

Article 36 of the *Family Code of the Philippines* states, “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.”

Worst divorce law?

The article is lifted from c.1095, §3 of the *Code of Canon Law*, which provides that they are incapable of contracting marriage “who are not capable of assuming the essential obligations of matrimony due to causes of psychological nature.”

Neither Canon Law nor the Family Code defines *psychological incapacity*. In church tribunals, decisions based on this ground, like other grounds in the canons, need a second

¹ Msgr. Artemio Baluma is a secular priest incardinated to [diocese]. He holds a Masters’ degree in sociology and in Civil Law, and a Doctorate in Canon Law. He is the Director of the Legal Office and is the Executive Secretary of the Permanent Committee on Public Affairs of the Catholic Bishops’ Conference of the Philippines and is an associate judge in the National Appellate Matrimonial Tribunal. He is a member of the Integrated Bar of the Philippines and of the Canon Law Society of the Philippines.

The Revision Committee, constituted under the auspices of the University of the Philippines Law Center which drafted the Code explained:

“The Committee would like the judge to interpret the provisions on a case-to-case basis, guided by experience, the findings of experts and researchers in psychological discipline, 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.”² Similarly, Justice Jose Vitug affirmed that we should give much value to Canon Law jurisprudence as an aid to the interpretation and construction of the statutory enactment.³

The Supreme Court had ruled as follows:

“The use of the phrase *psychological incapacity* under Article 36 of the Code has not been meant to comprehend all such possible cases of psychoses as, likewise mentioned by some ecclesiastical authorities, extremely low intelligence, immaturity, and like circumstances.... Article 36 of the Family Code cannot

² Justice Josue N. Bellosillo, quoting Justice Alicia V. Sempio-Diy, in *Salita vs. Hon. Magtolis*, 233 **SCRA** 100.

³ In his concurring opinion in *Republic of the Philippines (petitioner) vs. Court of Appeals and Rondel Olaviano Molina*, G.R. No. 108763.

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 condition must exist at the time the marriage is celebrated”⁴

In fine, the Supreme Court declared that the term “psychological incapacity”, to be a ground for the nullity of marriage under Article 36 of the Family Code, must be able to pass the following tests, *viz.*:

First, the incapacity must be psychological or mental, not physical, in nature;

Second, the psychological incapacity must relate to the inability, not mere refusal, to understand, assume and discharge the basic marital obligations of living together, observing love, respect and fidelity and rendering mutual help and support.

Third, this condition must exist at the time the marriage is contracted although its overt manifestations may occur only thereafter and

Fourth, the mental disorder must be grave or serious and incurable.

Supreme Court Guidelines for the Interpretation of Art. 36 of the *Family Code*

⁴ In *Santos vs. Court of Appeals*, 240 SCRA 20.

1. The burden of proof to show the nullity of the marriage pertains to the plaintiff. Any doubt should be resolved in favor of the existence and continuation of the marriage and against its dissolution and nullification.

2. The root cause of the psychological incapacity must be (a) medically or clinically identified, (b) alleged in the complaint, (c) sufficiently proven by experts and (d) clearly explained in the decision.

3. The incapacity must be proven to be existing at the time of the celebration of the marriage. The manifestation of the illness need not be perceivable at such time, but the illness itself must be present prior to the marriage.

4. Such incapacity must also be shown to be medically or clinically permanent or incurable.

5. Such illness must be grave enough to bring about the disability of the party to assume the essential obligations of marriage .

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

General issues a certification, which will be quoted in the decision, briefly stating therein his reasons for his agreement or opposition, as the case may be, to the petition. The Solicitor General, along with the prosecuting attorney, shall submit to the court such certification within fifteen (15) days from the date the case is deemed submitted for resolution of the court. The Solicitor General shall discharge the equivalent function of the *defensor vinculi* (defender of the bond) contemplated under c.1095. Justice Artemio V. Panganiban, who penned the decision, hinted at government recognition of church declaration of nullity being given civil effects, as an explanation of number 7:

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

Some Rotal Decisions; Indicators of Psychological Incapacity

From a canonical perspective, Natural Law demands the previous and natural capacity to assume those marital obligations which are contracted. Absence of such a capacity in

- 1.1. one seriously lacking in intrapersonal and interpersonal integration or psychological maturity before marriage.

2. *Coram Stankiewicz*, SRRD, Dec. 18, 1987.

The kind of psychological maturity congruent with the obligations of married life: mental, affective social. So, an incapacitated person suffers from:

- 2.1. mental immaturity
- 2.2. affective immaturity, when he/she cannot dominate his/her impulses, emotions
- 2.3. social immaturity in not being able to adapt to reality and interpersonal integration.

3. *Coram Pinto*, SRRD, February 12, 1982.

- 3.1. The pathological abnormality must be (1) serious, (2) antecedent and (3) incurable and (4) perpetual.

4. *Coram Pompedda*, SRRD, February 19, 1982.

- 4.1. Supervening incapacity cannot nullify a marriage.

5. *Coram Stankiewicz*, SSRD, December 8, 1986.

- 5.1. Ambivalences and profound obsessions
- 5.2. Hysterics
- 5.3. homosexuals and perverts
- 5.4. excessive anxiety
- 5.5. flight into an imaginary world

7.8. Lack of spousal assistance to grow

8. *Coram Cormac Burke*, SRRD, December 15, 1996.

8.1. Insistence on abortion

8.2. Repeated refusal of offspring

9. *Coram Cormac Burke*, SRRD, November 11, 1994.

9.1. Incapacity for interpersonal relationship

10. *Coram Cormac Burke*, SRRD, November 25, 1993.

10.1. Obsessive-compulsive

10.2. Narcissistic , phobic

11. *Coram Aidan McGrath*, SRRD, June 13, 1988.

11.1. Multiple sclerosis can cause incapacity to assume marital obligations

12. *Coram Serrano*, SRRD, April 5, 1973.

12.1. His personality was not directed toward his partner (or lack of interpersonal relationship)

12.2. Insensitivity to the presence of the other person

12.3. Paranoid personality

13. *Coram Stankiewicz*, SRRD, July 11, 1985.

Sources of emotional immaturity:

13.1. Immaturity connected with adolescence

13.2. Immaturity rooted in the personality structure

- 4.6. lack of independence
- 4.7. narcissism, egoism, etc.
- 4.8. alcoholism

14. *Coram Pinto*, SRRD, April 9, 1973.

- 14.1. Rejection of offspring by contraception
- 14.2. Pre-marital abortion

15. *Coram Pinto*, SRRD, March 18, 1971.

- 15.1. Anti-social personality disorder

16. *Coram Pinto*, SRRD, July 15, 1977.

- 16.1. Vaginismus or psychic impotence
- 16.2. frigidity

Note: Both impede interpersonal relation.

17. *Coram Teodoric*, SRRD, January 19, 1940.

- 17.1. Nymphomania: The woman cannot remain faithful to husband.

18. *Coram Heard*, SRRD, January 30, 1954.

- 18.1. Lethargic encephalitis affected his nerves and mind, he was guided by instinct. Before marriage, he chased girls, ripped their clothing, raped his own sister, was cruel to animals, irritably extreme jealousy of his wife, refused to work, sang daily to himself.

CONCLUSION

These indicators should not be taken individually, but collectively in order to draw a pattern of thoughts, words, or actions of a subject who we label as laboring from psychological incapacity. It is the desire of this writer one day to review all the pertinent rotal decisions and make a comprehensive listing of indicators of psychological incapacity relative to marriage responsibilities.