conflict is a symptom of a dysfunction in the individual, as described above...¹⁶³

Mental disorder has also been applied to abnormal behavioral patterns covering the whole range from mild to crippling. Mental illness has been used synonymously with mental disorder, but is now restricted to disorders involving brain pathology or severe personality disorganization. The term illness may be justified when referring to severely incapacitating disorders, although it is hardly appropriate in cases resulting faulty learning.¹⁶⁴

The DSM-IV system of psychiatric classification places mental disorders into the following major diagnostic categories: (1) Delirium, dementia, and amnesic and other cognitive disorders; (2) Mental disorders due to a general medical condition not elsewhere classified; (3) Substance-related disorders; (4) Schizophrenia and other psychotic disorders; (5) Mood disorders; (6) Anxiety disorders; (7) Somatoform disorders; (8) Factitious disorders; (9) Dissociative disorders; (10) Sexual and gender identity disorders; (11) Eating disorders; (12) Sleep disorders; (13) Impulse-control disorders not elsewhere classified; (14) Adjustment disorders; (15) Personality disorders; (16) Mental Retardation; and (17) Other conditions that may be a focus of clinical attention.¹⁶⁵

Personality is the totality and essence of the individual. Personality is defined as "the totality of emotional and behavioral traits that characterize the person in day-to-day living under ordinary conditions."¹⁶⁶ Personality refers to "that part of the individual that is most representative of the person, not only in that it differentiates the individual from others, more important, because it is what he or she actually is."¹⁶⁷ Some theorists adopt a biosocial definition of personality which equates an individual's personality to his

163. H.I. KAPLAN, ET AL., SYNOPSIS OF PSYCHIATRY 304 (1994) [hereinafter KAPLAN, ET AL.].

164. J.C. COLEMAN, ET AL., ABNORMAL PSYCHOLOGY AND MODERN LIFE 17 (1980) [hereinafter COLEMAN, ET AL.].

165. KAPLAN ET AL., *supra* note 163, at 309.

166. *Id.* at 731.

167. HALL & LINDZEY, *supra* note 160, at 7.

"social stimulus value" meaning that a person is defined by the reaction of other individuals to the subject. This theory is vigorously opposed by those who adopt the biophysical definition of personality which "roots the personality firmly in characteristics or qualities of the subject."¹⁶⁸ Thus, personality has been defined as: "that which permits a prediction of what a person will do in a given situation. The goal of psychological research in personality is thus to establish laws about what different people will do in all kinds of social and general environmental situations ... Personality is ... concerned with all the behavior of the individual, both overt and under the skin...."¹⁶⁹ Personality is said to be relatively stable and predictable, and a proper definition of personality "should reflect the enduring and recurring elements of behavior."¹⁷⁰

Personality disorders are specified and listed in DSM-IV. A personality disorder is defined as "a variant of those character traits that goes beyond the range found in most people." It is when the personality traits are inflexible and maladaptive and cause significant functional impairment or distress that they are classified as personality disorders.¹⁷¹ Persons with personality disorders are most likely to refuse psychiatric help and to deny their problems. Personality disorder symptoms are usually characterized as being *alloplastic* — they are capable of adapting and altering the external environment, and *ego-syntonic* — they are acceptable to the ego since they create no distress in the patients themselves despite their adverse effect on others.¹⁷² People having personality disorders do not feel anxious over their behavior. Because they do not acknowledge pain from their symptoms, they are usually not motivated to seek treatment.¹⁷³

Personality disorders comprise but one among several categories of mental disorders. The Fourth Edition of DSM-IV groups the personality disorders into three clusters. Cluster A is composed of the paranoid, the schizoid and the schizotypal personality disorders — these persons appear to be odd and eccentric. Cluster B is composed of the antisocial, the borderline, the histrionic and the narcissistic personality disorders — people having these disorders are usually dramatic, emotional and erratic. Cluster C, on the other hand, is made up of the avoidant, dependent, and 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 — persons having these disorders are usually

168. *Id.* at 8.

169. *Id.* at 8 (emphasis supplied).

170. *Id.* at 211.

171. KAPLAN, ET AL., *supra* note 163, at 731.

172. *Id.* at 732.

173. *Id.* at 731.

anxious or fearful. Some people exhibit traits that fall within several personality disorder classifications.¹⁷⁴

The different types of personality disorders are classified according to the particular characteristic which is prominent in the individual's behavior. However, oftentimes the dividing lines between the different classifications of personality disorders are unclear.¹⁷⁵

Individuals with personality disorders have the following features in common: (1) a pattern of disrupted personal relationships is characteristic of the different personality disorders which is marked by a trail of interpersonal problems and difficulties caused to others, (2) they perceive that difficulties they experience are as a result of bad fortune or the action of others; they do not feel that they are at fault or that they need to change; they perceive the world as wrong and have an angry, demanding manner, (3) they feel no responsibility towards other people; they are usually manipulative, self-seeking, without guilt for unethical behavior and they feel no remorse for hurting others; they have a callous disregard for others' welfare and have an overriding concern for taking care of themselves, (4) the same pattern of maladaptive behavior is repeated and are marked by considerable consistency over time; there appears to be a lack of learning from previous problems, (5) their lack of responsibility is accompanied by an avoidance of responsibility for the problems they have created, and (6) these people leave an imprint of their behavior on others, whereas the individual himself suffers no pain. All these characteristics lead to broken relationships which are the hallmark of personality disorders.¹⁷⁶

Antecedence of personality disorders may be proven. A great part of the personality of an individual is already given. The personality of an individual usually "sets" even before the person gets married. Although the marital obligations become such only after marriage, the incapacity to comply with such marital obligations may be determined by looking for certain behavior, prior to or even during the celebration of the marriage, indicative of certain disorders. Hence, the psychiatrist need not look for specific behavior concerning compliance with marital obligations, but rather need only look for a group of behaviors indicating psychological or personality disorders in order to prove its antecedence.¹⁷⁷

Personality disorders are essentially incurable. According to Dr. Luz Casimiro-Querubin with respect to incurability, personality disorders fit the bill for psychological incapacity because personality disorders are essentially

174. *Id.*

175. *Id.* at 277.

176. COLEMAN, ET AL., *supra* note 164, at 276-77.

177. Casimiro-Querubin, *supra* note 159.

incurable especially because the symptoms are ego-syntonic and the person accepts such behavior as being part of his personality. Since the definition of personality disorder is that it is a consistent pattern of behavior that does not change, regardless of situations, this would logically imply that a personality disorder would be incurable.¹⁷⁸

People with personality disorders are usually especially resistant to therapy. This is more so since they rarely come for treatment on a voluntary basis. When treated involuntarily, they tend to be surly, resistant, and in search of a cure with no effort required on their part. They tend to stay in treatment for only short periods of time and make very little improvement. In many cases, people with personality disorders undergo treatment as part of another person's treatment. In these cases, the problems of the "patient" are usually caused by the great strain that the family member with severe personality disorder has caused to the other family members. Since they often enter treatment due to somebody else's insistence and they themselves do not feel they have to change, people with personality disorders often place the responsibility for their treatment on others and avoid the focus of the therapy on themselves. Personality disorders are often tenacious and individuals with these disorders fail to profit from therapy as well as from their life experiences.¹⁷⁹

Patients with personality disorders usually have a variety of defense mechanisms which are "the unconscious mental processes that the ego uses to resolve conflicts among their instincts (wishes and needs), reality, important people, and conscience. Effective defenses abolish anxiety and depression. People with personality disorders are reluctant to abandon their defenses since doing so will mean that they will increase conscious anxiety and depression."¹⁸⁰

According to Kaplan and Sadock's *Synopsis of Psychiatry*, the prognosis for the following personality disorders are generally poor: paranoid personality disorder, schizoid personality disorder, schizotypal personality disorder, antisocial personality disorder, borderline personality disorder, histrionic personality disorder, narcissistic personality disorder, avoidant personality disorder, and obsessive-compulsive personality disorder.¹⁸¹

There could be no relative incapacity with personality disorders. Since a personality disorder is pervasive in the individual, Dr. Luz Casimiro-Querubin opines that there can be no relative incapacity with regard to personality disorders, taking into consideration that the symptoms and

178. *Id.*

179. COLEMAN, ET AL., *supra* note 164, at 282-83.

180. KAPLAN, ET AL., *supra* note 163, at 733.

181. *Id.* at 735-46.

behavior are already part of and integrated into the individual's personality.¹⁸² It must always be remembered that "the meaning of small segments of behavior can be fully understood only when seen within the larger framework of the entire functioning organism"¹⁸³ since personality is "that which gives order and congruence to all the different kinds of behavior in which the individual engages."¹⁸⁴

V. RECENT JURISPRUDENCE ON PSYCHOLOGICAL INCAPACITY

In view of the lack of definition of the concept of psychological incapacity in the Family Code, problems arose with regard to its application and interpretation, leading to many misapplications of article 36,¹⁸⁵ thereby resulting in efforts of the Supreme Court to provide guidelines for its application.¹⁸⁶

A. *Salita v. Hon. Magtolis and Espinosa: Seeing the Need for Definition of Psychological Incapacity*

In *Salita v. Magtolis*,¹⁸⁷ the Supreme Court acknowledged the need to define and circumscribe the concept of psychological incapacity. However, the Court did not provide such definition since this was not the issue in the case (which dealt with sufficiency of allegations in the petition for annulment) and was not necessary for the resolution of the case. Thus, Justice Bellosillo wrote in the decision that "[w]e do not see the need to define or limit the scope of the provision. Not in this case, at least. For, we are not called to do so, the actual controversy being the sufficiency of the bill of particulars to interpret this provision at this juncture would be to give an *obiter dictum* which is ill-timed ..."¹⁸⁸

B. *The Santos Jurisprudence: Confining Psychological Incapacity to the Most Serious Cases of Personality Disorders*

The first ruling of the Supreme Court circumscribing psychological incapacity was given in the case of *Santos v. Bedia-Santos*, which looked into the deliberations of the Family Code Revision Committee, and the

182. Casimiro-Querubin, *supra* note 159.

183. HALL & LINDZEY, *supra* note 160, at 179.

184. *Id.* at 8.

185. Angeles, *supra* note 15, at 6.

186. Temporal, *supra* note 7, at 383.

187. *Salita v. Hon. Magtolis and Espinosa*, 233 SCRA 100 (1994).

188. *Id.* at 107 (emphasis supplied).

jurisprudence of the Catholic marriage tribunals to arrive at the following summation:

[a]rticle 36 of the Family Code cannot be taken and construed independently of but must stand in conjunction with, existing precepts in our law on marriage. Thus correlated, "psychological incapacity" should refer to no less than a mental (not physical) incapacity that causes a party to be truly incognitive of the basic marital covenants that concomitantly must be assumed and discharged by the parties to the marriage which, as so expressed by article 68 of the Family Code, include their mutual obligations to live together, observe live, 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 psychological (sic) condition must exist at the time the marriage is celebrated ...

The other forms of psychoses, if existing at the inception of marriage, like the state of a party being of unsound mind or concealment of drug addiction, habitual alcoholism, homosexuality or lesbianism, merely renders the marriage contract voidable pursuant to article 46, Family Code. If drug addiction, habitual alcoholism, lesbianism or homosexuality should occur only during the marriage, they become mere grounds for legal separation under article 55 of the Family Code. These provisions of the Code, however, do not necessarily preclude the possibility of these various circumstances being themselves, depending on the degree and severity of the disorder, indicia of psychological incapacity.

... The well-considered opinions of psychiatrists, psychologists, and persons with expertise in psychological disciplines might be helpful or even desirable.¹⁸⁹

In the *Santos* case, the Supreme Court had occasion to cite the deliberations of the Code Commission regarding the validity of consent in psychological incapacity. The Supreme Court acknowledged what was deliberated on by the Code Commission with regard to the presence of valid consent in psychological incapacity cases, when it stated that "[p]sychological incapacity does not refer to mental faculties and has nothing to do with consent; it refers to obligations attendant to marriage."¹⁹⁰

The case of *Chi Ming Tsoi v. Court of Appeals*¹⁹¹ is an example of utter insensitivity or inability to give meaning and significance to the marriage. In this case, the Supreme Court noted that Chi Ming Tsoi's admission of the lack of sexual relations between him and his wife could be an indication of mental disorder. The Supreme Court stated:

189. *Santos v. Bedia-Santos*, 240 SCRA 20 (1995) (emphasis supplied).

190. *Angeles*, *supra* note 15, at 32.

191. *Chi Ming Tsoi v. Court of Appeals*, 266 SCRA 324 (1997).

[U]nwillingness to consummate his marriage is strongly indicative of a serious personality disorder which to the mind of this Court clearly demonstrates an 'utter insensitivity or inability to give meaning and significance to the marriage' within the meaning of Article 36 of the Family Code... the senseless and protracted refusal of one of the parties to fulfill the above marital obligation is equivalent to psychological incapacity.¹⁹²

The opinion of Dr. Gerardo Ty Veloso, former presiding judge of the Metropolitan Marriage Tribunal of the Catholic Archdiocese of Manila, was found persuasive regarding the matter: "[s]enseless and protracted refusal is equivalent to psychological incapacity. Thus, the prolonged refusal of a spouse to have sexual intercourse with his or her spouse is considered a sign of psychological incapacity."¹⁹³

C. *Republic v. Court of Appeals and Molina: The Molina Guidelines*

Guidelines were laid down by the Supreme Court on 13 February 1987 in *Republic of the Philippines v. Court of Appeals and Roridel Olaviano Molina*¹⁹⁴ to help interpret psychological incapacity as a ground to declare the nullity of a marriage.¹⁹⁵ In this case, the Supreme Court ruled there was no clear indication of psychological incapacity. Thus:

[t]here is no clear showing to us that the psychological defect spoken of is an incapacity. It appears to us to be more of a "difficulty," if not outright "refusal" or "neglect" in the performance of some marital obligations. Mere showing of "irreconcilable difference" and "conflicting personalities" in no wise constitutes psychological incapacity. It is not enough to prove that the parties failed to meet their responsibilities and duties as married persons; it is essential that they must be shown to be incapable of doing so, due to some psychological (not physical) illness.¹⁹⁶

In the *Molina* case, the Court decreed that the psychological incapacity must be characterized by (a) gravity, (b) juridical antecedence, and (c) incurability.¹⁹⁷ The *Molina* guidelines have been criticized as having unduly restricted the grounds for interpretation and application of psychological incapacity.

Among the guidelines laid down by the jurisprudence in *Molina*, the following are pertinent to the definition of psychological incapacity:

192. *Id.* at 18 (emphasis supplied).

193. *Pascual*, *supra* note 20, at 151 (emphasis supplied).

194. *Republic v. Court of Appeals and Molina*, 268 SCRA 198 (1997).

195. *Temporal*, *supra* note 7, at 381.

196. *Molina*, 268 SCRA at 210 (1997) (emphasis supplied).

197. *Id.*

x x x

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, were *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 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 absolute 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 to 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 a 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 declared 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.¹⁹⁸

D. *Hernandez v. Court of Appeals: Psychological Incapacity as Lack of Cognizance of Marital Obligations.*

In this case, the Supreme Court stated:

[n]o evidence was presented to show that private respondent was not cognizant of the basic marital obligations. It was not sufficiently proved that private respondent was really incapable of fulfilling his duties due to some incapacity of a psychological nature, and not merely physical.

x x x

Private respondent's alleged habitual alcoholism, sexual infidelity or perversion, and abandonment do not by themselves constitute grounds for finding that he is suffering from a psychological incapacity within the contemplation of the Family Code. It must be shown that these acts are manifestations of a disordered personality which make private respondent completely unable to discharge the essential obligations of the marital state, and not merely due to private respondent's youth and self-conscious feeling of being handsome, as the appellate court held.¹⁹⁹

Although the decision hinged on evidentiary matters, it is worthy to note that the concepts of "incapacity to comply with the essential marital obligations" have been confused with being "cognizant" of such marital obligations. "Cognizant" is defined in the Oxford American Dictionary as "aware, having knowledge."²⁰⁰ It is important to reiterate that incapacity to

198. *Id.* at 211-12 (emphasis supplied).

199. *Hernandez v. Court of Appeals*, 320 SCRA 77, 87-88 (1999) (emphasis supplied).

200. OXFORD AMERICAN DICTIONARY 162 (1980).

comply with the essential marital obligations was not meant to be limited to mere awareness or knowledge of such obligations.

The case of *Marcos v. Marcos*²⁰¹ further emphasized psychological incapacity as lack of awareness of marital responsibilities. This case clarified the Molina guidelines as follows:

The foregoing guidelines do not require that a physician examine the person to be declared psychologically incapacitated. In fact, the root cause may be "medically or clinically identified." What is important is the presence of evidence that can adequately establish a party's psychological condition. For 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.

x x x

Article 36 of the Family Code, we stress, is not to be confused with a divorce law that cuts the marital bond at the time the causes therefore manifest themselves. It refers to a serious psychological illness afflicting a party even before the celebration of the marriage. It is a malady so grave and so permanent as to deprive one of awareness of the duties and responsibilities of the matrimonial bond one is about to assume. These marital obligations are those provided under articles 68 to 71, 220, 221 and 225 of the Family Code.²⁰²

This case explicitly stated that a physician is not required to examine the person in order to prove psychological incapacity as per *Molina* guidelines, as long as the totality of evidence presented points to such condition. Further, the requirements for antecedence and incurability were reiterated. Again, it is noteworthy to note that the Supreme Court describes psychological incapacity as a malady so grave and permanent as to deprive one of awareness of the duties and responsibilities one is about to assume. As in the case of *Hernandez v. Court of Appeals*, concept of psychological incapacity has been confused with lack of awareness or knowledge of the marital obligations.

1. Pesca v. Pesca: Applying the Molina Guidelines

The Supreme Court in this case applied the requirements in the *Molina* guidelines of gravity and antecedence thus: "At all events, petitioner has utterly failed, both in her allegations in the complaint and in her evidence, to make out a case of psychological incapacity on the part of the respondent, let alone at the time of the solemnization of the contract, so as to warrant a declaration of nullity of the marriage. Emotional immaturity and irresponsibility, invoked by her, cannot be equated with psychological incapacity."²⁰³

201. *Marcos v. Marcos*, 343 SCRA 755 (2000).

202. *Id.* at 764-65 (emphasis supplied).

203. *Pesca v. Pesca*, 356 SCRA 589, 594 (2001) (emphasis supplied).

2. Choa v. Choa: Reiterating Molina

This case also reiterates what has been said in *Molina*: "In *Republic v. Molina*, we ruled that the psychological incapacity must be more than just a "difficulty", a "refusal", or a "neglect" in the performance of some marital obligations. We stressed that a mere showing of irreconcilable differences and conflicting personalities in no wise constitutes psychological incapacity."²⁰⁴

E. Barcelona v. Court of Appeals: The Root Cause Need Not be Proven by Experts

In the case of *Republic of the Philippines v. Dagdag*,²⁰⁵ the Supreme Court seems to have taken back what it said in *Marcos v. Marcos*,²⁰⁶ and appears to have put back the requirement of psychiatric or medical evidence, by stating thus: "Taking into consideration these guidelines, it is evident that Erlinda failed to comply with guideline No. 2 which requires that the root cause of psychological incapacity must be medically or clinically identified and sufficiently proven by experts, since no psychiatrist or medical doctor testified as to the alleged psychological incapacity of her husband."²⁰⁷

In *Barcelona v. Court of Appeals*,²⁰⁸ the root cause no longer need to be proven by experts; only physical manifestations of psychological incapacity need to be alleged.²⁰⁹ This case was decided subsequent to the issuance of the New Rules on Declaration of Absolute Nullity of Void Marriages and Annulment of Voidable Marriages effective 15 March 2003, where it was provided under section 2, paragraph (d) that: "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."²¹⁰

This case explicitly stated that the root cause of psychological incapacity no longer needs to be alleged, since —

[p]rocedural rules apply to actions pending and unresolved at the time of their passage. The obvious effect of the new Rules providing that "expert opinion need not be alleged" in the petition is that there is also no need to allege the root cause of the psychological incapacity. Only experts in the fields of neurological and behavioral sciences are competent to determine the root cause of psychological

204. *Choa v. Choa*, 392 SCRA 641, 651 (2002) (emphasis supplied).

205. *Republic of the Philippines v. Dagdag*, 351 SCRA 425 (2001).

206. *Marcos v. Marcos*, 343 SCRA 755 (2000).

207. *Dagdag*, 351 SCRA at 434-35 (2001) (emphasis supplied).

208. *Barcelona v. Court of Appeals*, 412 SCRA 41 (2003).

209. *Id.* at 49.

210. Rule on Declaration of Absolute Nullity of Void Marriages and Annulment of Voidable Marriage, Resolution A.M. 02-11-10-SC, § 2 (2003).

incapacity. Since the new Rules do not require the petition to allege expert opinion on the psychological incapacity, it follows that there is also no need to allege in the petition the root cause of psychological incapacity.

...The root causes of many psychological disorders are still unknown to science even as their outward, physical manifestations are evident. Hence, what the new Rules require the petition to allege are the physical manifestations indicative of psychological incapacity.²¹¹

In Republic of the *Philippines v. Quintero-Hermano*,²¹² the root cause of psychological incapacity must be proven. In this case, it was held that the physical manifestations of psychological incapacity need to be alleged and proven as being caused by a psychological disorder:

We cannot presume psychological defect from the mere fact that Toshio abandoned his family immediately after the celebration of the marriage. As we ruled in *Molina*, it is not enough to prove that a spouse failed to meet his responsibility and duty as a married person; it is essential that he must be shown to be incapable of doing so due to some psychological, not physical illness.²¹³

Thus, the requirement for allegation and proof of the root cause of the psychological incapacity was reintroduced in this case.

F. Dedel v. Court of Appeals: Requiring Complete Inability to Discharge the Marital Obligations.

This case seems to have raised the bar in the application of the concept of psychological incapacity even higher, since it requires a complete inability to discharge the essential obligations of marriage, thus:

Respondent's sexual infidelity or perversion and abandonment do not by themselves constitute psychological incapacity within the contemplation of the Family Code. Neither could her emotional immaturity and irresponsibility be equated with psychological incapacity. It must be shown that these acts are manifestations of a *disordered personality* which make respondent completely unable to discharge the essential obligations of the marital state, not merely due to her youth, immaturity, or sexual promiscuity.²¹⁴

In *Carating-Siayngco v. Siayngco*,²¹⁵ the requirement of complete inability to discharge the marital obligations was reiterated. This case again reiterates the requirement for evidence of the root cause of psychological incapacity in a disordered personality completely disabling a person from discharging the

211. *Barcelona*, 412 SCRA at 49 (emphasis supplied).

212. *Republic v. Quintero-Hermano*, 428 SCRA 735 (2004).

213. *Id.* at 742 (emphasis supplied).

214. *Dedel v. Court of Appeals*, 421 SCRA 461, 467 (2004) (emphasis supplied).

215. *Carating-Siayngco v. Siayngco*, 441 SCRA 423 (2004).

essential marital obligations. Thus, the decision states "[i]t must be shown that respondent Manuel's unfaithfulness is a *manifestation of a disordered personality which makes him unable to completely discharge the essential obligations of the marital state* and not merely due to his ardent wish to have a child of his own flesh and blood."²¹⁶

VI. ANALYSIS: DOES THE JURISPRUDENCE ON PSYCHOLOGICAL INCAPACITY CONFORM WITH THE INTENT OF THE FRAMERS?

Initially, the framers of the Code were optimistic that judges and lawyers would refer to their deliberations on psychological incapacity to guide them in its proper application. This was not the case, however, and decisions were promulgated that seem to have confused different aspects of psychological incapacity, even as they aimed to clarify the concept.²¹⁷ This essay deals mainly with the issue of whether or not the recent jurisprudence concerning the definition of psychological incapacity conforms to the legislative intent of the provision. Has judicial interpretation unduly restricted the ground of psychological incapacity for voiding marriages? Or does the judicial interpretation accurately reflect the true intent behind the law? If there is an inaccuracy found in the interpretation which the judiciary has given to the controversial provision, it is the aim of this essay to find out what was truly the spirit of the law and thus form possible suggestions for subsequent interpretation of psychological incapacity.

A. What was the Legislative Intent Behind Article 36?

In order to assess whether jurisprudence is in line with legislative intent, we must first ascertain legislative intent. In this endeavor, we must be guided by the rules given in statutory construction regarding guidance by legislative intent. Thus, we note a basic rule in statutory construction: "[e]very part of the statute must be interpreted with reference to the context. This means that every part of the statute must be considered together with the other parts and kept subservient to the general intent of the whole enactment, not separately and independently."²¹⁸

We must therefore keep in mind, in ascertaining the meaning of the provision on psychological incapacity, that behind the provision lies the will of the legislature, and thus, any interpretation should be guided by this intent. A statute is the will of the legislature to which all others are subordinate and the fundamental rule of interpretation is that *a statute is to be*

216. *Id.* at 428 (emphasis supplied).

217. *Angeles*, *supra* note 15, at 6-7.

218. JOSE JESUS G. LAUREL, STATUTORY CONSTRUCTION — CASES AND MATERIALS 23 (1999) (emphasis supplied).

expounded according to the intent of them who made it.²¹⁹ Hence, "when a court gives effect to a statute not in accordance with the intent of the lawmaker, the court is unjustifiably legislating."²²⁰

It has been shown in the summation above that the purpose of article 36 in adding a new ground for declaration of nullity of marriage was really to liberalize annulment, to serve as a solution to Church-annulled marriages on grounds that are not recognized under Civil Law, as well as to serve as an additional remedy for burdened spouses with analogous causes of action. The intention of the framers in drafting article 36 was to liberalize annulment, to lower the bar in order to nullify marriages. Of course, such lowering of the bar must be done within certain prescribed limits or standards, in order that the interpretation of the law would not ultimately lead to judicial legislation. Herein lies the problem with article 36. The standards or limits defining what cases could be encompassed within the ambit of "psychological incapacity" were purposely not explicitly prescribed in the law. The intention for such omission was for those tasked with interpreting the provision to refer to the Committee meetings or consult with the Committee members regarding this matter. It is thus useful to look deeper into the concept of psychological incapacity as defined by the framers of the provision in order to arrive at what they really meant to comprehend within this provision. This view could then be juxtaposed with current jurisprudence in order to pinpoint possible disparities.

B. Did the Legislative Intent of Psychological Incapacity Mean to Describe a Mental Illness or Disorder?

In the Civil Code Revision Committee deliberations, it was pointed out by Justice Caguioa 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."²²¹ It is unfortunate that the use of the term 'understand' was given in this summation, since previous discussions have already clarified that the idea conveyed in psychological incapacity is not really limited to mere understanding of the marital obligations. Hence, prior to the above summation, "Justice Caguioa explained that the phrase was 'wanting insufficient use of reason of judgment to understand the essential nature of marriage' refers to defects in the mental faculties vitiating consent, which is not in the idea in subparagraph (7), but lack of appreciation of one's marital obligation."²²² From this, one can gather that psychological incapacity is not

to be considered as a mental defect, nor to a mere lack of understanding of the essential marital obligations.²²³

In the *Molina* case, the Supreme Court appears to have interpreted the nature of psychological incapacity somewhat differently from the intention of the Civil Code Revision Committee. One major disparity is that "psychological incapacity" as interpreted in *Molina* involves a mental or psychological illness as may be seen from the *Molina* guidelines requiring that "[t]he evidence must convince the court that the parties, or one of them, was mentally or physically ill ... such root cause must be identified as a psychological illness and its incapacitating nature fully explained." This is to be contrasted with the intention of the framers that psychological incapacity does not refer to mental faculties and has nothing to do with consent.²²⁴ Thus, in contrast with current jurisprudence, it appears that the bar initially meant by the legislators which only described lack of "appreciation" was raised jurisprudentially to mean a "psychological illness." It is worthy to note that Justice Caguioa's statement that a psychiatrist will not be of help already serves to indicate that it is not a psychological illness that the Code Committee were talking about when they referred to psychological incapacity.

C. Psychological Incapacity: Psychological Illness or Personality Disorder?

Within the *Molina* case itself, there is confusion with regard to psychological incapacity as a psychological illness or as a psychological or personality disorder. Case in point is when it states that 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.

It must be noted that technically, a mental or psychological disorder is not synonymous with a personality disorder. The category "personality disorder" is merely a subclass of a larger group of disorders called "mental disorders." The DSM-IV system places personality disorders only as one among the 17 major diagnostic categories of mental disorders.²²⁵ The pronouncement in *Molina*, which sometimes refers to mental or psychological illness, while at other times referring to personality disorders in itself, served to add confusion to the delineation of the concept of psychological incapacity.

219. *Id.* at 2 (emphasis supplied).

220. *Id.* at 18.

221. CIVIL CODE AND FAMILY LAW COMMITTEE, 13 (July 26, 1986) (emphasis supplied).

222. *Id.*

223. Pascual, *supra* note 20, at 155.

224. *Id.* at 162.

225. *Id.* at 157.

It is unfortunate that the technical terms "psychological illness" and "personality disorder" are being used in a loose sense, when said terms have strict technical definitions. This further exacerbates the issue, since it is not determinable in which sense the said terms are being utilized — are they being used in their layman's sense, or should they be interpreted with precision in their strict technical sense?

Again, one must go back to the intention of the framers in order to clarify the true sense one needs to use to determine whether the provision encompasses psychological illness or personality disorders. One legislative intention was to liberalize annulment in order to serve as a remedy for Church-annulled marriages which are not then recognized under Civil Law. One must therefore refer to the bases used under Church Law to annul marriages under the rubric of psychological incapacity, since the framers intended to accommodate these bases within the ambit of the provision. Thus, according to the Minutes of the Meeting of the Civil Code and Family Law Committee, "... it is their answer to the problem of church annulments, which are still valid under the Civil Law."²²⁶

Rotal decisions prior to the drafting of article 36 indicate that essentially, the Church recognizes as coming within the ambit of incapacity to assume marital obligations personality disorders such as narcissism and obsessive-compulsive disorders, but they also included affective immaturity /immature personality, sexual and gender-identity disorders, as well as schizophrenia and other psychotic disorders, impulse-control disorders such as excessive drinking and gambling, and substance-related disorders. Thus, Church jurisprudence seems to have included more subcategories of mental disorders than just the subcategory "personality disorders." If one is to follow Church jurisprudence, this would greatly liberalize the interpretation of the concept of psychological incapacity.

The question would then be — should one follow Church Law concerning interpretation of the concept of psychological incapacity? Although Church Law is not binding, the intention appears to have been the use of church jurisprudence as a guide to the interpretation of the provision. It has been stated:

[r]ather, 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.²²⁷

226. CIVIL CODE AND FAMILY LAW COMMITTEE, 10 (Aug. 9, 1986).

227. Salita v. Hon. Magtolis and Espinosa, 233 SCRA 100, 108 (1994) (citing Sempio-Diy, *supra* note 10, at 41) (emphasis supplied).

However, if one looks into the Minutes of the Meetings of the Civil Code and Family Law Committee, one finds the following as a caveat:

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.*²²⁸

Thus, on the one hand, is it being stated that we must be guided by decisions of the church tribunals, whereas on the other hand is it being implied that said Church decisions will have no bearing under Civil Law? Or does one simply interpret the above negative reply as referring to the rejection of the "automatic" process of annulment — that Church annulled marriages still have to undergo the annulment process in Civil Law? To harmonize this with the discussions in the Committee Meetings, it is submitted that the negative reply of the Committee members merely referred to rejection of the "automatic" process, and should not be interpreted to mean that Church decisions will have no bearing under Civil Law.

If one takes this to be the case, therefore, it would lead to the conclusion that the framers intended to encompass within the ambit of the concept of psychological incapacity more than just the subcategory of personality disorders, but also other subcategories of mental disorders, such as those accommodated under Church Law. One can then interpret the intention as encompassing a wide variety of cases under mental disorders, thereby liberalizing the provision.

It is thus posited that the framers did not really intend psychological incapacity to be straight-jacketed into the category of personality disorders. It must be pointed out that nowhere in the Minutes of the Civil Code and Family Law Committee Meetings was it stated that psychological incapacity is to be equated with personality disorders. It was only in the Santos case where it was stated that:

[t]here 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.²²⁹

The wording of the provision itself points out that there is really no requirement for the incapacity to stem from a personality disorder, or even from a mental disorder, it being enough that the incapacity to assume the

228. CIVIL CODE AND FAMILY LAW COMMITTEE, 10 (Aug. 9, 1986) (emphasis supplied).

229. Santos v. Bedia-Santos, 240 SCRA 20 (1995) (emphasis supplied).

essential marital obligations should result from a psychological cause. It is posited that the intention of the framers was to differentiate this type of incapacity from mental and physical incapacities, which is why they used the term "psychological." This is evident from the deliberations found in the Minutes of the Civil Code and Family Law Committee Meetings, thus:

Judge Diy suggested that they 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 species or vice or consent.*²³⁰

It is posited that it was not the intention to limit the concept only to psychological or mental disorders and illnesses, but rather to a condition that makes a person incapacitated to comply with the essential marital obligations, which can be traced to a psychological rather than to a physical cause.

D. Is Psychological Incapacity Related to Understanding or to Compliance with the Essential Obligations?

Confusion arises from the fact that incapacity is sometimes used to refer to different things — sometimes it is used to refer to mere understanding or cognizance of the essential marital obligations, while at other times it is used to mean assumption or compliance with the essential marital obligations.

If one traces the history of the Family Code provision on psychological incapacity, the initial wording was as follows:

The following marriages shall be void from the beginning:

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.²³¹

It is evident that initially, the provision encompassed three distinct conditions: (1) a person wanting in sufficient use of reason, (2) a person wanting in sufficient use of judgment to understand the essential nature of marriage, and (3) a person psychologically or mentally incapacitated to discharge the essential marital obligations. However, in the final wording of the provision, one can infer that it is only dealing with a single condition: a person psychologically incapacitated to comply with the essential marital obligations. Thus,

[a] marriage contracted by any party who, at the time of 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.²³²

This may have been one source of the confusion we see today where the provision is sometimes interpreted as pertaining to incapacity to understand, such as what has been noted in the *Hernandez v. Court of Appeals*²³³ and the *Marcos vs. Marcos*²³⁴ cases. The confusion may have been heightened by the fact that if one refers to the Minutes of the Meeting of the Civil Code and Family Law Committees, one finds several instances where it refers to incapacity to understand, such as in the following quotations from the Minutes:

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

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

x x x

Prof. 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...*

Prof. Bautista found it difficult to accept the distinction between lack of consent and lack of understanding because if one *does not understand what he is consenting to*, it is equivalent to no consent. Justice Caguioa pointed out that Prof. Bautista is using consent in general. He stressed that he is referring to consent in marriage.

x x x

Justice Puno suggested that they determine the classification of the bases for the void character of the marriage. Justice Reyes, Justice Puno and Justice Caguioa enumerated the reasons for marriage being void and indicated their corresponding bases as follows:

Base I-(1) *lack of capacity and understanding*

230. CIVIL CODE AND FAMILY LAW COMMITTEE, 9 (Aug. 9, 1986) (emphasis supplied).

231. *Id.* (The provision was initially a subdivision of Article 35.)

232. FAMILY CODE, art. 36.

233. *Hernandez v. Court of Appeals*, 320 SCRA 77 (1999).

234. *Marcos v. Marcos*, 343 SCRA 755 (2000).

- Base I-(2) public policy
- Base I-(3) lack of formal and essential requisites
- Base I-(4) genetic and morality reasons
- Base II-(5) *psychological capacities*

x x x

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.

Prof. 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 Reyes and Dean Gupit remarked that that ground of psychological incapacity will not apply if the marriage was contracted at the time when there is *understanding of the consequences of marriage*.²³⁵

This reference to understanding of the essential marital obligations is probably due to the fact that at the time of those deliberations, three distinct conditions were being discussed: the person who is wanting in sufficient use of reason, the person wanting in sufficient use of judgment to understand the essential obligations of marriage, and the person who is incapable of discharging or complying with the essential marital obligations. Later on, the concepts embodied in the above distinct conditions seem to have been lumped together as one when they discussed the details of psychological incapacity as a condition.

If one traces the origin of the provision in Canon Law, Canon 1095 provides:

The following are incapable of contracting marriage:

1. Those who lack sufficient use of reason;
2. Those who suffer from a grave lack of discretionary judgment concerning the essential matrimonial rights and obligations to be mutually given and accepted;
3. Those who, because of causes of a psychological nature, are unable to assume the essential obligations of marriage.²³⁶

These three areas in which consent can be affected psychologically are termed "Amentia," "Lack of Due Discretion" and "Incapacity to Assume."²³⁷ Hence, in the provision on psychological incapacity we have in

235. CIVIL CODE AND FAMILY LAW MINUTES, 12 (July 26, 1986) (emphasis supplied).

236. Code of Canon Law, Can. 1095; TEMPORAL, *supra* note 7, at 382.

237. BROWN, *supra* note 44, at 87.

the Family Code today, it appears that the two categories of Canon 1095 — Lack of Due Discretion and Incapacity to Assume — have been lumped together into one category. Lack of Due Discretion refers to the cognoscitive-evaluative-volitive sphere whereas Incapacity to Assume refers to the executive sphere of human activity.²³⁸ The New Code of Canon Law implies the existence of a dichotomy between a person's discretionary power and his ability to assume the essential obligations of marriage.²³⁹ There has been much debate even among Catholic Tribunal Judges as to whether the two grounds are indeed distinct and autonomous or whether Incapacity to Assume may be reduced to an aspect of Lack of Due Discretion.²⁴⁰ Whether or not the condition required to be declared psychologically incapacitated under article 36 fits in any one category or the other, or must fit both categories needs to be clarified in order to avoid ambiguity in interpreting the provision.

E. Is There Lack of Consent in Psychological Incapacity?

Reference to the Meetings of the Civil Code and Family Law Revision Committees will point to the fact that said Committee did not treat psychological incapacity as a vice of consent. Thus, one may glean from the following passages during their deliberations:

Justice Caguioa explained that his point is that in the case of incapacity by reason of defects in the mental faculties, which is less than insanity, there is a defect in consent and, therefore, it is clear that it should be a ground for voidable marriage because there is the appearance of consent and it is capable of convalidation for the simple reason that there are lucid intervals and there are cases when the insanity is curable. He emphasized that *psychological incapacity does not refer to mental faculties and has nothing to do with consent*; it refers to obligations attendant to marriage.

x x x

Justice Caguioa explained that, ultimately, consent in general is affected but he stressed that his point is that *it is not principally a vitiation of consent since there is a valid consent*. He objected to the lumping together of the validity of the marriage celebration and the obligations attendant to marriage, which are completely different from each other, because they require a different capacity, which is eighteen years of age, for marriage but in contract, it is different. Justice Puno, however, felt that psychological incapacity is still a kind of vice of consent and that it should not be classified as a voidable marriage which is incapable of convalidation; it should be convalidated but there 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

238. DOOGAN, *supra* note 121, at 101.

239. BROWN, *supra* note 44, at 100.

240. DOOGAN, *supra* note 121 at 101.

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.

x x x

Justice 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.²⁴¹

It is clear from the above passages that the Committee did not consider there to be a lack of consent in psychological incapacity. It is important at this point to note the meaning of "consent" in Civil Law. The New Civil Code of the Philippines²⁴² lists down the three essential requisites of contracts: consent, object and cause.²⁴³ Consent is manifested by the meeting of the offer and the acceptance upon the thing and the cause which are to constitute the contract. In the Civil Code, consent as an essential requirement of contracts deals mainly with the personal condition of the parties to the contract such as age, insanity, or dementia, and deaf mutes who do not know how to write, as well as to conditions vitiating consent, such as entering a contract while deranged or in a state of drunkenness or during a hypnotic spell, when there is mistake, violence, intimidation, undue influence, or fraud, as well as simulation. The section in the Civil Code related to consent as an essential requisite of contracts does not deal with compliance or fulfillment of the object or subject matter of the contract. Consent in the Civil Code is treated separately from the object of the contracts as well as from the cause of the contract.

With this in mind, it is easy to understand why the Committee members considered that there is no lack of consent in psychological incapacity. Psychological incapacity as a condition does not affect the age, sanity, or communication ability of the party, nor is there mistake, violence, intimidation, undue influence, fraud, nor simulation by the party who is psychologically incapacitated to comply with the essential marital obligations. He/she is therefore equipped to render the required consent as per the Civil Code. Since a contract is defined by the Civil Code as a "meeting of the

minds,"²⁴⁴ such contract therefore has been perfected by the rendition of the consent by the parties.

In psychological incapacity, what is affected is the ability of the psychologically incapacitated person to give the object of consent required by the contract. This is the reason why Justice Caguioa in the Committee deliberations stressed that they should not lump together the validity of the marriage celebration and the obligations attendant to marriage — since one deals with consent (validity of the marriage celebration), whereas the other deals with the object of consent (obligations attendant to marriage). In Civil Law, therefore, there is a valid consent to the marriage rendered by a psychologically incapacitated person.

In Canon Law, however, the ability to assume the essential obligations attendant to the marital state is a requirement for consent. Thus, Canon 1095 lists down the three faculties required for consensual capacity: (1) the ability to make a responsible human act, (2) the ability to evaluate sufficiently the nature of marriage and consequently to choose it freely, and (3) the ability to assume its essential obligations. Canon Law does not separate the ability to posit the object of consent from the rendering of the consent itself. Thus in Canon Law, if one is unable to posit the object of consent, the consent rendered is therefore not valid as a result.

This duality in the concept of consent as interpreted in Civil Law as well as that provided for in Canon Law may be another source of confusion in arriving at a complete understanding of psychological incapacity.

F. What Must Exist at the Time of Celebration of the Marriage — the Disorder or the Incapacity?

That antecedence is required as a condition for psychological incapacity to be a ground for declaration of nullity of marriage may be gleaned from the following statements made during the Civil Code and Family Law Revision Committee Meetings:

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 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.²⁴⁵

241. CIVIL CODE AND FAMILY LAW MINUTES, 10 (Aug. 9, 1986) (emphasis supplied).

242. An Act to Ordain and Institute the Civil Code of the Philippines [NEW CIVIL CODE].

243. *Id.* art. 1318.

244. *Id.* art. 1305 ([t]he article provides that a contract is a meeting of minds between two persons whereby one binds himself, with respect to the other, to give something or to render some service.).

245. CIVIL CODE AND FAMILY LAW COMMITTEE, 10 (July 26, 1986) (emphasis supplied).

According to the *Molina* guidelines:

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.²⁴⁶

Jurisprudence does not seem to differentiate between the illness and the manifestation of the incapacity. The illness must be present at the time the marriage is celebrated, and the incapacity to comply with the essential marital obligations, which is the effect of the illness, may thus be manifest only when such marital obligations are already present.

The wording of the provision itself states:

Art. 36. A marriage contracted by any party who, *at the time of the celebration*, was psychologically incapacitated to comply with the essential obligations of marriage, shall likewise be void even if such incapacity becomes manifest only after its solemnization.²⁴⁷

From the wording of the provision, it can be gleaned that it is a requirement that the incapacity to comply with the essential marital obligations be present during the time the marriage is celebrated. The provision does not refer explicitly to a disorder or illness which should be present during the time of the marriage, but rather, there should be an incapacity to comply, although such incapacity becomes manifest after solemnization of the marriage. Thus, there should already be an incapacity to comply with or fulfill the essential obligations attendant to marriage during the time the marriage is celebrated, regardless of whether such incapacity stems from an illness, disorder, or any other condition.

G. Does Psychological Incapacity have to be Incurable?

The Minutes of the Civil Code and Family Code Revision Committee Meetings do not seem to require incurability as a characteristic of psychological incapacity for it to be used as a ground for the declaration of nullity of marriages. At best, the Committee's position on the matter is ambivalent and ambiguous.

Even decisions of the Catholic Church declaring nullity of marriages are conflicting with regard to this requirement of incurability in cases where there is an incapacity to assume the marital obligations. Some Rotal decisions state that incurability is a requirement, while some Rotal decisions seem to imply that incurability is not required. Thus, according to Ralph Brown in

246. Republic v. Court of Appeals and Molina, 268 SCRA 198, 211-12 (1997).

247. FAMILY CODE, art. 36.

his book *Marriage Annulment in the Catholic Church*: "although the perpetuity of the condition is helpful evidence, it is by no means a necessity to conclude the inability to assume the essential obligations of marriage."²⁴⁸ The Santos case citing Dr. Gerardo Veloso, a former presiding judge of the Metropolitan Marriage Tribunal of the Catholic Archdioceses of Manila (Branch 1) stated: "Psychological incapacity must be ... incurable or, even if it were otherwise, the cure would be beyond the means of the party involved."²⁴⁹ Thus, even the Church's position on the matter of incurability seems to be ambiguous.

The *Molina* guidelines,²⁵⁰ on the other hand, firmly stated that "the incapacity must also be shown to be medically or clinically permanent or incurable." The same guidelines also stated that the intention of the law was to confine the meaning of psychological incapacity to "the most serious cases of personality disorders." Expert opinion²⁵¹ indicates that personality disorders would necessarily be incurable since such is its definition. Personality disorders are pervasive, as it is part of the personality of the individual and the individual has already come to accept such behavior as his own. Being ego-syntonic, the person does not feel anxiety about their maladaptive behavior, and thus has little motivation for change.²⁵² Thus, the *Molina* guidelines here seem to have raised the requirement for psychological incapacity to a condition where it must be incurable, despite the ambiguity of both the legislative intent and the Church's position on the matter.

H. Can Psychological Incapacity be Relative?

According to Justice Alicia V. Sempio-Diy, the Code Committee believes that "the psychologically incapacitated person would not be disqualified from marrying again."²⁵³ This would imply that the framers believed that psychological incapacity could be relative to the spouse. This may also be inferred from the following statements made during the deliberations of the Civil Code and Family Law Revision Committee:

Justice Caguioa remarked that subparagraph (7) refers to psychological impotence. Justice (Ricardo) Puno stated that *sometimes a person maybe*

248. BROWN, *supra* note 44, at 103.

249. Santos v. Bedia-Santos, 240 SCRA 20, 33 (1995).

250. *Molina*, 268 SCRA 198, 211-12.

251. Casimiro-Querubin, *supra* note 159.

252. KAPLAN, ET AL., *supra* note 163, at 731.

253. Sempio-Diy, *supra* note 10, at 41.

psychologically impotent with one but not with another. Justice (Leonor Ines-) Luciano said that it is called *selective impotency*.²⁵⁴

Hence the framers, as well as the *Molina* guidelines, in an effort to further clarify psychological incapacity, seem to have introduced another complication whereby they described that incapacity may be absolute or relative. This would, however, negate the equivalence between psychological incapacity and personality disorder which is implied in the *Molina* guidelines. The *Molina* guidelines would therefore be inconsistent when the guidelines say, on the one hand, that psychological incapacity is to be confined to the most serious cases of personality disorders, while on the other hand, saying that psychological incapacity may be relative.

Personality disorders, being pervasive within the personality of the individual, will affect his/her relations with other people as well, and not just be confined to his relations with the present spouse. Hence, if he/she marries another individual, said incapacity should again surface, being part of his/her personality.²⁵⁵ This is because "[p]atients with personality disorders show deeply ingrained, inflexible, and maladaptive patterns of relating to and perceiving both the environment and themselves."²⁵⁶ Thus, if one is to accept that psychological incapacity is a personality disorder, as per the *Molina* guidelines, one cannot accept that there can be relative incapacity.

It is thus posited that psychological incapacity cannot merely be equated with personality disorders, since in so doing, it would negate the discussions of the framers regarding the existence of relative incapacity. Since there can be no relative incapacity with regard to personality disorders, one can deduce that the framers were not referring simply to personality disorders when they were talking about psychological incapacity.

I. Can Psychological Incapacity be Confined Merely to the Specific Marriage Relation?

The *Molina* guidelines established that 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. This seems to suggest that the relevant behavior may be confined within the marital relation.

According to expert psychiatric opinion,²⁵⁷ effects of a personality disorder can not be confined within the marital relation. Said behavior,

254. CIVIL CODE AND FAMILY LAW COMMITTEE, 8 (July 26, 1986) (emphasis supplied).

255. Casimiro-Querubin, *supra* note 159.

256. KAPLAN, ET AL., *supra* note 163, at 731.

257. Casimiro-Querubin, *supra* note 159.

being definitive of the personality of the individual, it will surface in his/her relations with other people. Personality is a pervasive character of the individual; to think that said behavior can only be confined within the marital relationship would imply that the individual does not have an integrated personality. This is not the case, however. Maladaptive patterns of the individual having personality disorder will affect how he/she relates to and perceives both the environment and himself/herself and would therefore affect his/her dealings with all people.²⁵⁸ Thus, although evidence may not be required as to how a personality disorder affects a person's dealings with other people, it is expected to affect the assumption of other obligations, even those which are not related to marriage.

VIII. CONCLUSION

In this essay, it is suggested that the intent of the framers must be reflected accurately by the interpretation given to the provision. Such intention as may be read and deduced from the records of the sessions of the Family Code Revision Committee, as well as that which may be gathered from a holistic reading of the Family Code, guided by the external sources allowed by the framers such as experts in the psychiatric fields, as well as Church Law and jurisprudence must be ascertained carefully, and as much as possible, such intention must be followed.

From the above discussion, one can gather that jurisprudence concerning the definition of psychological incapacity does not conform to the legislative intention for the provision. Judicial interpretation has unduly restricted the grounds of psychological incapacity for voiding marriages, and thus no longer accurately reflects the true intent behind the law. The spirit of the law was to liberalize the grounds for declaration of nullity of marriages whereas judicial interpretation has severely limited the concept. In so doing, jurisprudence seems to have arrived at a point where the concepts allowed to be encompassed by jurisprudence are no longer consistent with each other, such as the pronouncement in *Molina* with regard to psychological incapacity being a personality disorder and at the same time that it could be relative, as well as the question of whether the Supreme Court is referring to a mental illness/disorder or a personality disorder when referring to psychological incapacity.

It is posited that, looking into the intent of the framers, one should not straightjacket the concept of psychological incapacity merely into the category of personality disorders. Church decisions allow the concept to encompass more than this subcategory called "personality disorders," including within its ambit other subcategories of the larger grouping called "mental disorders." If one is to be true to the intention of accommodating

258. *Id.*

Church annulled marriages into civil law, one should also accommodate these other classes of mental disorders as being within the scope of the concept of psychological incapacity.

Furthermore, if one is to be guided by experts in the field of psychiatry, one should not just look at disorders of individuals, but look also into the interpersonal dynamics of the marital relationship. Hence, psychological incapacity need not be considered as to whether or not it is caused by a personality or a mental disorder, rather, one should view the incapacity simply as being caused by psychological factors. This would have the effect of further lowering the bar with regard to the declaration of nullity of marriages, which is the avowed intention of the provision.

Of course, however, it is still important to take into consideration the inviolability of marriage which is enshrined in our Constitution and the importance of the family, which duty of strengthening and actively promoting its development the State upholds. It is "a basic precept in statutory construction that a statute should be interpreted in harmony with the Constitution."²⁵⁹ If one lowers the bar too much, doing so might be detrimental to marriages and the family, thereby running counter to the Constitution which upholds the family as a state policy.²⁶⁰

We are thus left in a cross-road where we must decide — should we allow the liberalization of the declaration of nullity of marriages, or should we opt for the more conservative view where the bar should be made higher? The author feels that this is the point we find ourselves in jurisprudence, thereby explaining the seeming disparity between the legislative intent and the court pronouncements. The Supreme Court seems to favor the more conservative view, perhaps keeping in mind their allegiance to the Constitution. The framers, on the other hand, failed to give proper and definitive guideposts for subsequent jurisprudence. Some of the guideposts provided, seemingly, are actually moving guideposts — the experience of the judges, the findings of the experts and researchers in psychological disciplines, and the decisions of the Church tribunals — these are all dynamic guides. It is no wonder that the proper interpretation of psychological incapacity could place even learned men and women of our courts in a quandary.

259. LAUREL, *supra* note 218, at 48.

260. PHIL. CONST. art II, §12.

The State recognizes the sanctity of family life and shall protect and strengthen the family as a basic autonomous social institution. It shall equally protect the life of the mother and the life of the unborn from conception. The natural and primary right and duty of parents in the rearing of the youth for civic efficiency and the development of moral character shall receive the support of the Government.

It is therefore suggested that legislation be made to further clarify the concept of psychological incapacity. Clarification must be done keeping in mind the present state of understanding of the psychological sciences, such that the proper categories in the classifications of the mental disorders are included within the definition of the concept itself, if indeed the legislators intended the concept to encompass only mental or personality disorders. If not, the law should state more precisely what it wishes to include within the ambit of the term.

In the meantime, the Courts will have no choice but to follow the intent of the framers. One of the intentions is clearly that Church annulled marriages be accommodated in Civil Law. If such is the case, then the Courts will at least have to allow other forms of mental disorders and clinically undefined abnormalities allowed by Church jurisprudence to be similarly annulled under Civil Law.

Although article 9 of the Civil Code²⁶¹ affirms the ability of judges to fill in the gaps and interstices of the law, and as Justice Holmes stated, courts "do and must legislate" in order to fill in the gaps of the law, because the mind of the legislator, like all human beings is finite and therefore cannot envisage all possible scenarios,²⁶² we must always be careful that before judicial interpretation comes in to fill in the interstices, such gaps in the law really exist. Otherwise, judicial interpretation might easily become judicial legislation.

261. NEW CIVIL CODE, art. 9 ("[n]o judge or court shall decline to render judgment by reason of the silence, obscurity or insufficiency of the laws.").

262. LAUREL, *supra* note 218, at 18.