

Abstract

In the determination of matters pertaining to the withdrawal of parental power, Section 1582 of the Civil and Commercial Code laid down that the court might withdrawal total or partial of parental power from the incapacitated parent who was adjudged incompetent or quasi-incompetent. However, this cause is different from other cause of withdrawal of parental power in Section 1582 because the parent is not at fault. In this research, a study has been taken into account for the withdrawal of parental power causes in Thailand and other countries and analytical comparison has been made thereof. The research has revealed that the essential matter of withdrawal of parental power cause is parent's fault. For example, the parent abuses parental power, mismanagement the property of the child, guilty of gross misconduct, neglect of the child or commit a serious criminal offence.

In the adjudged incapacitated parent case, the foreign laws laid down the principle that the parent is not entitled to exercise the parental power, the other parent exercises it alone. The same principle has appeared in Section 1566(3) of the Civil and Commercial Code which the total parental power are suspended. So this section is different from Section 1582 because it is not about the withdrawal of parental power. Thus, the difference between the withdrawal of parental power and the suspended of parental power should be clearly separated that we shall analyze in this research.

While the withdrawal of parental power from incapacitated parent , Section 1582, the court has power to consider to withdrawal total or partial of parental power but in the suspended of parental power case, Section 1566(3), total of parental power are suspended by the law. In fact, the incapacitated parent might have a capacity in taking care of the child. The total suspended of parental power might not appropriate to the ability of the incapacitated parent. Thus, the court should have a power to consider and order that the incapacitated parent could have a parental power with regard to the person of the child.