

**CIVIL LAW****ROSANNA L. TAN-ANDAL v. MARIO VICTOR M. ANDAL**  
**G.R. No. 196359, 11 MAY 2021, EN BANC (LEONEN, J.)****DOCTRINE OF THE CASE**

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

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

**FACTS**

Mario Victor Andal (Mario) and Rosanna Tan (Rosanna) married in 1995. A year later, Rosanna and Mario gave birth to a child, Ma. Samantha.

In 2000, Mario and Rosanna separated. Subsequently, Mario filed a petition for custody of Ma. Samantha before the Regional Trial Court (RTC).

Rosanna then filed a petition to nullify her marriage with Mario. Rosanna alleged that Mario is psychologically incapacitated to fulfill his marital duties. Rosanna stated that Mario's drug habit caused detriment to their family. Mario experienced paranoia from his drug habit. In one instance, Mario threatened Rosanna and her family for the custody of Ma. Samantha. Mario was committed for drug rehabilitation at the National Bureau of Investigation Treatment and Rehabilitation Center and, eventually, at the Seagulls Flight Foundation (Seagulls). However, Mario escaped Seagulls and continued his drug use. Furthermore, Rosanna gave Mario the responsibility of managing a construction firm she set up. However, Mario's drug use depleted the company's funds and caused its closure.

Rosanna presented the testimony of Dr. Fonso Garcia (Dr. Garcia), stating that Mario has narcissistic antisocial personality disorder and substance

abuse disorder with psychotic features. The RTC granted Rosanna's petition and declared the marriage between Mario and Rosanna as void.

The Court of Appeals (CA) reversed the ruling of the RTC. It held that the expert testimony given by Dr. Garcia was not credible as Mario was not interviewed personally.

### **ISSUE**

Is the marriage between Mario and Rosanna void due to psychological incapacity?

### **RULING**

**YES.** The Court concluded that Rosanna proved with clear and convincing evidence that Mario was psychologically incapacitated to comply with his essential marital obligations. Their marriage, therefore, is void under Article 36 of the Family Code.

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

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

Psychological incapacity consists of clear acts of dysfunctionality that show a lack of understanding and concomitant compliance with one's essential marital obligations due to psychic causes. It is not a medical illness that has to be medically or clinically identified; hence, expert opinion is not required. As an explicit requirement of the law, the psychological incapacity must be shown to have been existing at the time of the celebration of the marriage, and is caused by a durable aspect of one's personality structure, one that was formed before the parties married. Furthermore, it must be shown caused by a genuinely serious psychic cause. To prove psychological incapacity, a party must present clear and convincing evidence of its existence.

The Court abandoned the second Molina guideline. Psychological incapacity is neither a mental incapacity nor a personality disorder that must be proven through expert opinion. There must be proof, however, of the durable or enduring aspects of a person's personality, called "personality structure," which manifests itself through clear acts of dysfunctionality that undermines the family. The spouse's personality structure must make it impossible for him or her to understand and, more importantly, to comply with his or her essential marital obligations. Proof of these aspects of personality need not be given by an expert. Ordinary witnesses who have been present in the life of the spouses before the latter contracted marriage may testify on behaviors that they have consistently observed from the supposedly incapacitated spouse. From there, the judge will decide if these behaviors are indicative of a true and serious incapacity to assume the essential marital obligations.

The psychological incapacity contemplated in Article 36 of the Family Code is incurable, not in the medical, but in the legal sense; hence, the third Molina guideline is amended accordingly. This means that the incapacity is so enduring and persistent with respect to a specific partner, and contemplates a situation where the couple's respective personality structures are so incompatible and antagonistic that the only result of the union would be the inevitable and irreparable breakdown of the marriage. "[A]n undeniable pattern of such persisting failure [to be a present, loving, faithful, respectful, and supportive spouse] must be established so as to demonstrate that there is indeed a psychological anomaly or incongruity in the spouse relative to the other." With respect to gravity, the requirement is retained, not in the sense that the psychological incapacity must be shown to be a serious or dangerous illness, but that "mild characterological peculiarities, mood changes, occasional emotional outbursts" are excluded. The psychological incapacity cannot be mere "refusal, neglect[,] or difficulty, much less ill will." In other words, it must be shown that the incapacity is caused by a genuinely serious psychic cause.

The Court found Mario psychologically incapacitated to comply with his essential marital obligations. Rosanna discharged the burden of proof required to nullify her marriage to Mario. Clear and convincing evidence of Mario's psychological incapacity consisted mainly of testimony on Mario's personality structure and how it was formed primarily through his childhood and adult experiences, well before he married Rosanna.

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

**SPOUSES FULALIO CUENO AND FLORA BONIFACIO CUENO V.  
SPOUSES EPIFANIO AND VERONICA BAUTISTA ET AL.**

**G.R. No. 246445, 02 MARCH 2021, EN BANC, (CAGUIOA, J.)**

**DOCTRINE OF THE CASE**

*Article 166 of the Civil Code indicates that “the husband cannot alienate or encumber any real property of the conjugal partnership without the wife’s consent” and in relation thereto, Article 173 of the Civil Code provides that “the wife may, during the marriage and within ten years from the transaction questioned ask the courts for the annulment of any contract of the husband entered into without her consent.” Contrary to the nature of void contracts, transactions that fail to comply with Article 166 produce effects and when read with Article 173, said provision leads to the inescapable conclusion that a contract disposing or encumbering conjugal real property without the wife’s consent is not void but merely voidable.*

*Applying the foregoing principles, the Court held in this case that Sps. Cueno’s claim that the second sale was void and imprescriptible lacks merit. The Court had previously ruled that the ten-year prescriptive period under Article 173 of the Civil Code is counted from the execution of the deed of sale of the property. In the present case, the Escritura de Venta between Eulalio and Luis which was executed without Flora’s consent was on 04 December 1963. Pursuant to Article 1973, Flora’s action to annul the contract accrued upon the execution of the sale in 1963 and had 10 years or until 1973 to question said transaction. Unfortunately, the action commenced in 2009 was filed out of time which only meant that Sps. Cueno lacked the right to question the subsequent sale by Luis in favor of Sps. Bautista.*

**FACTS**

Lot No. 2836 was owned by the two sons of Ramon Bonifacio: Luis Bonifacio (Luis) and Isidro Bonifacio (Isidro), who sold part of their interest to the City of Zamboanga and became co-owners of the retained lot (subject property). Flora Bonifacio Cueno (Flora) is the daughter of Luis and is married to Eulalio Cueno (Eulalio). In 1961, Spouses Eulalio and Flora Cueno (Sps. Cueno) bought the *pro indiviso* share of Isidro in the subject property as reflected in an *Escritura de Venta* (first sale), which led to the issuance of a Transfer Certificate of Title (TCT) in the names of Luis and Eulalio.

Prior to the issuance of the TCT, Eulalio supposedly sold his and Flora’s share of the lot to Luis without Flora’s consent as covered by another *Escritura de Venta* (second sale). The second sale was registered and another TCT was issued

in the names of Luis and Eulalio, which was later cancelled for another TCT issued solely in the name Luis, married to Juana.

In a Deed of Absolute Sale (third sale), Luis allegedly sold the property to Spouses Epifanio and Veronica Bautista (Sps. Bautista) leading to the registration of a TCT in their name. Thereafter, the Sps. Bautista took possession of the property and built improvements on the same. Years later, Sps. Bautista donated the subject property to their four children: Rizaldo, Dionilo, Jessibel, and Mercedesita to which TCTs were issued in their names. Sps. Cueno filed a complaint in 2008 for recovery of the subject property on the ground that they were allegedly deprived of their share through fraud. On the other hand, Sps. Bautista claimed that they acquired the subject property in good faith and for value from the registered owner, Luis, as evidenced by the third sale.

The Regional Trial Court (RTC) granted the complaint and declared the second sale between Eulalio and Luis void. Although the fraud and/or forger was not proven, the RTC invalidated the sale for lack of the spousal consent of Flora. On appeal, the Court of Appeals (CA) reversed the decision of the RTC and held that the Sps. Bautista had a better right over the subject properties.

### **ISSUE**

Was the second sale void for lack of spousal consent pursuant to Article 166 of the Civil Code?

### **RULING**

**NO.** Article 166 of the Civil Code indicates that “the husband cannot alienate or encumber any real property of the conjugal partnership without the wife’s consent” and in relation thereto, Article 173 of the Civil Code provides that “the wife may, during the marriage and within ten years from the transaction questioned ask the courts for the annulment of any contract of the husband entered into without her consent.”

Based on various jurisprudence, two conflicting views in the interpretation of the above-mentioned provisions emerged:

- (a) The first view treats such contracts as void:
  - (i) on the basis of lack of consent of an indispensable party;  
and/or

- (ii) because such transactions contravene mandatory provisions of law; and
- (b) The second view holds that the absence of such consent indicated under Article 166 does not render the entire transaction void but merely voidable in accordance with Article 173 of the Civil Code.

Here, the Court adopted the second view and declared that the same is the prevailing and correct rule thus abandoning all cases contrary thereto. The Court held that a sale that fails to comply with Article 166 is not void but merely voidable in accordance with Article 173 of the Civil Code.

The Court differentiated a void or inexistent contract from that of a voidable contract. On one hand, a void or inexistent contract is one which lacks, absolutely either in fact or in law, one or some of the elements which are essential for its validity and is one which has no force and effect from the very beginning as if it had never been entered. On the other hand, a voidable contract is one where consent is vitiated by lack of legal capacity of one of the contracting parties or by mistake, violence, intimidation, undue influence, or fraud. Unlike void contracts, voidable or annulable contracts are existent, valid, and binding between parties. The same may still be ratified and may be barred by prescription.

Contrary to the nature of void contracts, transactions that fail to comply with Article 166 produce effects and when read with Article 173, said provision leads to the inescapable conclusion that a contract disposing or encumbering conjugal real property without the wife's consent is not void but merely voidable. Insofar as the phrase "lack of consent" under Article 166 is concerned, the same does not give rise to a no contract situation as such phrase contemplates a situation akin to an incapacity to give consent under Article 1390 of the Civil Code. Hence, contracts falling under Article 166 are considered as a special type of voidable contract which are deemed valid until annulled.

Applying these principles, the Court held that Sps. Cueno's claim that the second sale was void and imprescriptible lacks merit. The Court had previously ruled that the ten-year prescriptive period under Article 173 of the Civil Code is counted from the execution of the deed of sale of the property. In the present case, the *Escritura de Venta* between Eulalio and Luis, which was executed without Flora's consent, was on 04 December 1963. Pursuant to Article 1973, Flora's

action to annul the contract accrued upon the execution of the sale in 1963 and had 10 years or until 1973 to question said transaction. Unfortunately, the action commenced in 2009 was filed out of time which only meant that Sps. Cueno lacked the right to question the subsequent sale by Luis in favor of Sps. Bautista. Hence, the Court denied the petition.



**NIXON L. PEREZ, JR. v. AVEGAIL PEREZESENERPIDA,  
ASSISTED BY HER HUSBAND MR. SENERPIDA**

**G.R. No. 233365, 24 MARCH 2021, *FIRST DIVISION*, (CAGUIOA, J.)**

**DOCTRINE OF THE CASE**

*It is true that Article 147 provides that the property acquired during the cohabitation shall be governed by the rules on co-ownership and pursuant to Article 493 of the Civil Code, in a co-ownership: "Each co-owner shall have the full ownership of his part and of the fruits and benefits pertaining thereto, and he may therefore alienate, assign or mortgage it, and even substitute another person in its enjoyment, except when personal rights are involved; but the effect of the alienation or the mortgage, with respect to the co-owners, shall be limited to the portion which may be allotted to him in the division upon the termination of the co-ownership."*

*However, Article 493 of the Civil Code cannot supersede, and must yield to, Article 147 of the Family Code, which expressly mandates that: "Neither party can encumber or dispose by acts inter vivos of his or her share in the property acquired during cohabitation and owned in common, without the consent of the other, until after the termination of their cohabitation."*

*While the Court found merit in Nixon's contention that the lower courts in the present case erred in finding that the property regime between Adelita and Eliodoro was governed by the ACP as their marriage subsisted until Eliodoro died, the Deed of Donation to him of the subject property is, nonetheless, void as this is a prohibited disposition under Article 147 of the Family Code.*

**FACTS**

Spouses Eliodoro Q. Perez (Eliodoro) and Adelita M. Perez (Adelita) were the registered owners of a parcel of land in Olongapo City. They were married on December 10, 1975, and had two children, Avegail and Adonis Perez (Adonis). Before his marriage with Adelita, Eliodoro was married and had several children, one of whom was Nixon Perez, Sr. The latter, in turn, is the father of Nixon L. Perez, Jr. (Nixon).

Adelita executed a sworn statement denominated as Renunciation and Waiver of Rights (RWR) in favor of Eliodoro on October 29, 1995, which was inscribed on the Transfer Certificate of Title (TCT) of the subject parcel of land. Eliodoro donated said land to Nixon on July 27, 2004. However, the donation

was without the conformity of Adelita. Subsequently, a Real Estate Mortgage was executed by Nicxon in favor of Rolando Ramos.

On February 1, 2005, Eliodoro filed against Adelita a petition for declaration of nullity of marriage under Article 36 of the Family Code before the Regional Trial Court Branch 73 (RTC-Branch 73). The RTC declared the marriage void ab initio. Such decision became final and executory as of July 6, 2005 pursuant to an entry of judgment dated July 11, 2005.

Eliodoro died on June 28, 2008. An Extrajudicial Settlement Among Heirs with Waiver was executed and signed by his legitimate and compulsory heirs.

On September 30, 2010, Avegail Perez-Senerpida (Avegail) brought an action for Annulment of Donation and Title against Nicxon. Avegail alleged that she is one of the children of the late Eliodoro and Adelita and that Deed of Donation solely executed by Eliodoro was based on the alleged RWR executed by her mother Adelita. She claimed that the RWR and the Deed of Donation were prejudicial to her interest because it affected her future inheritance or legitime.

Nicxon answered by denying Avegail's allegation that Adelita is a part owner of the subject land and that assuming she was, she has no more right thereon when she executed the RWR.

Avegail reiterated that Adelita, was a part owner of the subject property. Furthermore, she countered that RWR was null and void as it was not supported by any valid consideration.

In the meantime, On July 5, 2011, six years after the Marriage Nullity Decision had become final and executory, Adelita filed before the Court of Appeals (CA) a petition for annulment of judgment (Annulment of Judgment Petition) against the heirs of Eliodoro, who are the children of Eliodoro by his first marriage, on the ground of lack of jurisdiction over her person.

With respect to the annulment of judgement petition, the CA, on March 5, 2012, referred the case to the Executive Judge for assignment to a judge for further reception of evidence. The RTC-Branch 75 received the respective evidence of Adelita and Nicxon and subsequently ordered the transmission thereof to the CA.

On February 24, 2015. The RTC-Branch 73 ruled in favor of Avegail and ordered the annulment of the RWR and the Deed of Donation in favor of Nixon. It further ruled that the Marriage Nullity Decision had not yet attained finality at the time of Eliodoro's death considering that the same has been assigned for further reception of evidence. Thus, it deemed the marriage between Eliodoro and Adelita to be valid and subsisting from the time of its celebration up to Eliodoro's death on June 28, 2008.

On September 22, 2015, the CA denied the petition for annulment of judgement. The Motion for Reconsideration was also denied. The petition for review on certiorari filed by Adelita before the Supreme Court was also denied.

As to the appeal filed by Nixon, the same was denied by the CA on April 7, 2017. It ruled that at the time of the donation, Eliodoro was still legally married to Adelita. As such, Eliodoro should have first secured the conformity of his wife, Adelita, as expressly required under Article 98 of the Family Code.

As to the RWR, the CA ruled that the RWR is a prohibited waiver because the property regime of Eliodoro and Adelita was the absolute community property (ACP), there being no marriage settlement between them, and under Article 89 of the Family Code (FC), which provides that: "No waiver of rights, interests, shares and effects of the absolute community property during the marriage can be made except in case of judicial separation of property".

The CA further agreed with the RTC the RWR partook the nature of a donation or grant of gratuitous advantage between spouses, there being no material consideration given by Eliodoro to Adelita in exchange for the execution of the RWR, which consequently is prohibited under Article 87 of the FC which provides: "every donation or grant of gratuitous advantage, direct or indirect, between the spouses during the marriage shall be void."

Nixon contends that Article 147 of the FC applies to the present case. Thus, the RWR is valid on the ground that Eliodoro and Adelita, being mere co-owners of the subject property, either of them could donate or waive their respective shares therein provided that the consent of either partner was obtained.

Hence, this petition.

**ISSUES**

- (1) Was the marriage between Eliodoro and Adelita valid and subsisting at the time of the former's death?
- (2) Did the property regime of ACP apply to the marriage of Eliodoro and Adelita?
- (3) Is the RWR valid?
- (4) Is the Deed of Donation valid despite the absence of consent of Adelita?

**RULING**

(1) **NO.** The Court had the occasion to correct the factual findings of the RTC and the CA in the present case in which it both ruled that the marriage of Eliodoro and Adelita was still valid and subsisting at the time of the former's death. The Court deemed it necessary to correct such because the date of the finality of the Marriage Nullity Decision is the fact determinative of the case.

While the RTC Decision was rendered on February 24, 2015, or prior to the CA Decision in the Annulment of Judgment Petition dated September 22, 2015, the RTC-Branch 73 could not have mistaken the March 5, 2012 Resolution of the CA to mean reception of further evidence in the second petition for declaration of nullity of the marriage between Eliodoro and Adelita that was filed by the former because that Resolution emanated from the CA in its disposition of the Annulment of Judgment Petition. In other words, if the RTC-Branch 73 entertained any doubt, it should have verified from Branch 75 what the hearing for reception of further evidence was all about.

Another option of the RTC-Branch 73 would have been to await the outcome of the Annulment of Judgment Petition filed by Adelita with the CA inasmuch as the resolution of the issue in the said petition — the annulment of the Marriage Nullity Decision — was inextricably linked with the instant case.

On the part of the CA in the present case, at the time it rendered its Decision on April 7, 2017, the other CA's Decision in the Annulment of Judgment Petition had already been rendered more than a year earlier, or on September 22, 2015. A mere perusal of the March 5, 2012 Resolution of the CA issued in connection with the Annulment of Judgment Petition would have made the CA to be circumspect and make a verification as to whether the RTC-Branch 73's

finding in this case in relation to that March 5, 2012 Resolution was factually accurate.

Since the Marriage Nullity Decision became final and executory on July 6, 2005, as confirmed with finality in the CA Decision in the Annulment of Judgment Petition, prior to Eliodoro's death, then the marriage between him and Adelita, was null and void ab initio pursuant to Article 36 of the Family Code as declared in the Marriage Nullity Decision.

(2) **NO.** Since the marriage between Adelita and Eliodoro was judicially decreed to be void ab initio or from the beginning, the RTC and the CA erred in ruling that the ACP regime governed their property relations.

Even if their marriage was not declared void from the beginning, the RTC and the CA would still have erred because the applicable property regime should have been the conjugal partnership of gains (CPG). Pursuant to Article 105 of the Family Code, the provisions of Chapter 4, Conjugal Partnership of Gains, shall apply to CPG already established before the effectivity of the Family Code, without prejudice to vested rights.

Since the marriage between Eliodoro and Adelita was celebrated on December 10, 1975 and the CPG was then the applicable property regime between validly married spouses, absent any contract executed before the marriage, then that property regime continued.

Consequently, since the property regime is CPG, Article 89 of the FC which provides in part: "No waiver of rights, interests, shares and effects of the absolute community property during the marriage can be made except in case of judicial separation of property", does not apply and it cannot justify the nullification of Adelita's RWR since Adelita and Eliodoro were not validly married.

(3) **NO.** The RWR is void pursuant to Article 87 of the FC, which provides: "Every donation or grant of gratuitous advantage, direct or indirect, between the spouses during the marriage shall be void, except moderate gifts which the spouses may give each other on the occasion of any family rejoicing. The prohibition shall also apply to persons living together as husband and wife without a valid marriage."

While both the CA and the RTC correctly ruled in this case that the RWR is void based on Article 87 of the Family Code, their reliance on that provision of the Article referring to "every donation or grant of gratuitous advantage, direct or indirect, between the spouses during the marriage shall be void" is incorrect — borne out by the fact that they erroneously believed that the marriage between Eliodoro and Adelita was valid and subsisting until Eliodoro's death. To be clear, therefore, the provision of Article 87 that squarely applies to the case is: "The prohibition shall also apply to persons living together as husband and wife without a valid marriage."

Assuming the marriage between Eliodoro and Adelita was valid at the time the RWR was executed and it had valuable or material consideration the RWR would still be void because the sale between the spouses during their marriage is proscribed under Article 1490 of the Civil Code, which provides:

ART. 1490. The husband and the wife cannot sell property to each other, except:

- (1) When a separation of property was agreed upon in the marriage settlements; or
- (2) When there has been a judicial separation of property under Article 191.

In the landmark case of *Matabuena v. Cervantes* in 1971, which involved a donation between common law spouses before their marriage, it was ruled that the prohibition of donations between spouses was intended to avoid possible transfer of property from one spouse to the other due to passion or avarice. The intimate relations of the spouses during the marriage places the weaker spouse under the will of the stronger, whatever the sex, so that the former might be obliged, either by abuse of affection or by threats of violence, to transfer some properties to the latter. The law seeks to prevent such exploitation in marriages which might have been contracted under this stimulus of greed. It also ruled that the prohibition also applies to the parties in what are called "common law" marriages; otherwise, the condition of those who incurred guilt would turn out to be better than those in legal union.

It was further ruled therein that:

While Art. 133 of the Civil Code considers as void a "donation between the spouses during the marriage," policy considerations of the most exigent character as well as the dictates of morality require that the same prohibition should apply to a commonlaw relationship.

xxx If the policy of the law is, in the language of the opinion of the then Justice J.B.L. Reyes of the Court, "to prohibit donations in favor of the other consort and his descendants because of fear of undue and improper pressure and influence upon the donor, a prejudice deeply rooted in our ancient law. xxx then there is every reason to apply the same prohibitive policy to persons living together as husband and wife without benefit of nuptials. xxx 'it would not be just that such donations should subsist, lest the condition of those who incurred guilt should turn out to be better.' So long as marriage remains the cornerstone of our family law, reason and morality alike demand that the disabilities attached to marriage should likewise attach to concubinage."

Thus, the jurisprudence on the nullity of donations between the parties of a common-law relationship or exclusive cohabitation or union of a man and a woman without a valid marriage found its way into the present Article 87 of the Family Code.

Given the express prohibition under Article 87 of the Family Code, the RWR executed by Adelita in favor of Eliodoro in respect of the subject property is void.

(4) **NO.** The Court ruled first ruled that Article 147 of the FC applied which provides:

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

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

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

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

Since the subject property was registered in the names of Eliodoro and Adelita, as spouses, and there being no proof to the contrary, the subject property is presumed to have been obtained by their joint efforts, work or industry, and was owned in equal shares by them pursuant to Article 147.

Under Article 147 of the Family Code, which covers the exclusive cohabitation of a man and woman as husband and wife without the benefit of marriage or under a void marriage, there is unfortunately no direct prohibition on donation of any property acquired during the cohabitation by one party without the consent of the other.

It is true that Article 147 provides that the property acquired during the cohabitation shall be governed by the rules on co-ownership and pursuant to Article 493 of the Civil Code, in a co-ownership: "Each co-owner shall have the full ownership of his part and of the fruits and benefits pertaining thereto, and he may therefore alienate, assign or mortgage it, and even substitute another person in its enjoyment, except when personal rights are involved; but the effect of the alienation or the mortgage, with respect to the co-owners, shall be limited to the



portion which may be allotted to him in the division upon the termination of the co-ownership."

With Article 493 of the Civil Code as basis, Eliodoro could have alienated onerously or gratuitously his part or share in the subject property to Nixon without the consent of Adelita.

However, Article 493 of the Civil Code cannot supersede, and must yield to, Article 147 of the Family Code, which expressly mandates that: "Neither party can encumber or dispose by acts *inter vivos* of his or her share in the property acquired during cohabitation and owned in common, without the consent of the other, until after the termination of their cohabitation." The reason for this amendment to Article 144 of the Civil Code rule, as it is now expressed in the Family Code, is this:

x x x If the parties are allowed to dispose of their shares in said properties like in a true co-ownership, it will destroy their relationship. The Family Code, as already stated, would like to encourage the parties to legalize their union some day and is just smoothing out the way until their relationship ripens into a valid union.

Given the above express prohibition of a party to the cohabitation to encumber or alienate by acts *inter vivos* even his or her share in the property acquired during the cohabitation and owned in common, without the consent of the other party until after the termination thereof under Article 147, then the donation of any property acquired during the cohabitation by one party without the consent of the other can only be but void. The rules on ordinary co-ownership cannot apply to vest validity on the undivided share of the disposing party.

If a disposition of a party's share in the property under special co-ownership created by virtue of Article 147 without the consent of the other party is proscribed by law, then, and with more reason, should the disposition of the entire property under such special co-ownership by a party without the other party's consent be considered void as well.

While the Court found merit in Nixon's contention that the lower courts in the present case erred in finding that the property regime between Adelita and

Eliodoro was governed by the ACP as their marriage subsisted until Eliodoro died, the Deed of Donation to him of the subject property is, nonetheless, void as this is a prohibited disposition under Article 147 of the Family Code.