

# H A R V A R D L A W R E V I E W

## ARTICLES

INCIDENTAL BURDENS ON FUNDAMENTAL  
RIGHTS

*Michael C. Dorf*

COLONIAL LAND USE LAW AND ITS SIGNIFICANCE  
FOR MODERN TAKINGS DOCTRINE

*John F. Hart*

## NOTES

Fusion Candidacies, Disaggregation, and  
Freedom of Association

A Reformed Economic Model of Consumer Bankruptcy

An Evidentiary Framework for Diversity as a Compelling Interest  
in Higher Education

Why Law Firms Cannot Afford to Maintain the Mommy Track

## COMMENTARY

THE NEW LEGAL PROCESS,  
THE SYNTHESIS OF DISCOURSE,  
AND THE MICROANALYSIS OF INSTITUTIONS

*Edward L. Rubin*

## RECENT CASES

## RECENT LEGISLATION

HARVARD LAW REVIEW
--------------------

© 1996 by The Harvard Law Review Association

## CONTENTS

## ARTICLES

- Incidental Burdens on  
Fundamental Rights . . . . *Michael C. Dorf* . . . 1175
- Colonial Land Use Law and Its  
Significance for Modern Takings  
Doctrine . . . . . *John F. Hart* . . . . 1252

## NOTES

- Fusion Candidacies, Disaggregation, and Freedom of  
Association . . . . . 1302
- A Reformed Economic Model of Consumer Bankruptcy . . . 1338
- An Evidentiary Framework for Diversity as a Compelling  
Interest in Higher Education . . . . . 1357
- Why Law Firms Cannot Afford to Maintain the Mommy  
Track . . . . . 1375

## COMMENTARY

- The New Legal Process, the  
Synthesis of Discourse, and the  
Microanalysis of Institutions . . *Edward L. Rubin* . . . 1393

## RECENT CASES

- Arbitration — Statutory Claims — Ninth Circuit Imposes  
Knowing Waiver Standard for Mandatory Arbitration of  
Sexual Harassment Claims. — *Prudential Insurance Co. v.*  
*Lai*, 42 F.3d 1299 (9th Cir. 1994), *cert. denied*, 116 S. Ct. 61  
(1995) . . . . . 1439

**CONTENTS**

**Criminal Procedure — Search and Seizure — Tenth Circuit**  
Finds That Thermal Imaging Scan of a Home Constitutes a  
Search. — *United States v. Cusumano*, 67 F.3d 1497 (10th  
Cir. 1995) . . . . . 1445

**Civil Rights — Availability of § 1983 — Ninth Circuit Holds**  
That § 1983 Is Available to Enforce Title IV-D of the Social  
Security Act. — *Freestone v. Cowan*, 68 F.3d 1141 (9th Cir.  
1995) . . . . . 1451

**Intellectual Property — Patent and Trade Dress Law — Tenth**  
Circuit Applies “Significant Inventive Aspect” Test to  
Determine Whether Utility Patent Precludes Trade Dress  
Protection. — *Vornado Air Circulation Systems, Inc. v.*  
*Duracraft Corp.*, 58 F.3d 1498 (10th Cir. 1995), *cert. denied*,  
116 S. Ct. 753 (1996) . . . . . 1457

**RECENT LEGISLATION**

**Constitutional Law — Abortion Regulation — Ohio Becomes**  
First State to Ban a Particular Abortion Procedure. — Act of  
June 28, 1995, Sub. H.B. No. 135, 1995 Ohio Legis. Serv.  
L-1562 (Baldwin) (to be codified at OHIO REV. CODE ANN.  
§§ 2305.11, 2307.51-52, 2919.15-18 (Baldwin)) . . . . . 1464

**Federalism — Intergovernmental Relations — Congress Requires**  
a Separate, Recorded Vote for Any Provision Establishing an  
Unfunded Mandate. — Unfunded Mandates Reform Act of  
1995, Pub. L. No. 104-4, 109 Stat. 48 . . . . . 1470

**RECENT PUBLICATIONS** . . . . . 1475