NOTE

STANDARDS OF REVIEW IN THE IOWA APPELLATE SYSTEM: A REVIEW, CRITIQUE, AND PROPOSAL FOR STANDARDIZATION

"Unless counsel is familiar with the standard of review for each issue, he may find himself trying to run for a touchdown when basketball rules are in effect."

-Godbold, *Twenty Pages and Twenty Minutes—Effective Advocacy on Appeal*, in APPELLATE ADVOCACY 63, 64 (1981).

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I. INTRODUCTION

Determining the applicable standard of review is an important element

of appellate practice frequently overlooked by attorneys. Attorneys must be aware of the applicable standard of review because the standard dictates the deference the appellate court must give to the trial court's decision when challenged by the appellant.[1] The standard of review often indicates the likelihood of a successful appeal and, therefore, may determine whether an appeal should be taken at all.[2] If the standard is highly deferential, the appellate court is less likely to reverse the trial court. If, on the other hand, the appellate court is free to substitute its own judgment, the appellant has a greater chance of succeeding on appeal.[3]

Because of their importance in the decision to appeal, the applicable standards of review should be uniformly applied and easily ascertainable by practicing attorneys. Otherwise, attorneys will be unable to make informed decisions or give sound advice regarding the question whether to appeal.

This Note addresses the various standards of review currently applied in the Iowa appellate system. In addition, the rationale behind each standard and the potential difficulties associated with the application of the various standards are discussed. The scope of this Note is limited to civil appeals and does not address the standards of review used in criminal or administrative proceedings.

II. Standards of Review

The predominant standards of review applied in the Iowa appellate system include: (1) abuse of discretion;[4] (2) correction of errors of law;[5] (3) de novo;[6] (4) substantial evidence to support the findings;[7] and (5) carried burden as a matter of law.[8]

A. *Abuse of Discretion*

"Abuse of discretion" is probably the easiest standard to understand in its application and rationale. The abuse of discretion standard arises in appeals based on alleged procedural errors in the trial court's exercise of its discretionary powers. A trial court uses discretionary powers when deciding such matters as the admission of evidence, motions for continuance, and motions for new trials. A trial court derives its discretionary powers from express statutes or rules,[9] or when the appellate court determines that a

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1. R. Martineau, Modern Appellate Practice—Federal and State Civil Appeals § 11.20, at 343 (Supp. 1988).
2. *Id.*
3. *Id.*
4. *See* Glenn v. Farmland Foods, Inc., 344 N.W.2d 240 (Iowa 1984).
5. *See* Chariton Feed & Grain, Inc. v. Harder, 369 N.W.2d 777 (Iowa 1985).
6. *See* Israel v. Farmers Mut. Ins. Ass'n, 339 N.W.2d 143 (Iowa 1983).
7. *See* Menzel v. Morse, 362 N.W.2d 465 (Iowa 1985).
8. *See* Bebensee v. Ives, 409 N.W.2d 710 (Iowa Ct. App. 1987).
9. Iowa R. App. P. 14(f)(3).

matter is best left to the discretion of the trial court.[10]

When an appeal challenges a judge's discretionary decision, the reviewing court looks not to whether it would have ruled differently, but rather, focuses on whether the trial judge abused his discretion in deciding as he did.[11] Abuse of discretion is defined as "an erroneous conclusion and judgment, one clearly against logic and effect of facts and circumstances before the court, or the reasonable, probable, and actual deductions to be drawn therefrom."[12]

When granted discretionary power, the trial court's right to exercise that power is adamantly protected. As such, when an appeal arises from the trial court's exercise of its discretionary powers, the reviewing court shows great deference to the trial court's judgment. "[A]bsent a showing that such discretion was exercised on grounds or for reasons clearly untenable or to an extent clearly unreasonable, [the appellate] court will not interfere."[13] "Generally, abuse of discretion will be found only where there is no support for the decision in the . . . evidence."[14]

B. *Correction of Errors of Law*

In all cases other than equity, "the appellate courts shall constitute courts for correction of errors of law."[15] The "correction of errors" standard gives little or no deference to the decision of the trial court relating to the determination, interpretation, or application of law. In some respects, this standard could be categorized as de novo review limited to the question of law.[16]

Unlike the deference given to the trial court's findings of fact, which are binding on the appellate court if supported by substantial evidence, the appellate court's deference does not extend to the trial court's determinations of law.[17] The appellate court is not precluded from "inquiry into the question whether, conceding the truth of the facts found, a conclusion of law drawn therefrom is correct, nor [is the appellate court] bound by trial court's determination of the law."[18]

The basis for this broad inquiry into the trial court's application of law is constitutional.[19] The Iowa Constitution provides that appellate courts in

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10. R. MARTINEAU, *supra* note 1, at 346.
11. S. CHILDRESS & M. DAVIS, STANDARDS OF REVIEW § 4.1, at 228 (1986) (quoting National Hockey League v. Metropolitan Hockey Club, 427 U.S. 639, 642 (1976)).
12. Glenn v. Farmland Foods, Inc., 344 N.W.2d 240, 243 (Iowa 1984).
13. *Id.* (quoting State v. Morrison, 323 N.W.2d 254, 256 (Iowa 1982)).
14. Rath v. Sholty, 199 N.W.2d 333, 336 (Iowa 1972).
15. IOWA R. APP. P. 4.
16. R. MARTINEAU, *supra* note 1, at 348.
17. Chariton Feed & Grain, Inc. v. Harder, 369 N.W.2d 777, 782 (Iowa 1985).
18. *Id.* at 782-83.
19. IOWA CONST. art. V, § 4.

Iowa are courts for the correction of errors at law.[20] The duty of appellate courts, therefore, is to determine and interpret the law. As such, it would be irrational to limit an appellate court's constitutional duty by giving deference to the trial court's determination or interpretation of the law. When a conflict arises over a question of law, the appellate court's decision must prevail. For this reason, the standard of review for appeals on questions of law must necessarily allow the appellate court great latitude in reaching its own determination.

C. *De Novo*

All cases tried in equity are reviewed "de novo" on appeal.[21] "In contrast to the action at law, the appeal in equity [is] not regarded as a new proceeding but as a removal to a higher court for retrial on the old record below . . . ."[22]

Iowa is one of the few states that has not abandoned the trial court distinction between cases "at law" and cases "in equity."[23] Consequently, Iowa is one of a handful of states retaining de novo review on appeal. Most states have adopted some form of the Federal Rules of Civil Procedure, which abandoned the law or equity distinction.[24] The Federal Rules no longer provide for de novo review since all cases are considered under uniform standards.[25]

Pure de novo review accords no deference to the findings of the trial court.[26] Iowa, however, does not practice a pure de novo standard. The Iowa appellate courts give some weight to the fact findings of the trial judge.[27] The reviewing court "first review[s] the grounds on which the trial court reached its decision, affirming if the decree can be supported on the basis relied upon by the trial court."[28] If the basis relied on by the trial court does not merit affirmance, the appellate court ascertains if there is any basis on which the decree may be affirmed. The decree will be affirmed "if there is a proper basis for the decree entered by the trial court, even though the reasons for affirming are different than those upon which the trial court relied."[29]

Though not pure de novo review, Iowa's de novo standard still accords

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20. *Id.*
21. IOWA R. APP. P. 4.
22. R. STERN, APPELLATE PRACTICE IN THE UNITED STATES § 1.2, at 4 (2d ed. 1989).
23. *Id.*
24. *See* FED. R. CIV. P. 52.
25. *Id.* Under rule 52, findings of fact in *all* cases tried to the bench are reviewed under the clearly erroneous standard—a standard less deferential than the substantial evidence standard, yet substantially more deferential than the de novo standard.
26. S. CHILDRESS & M. DAVIS, *supra* note 11, § 15.2, at 263.
27. IOWA R. APP. P. 14(f)(7).
28. Israel v. Farmers Mut. Ins. Ass'n, 339 N.W.2d 143, 146 (Iowa 1983).
29. *Id.*

very little deference. The appellate court is not bound by the trial court's findings of fact and retains the right to substitute its findings for those of the trial court.[30]

D. *Substantial Evidence to Support the Findings*

Review of a jury's findings of fact is guided by the "substantial evidence" standard.[31] Stated simply, a jury's findings of fact are binding on the reviewing court if those findings are supported by substantial evidence.[32] The substantial evidence standard does not require the reviewing court to find the findings of fact are supported by a preponderance of the evidence. It merely requires the existence of substantial evidence supporting the jury's conclusion.[33]

When applying the substantial evidence standard, the evidence is viewed in the light most favorable to the judgment.[34] Evidence that may support the claims of either party to the action is interpreted to be consistent with the trial court's judgment.[35] Obviously, this standard is very deferential to the trial court and exceedingly difficult for an appellant to overcome.

The deferential nature of the substantial evidence standard is derived from the importance historically accorded to the right to trial by a jury. This right, deemed so important that it is guaranteed by the Iowa Constitution,[36] places substantial emphasis on the premise that facts found by a jury should control the final outcome of a case. Therefore, jury findings are naturally given great deference on review.

E. *Carried Burden as a Matter of Law*

The Iowa appellate courts have formulated an even stricter standard of review for actions at law, tried to the bench rather than to a jury. The appellate courts generally interpret a bench trial verdict as a finding that the losing party failed to carry his or her burden of proof.[37] The Iowa Supreme Court's view is: "[W]hen the trial court following a bench trial denies recovery because a party has failed to sustain its burden of proof on an issue, we will not interfere unless we find the party carried its burden as a matter of

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30. IOWA R. APP. P. 14(f)(7).
31. IOWA R. APP. P. 14(f)(1).
32. Menzel v. Morse, 362 N.W.2d 465, 470 (Iowa 1985).
33. *Id.*
34. Whiteaker v. State, 382 N.W.2d 112, 114 (Iowa 1986).
35. *Id.*
36. The Iowa Constitution states: "The right to trial by jury shall remain inviolate; but the General Assembly may authorize trial by a jury of a less number than twelve men in inferior courts; but no person shall be deprived of life, liberty, or property, without due process of law." IOWA CONST. art. I, § 9.
37. Bebensee v. Ives, 409 N.W.2d 710, 712 (Iowa Ct. App. 1987).

law."[38]

The Iowa Court of Appeals has stated that "[an appellant's] burden is much greater than if a jury had been directed to find against him on the ground the evidence was insufficient and the [appellant on appeal was] contending that the evidence would support a recovery."[39] Under this strict standard, the appellant must present "overwhelming evidence in [her] favor that only one reasonable inference could be drawn" and the trial court drew the wrong one![40] In other words, the appellant must show that she met the requirements necessary for a directed verdict—that she was entitled to the judgment as a matter of law.[41]

III. Critique: Pitfalls (If Any) in Application

A. *Abuse of Discretion*

The only apparent problem in the application of the abuse of discretion standard is the discretion in the underlying decision. A trial court has no hard and fast rules to follow when making discretionary decisions.[42] The trial judge must use his best judgment, based on the facts and circumstances presented, to reach a decision equitable to the litigants.

To attain an equitable outcome, the abuse of discretion standard is applied in a somewhat bifurcated manner.[43] For example, a judge's discretionary decision to deny a new trial receives closer scrutiny by the reviewing court than does the judge's decision to grant a new trial.[44] Likewise, a judge's decision to deny a continuance receives closer scrutiny than a decision granting one. Further, a judge's refusal to set aside a default judgment receives closer scrutiny than a decision to set it aside.[45]

The ramifications of the trial judge's actions explain the need for this bifurcated application. When a trial judge exercises his discretion to foreclose any further relief to a party, that decision necessarily deserves closer attention on review. A decision foreclosing a party's options has a harsher effect on the losing party than does a decision merely making a litigant's goal more difficult to obtain. Closer scrutiny is therefore necessary to safeguard against the resulting hardship if the decision is made arbitrarily.

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38. Whiteaker v. State, 382 N.W.2d at 114.

39. Bebensee v. Ives, 409 N.W.2d at 712.

40. *Id.* (citing Wilson v. Forty-O-Four Grand Corp., 246 N.W.2d 922, 925 (Iowa 1976)).

41. Estate of Lawrence v. Harvey, 21 Iowa 305, ____, 100 N.W.2d 645, 648 (1960). Interestingly, the *Harvey* court stated: "The trial court's decision on the facts has the force and effect of a jury verdict." *Id.* If this were so, the appellate court should have applied the substantial evidence standard to the findings of fact and the correction of errors standard to the questions of law.

42. R. Martineau, *supra* note 1, at 347.

43. *See* Iowa R. App. P. 14(f)(4).

44. *Id.*

45. Rath v. Sholty, 199 N.W.2d 333, 336 (Iowa 1972) (citations omitted).

Trial judges are in the best position to make discretionary decisions. They have before them all the parties, facts, evidence, and other circumstances that must be taken into consideration to reach an informed decision. They are not limited to the written record. Trial judges must be able to act independently without the threat of being reversed on appeal merely because an appellate court would not have reached the same decision. The ability to make discretionary decisions enhances the timely and orderly administration of justice. Without the deferential treatment, trial courts could not adequately and effectively control the litigation before them.

The abuse of discretion standard utilized by the Iowa appellate courts is the best and most logical standard that can be applied when reviewing discretionary decisions. It allows the trial judges wide latitude in exercising their discretionary powers, yet addresses the dangers of abuse inherent in those powers.

B. *Correction of Errors of Law*

In Iowa the correction of errors standard is constitutionally mandated.[46] Because appellate courts are courts for correcting errors of law,[47] this is the only logical standard that can be applied when reviewing questions of law. A recurring issue involved in the correction of errors standard is the determination of what constitutes a question of law.[48] Sometimes the line between law and fact is not clear.[49]

Courts often face mixed questions of law and fact. One such instance arises in cases concerning "scope of employment." When determining whether an employee's actions are conducted within the scope of his employment, if the "evidence is in dispute or reasonable minds may differ on the inferences fairly drawn from the facts," the courts label the issue a question of fact.[50] "However, where the facts are not in dispute and different inferences could not be reasonably drawn therefrom it becomes a question of law . . . ."[51]

Negligence actions provide another example of mixed questions of law and fact. "Contributory negligence and proximate cause are questions of fact to be determined by a jury except where, under the entire record, contributory negligence is so palpable that reasonable minds may fairly reach no other conclusion and only then does it become a question of law."[52]

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46. IOWA CONST. art. V, § 4.
47. IOWA R. APP. P. 4.
48. R. MARTINEAU, *supra* note 1, at 348.
49. *Id.*
50. Hawk v. Jim Hawk Chevrolet-Buick, Inc., 282 N.W.2d 84, 87 (Iowa 1979) (quoting McClure v. Union, 188 N.W.2d 283, 284 (Iowa 1971)).
51. *Id.*
52. Boegel v. Morse, 251 Iowa 1253, ____, 104 N.W.2d 826, 828 (1960) (citations omitted).

Mixed questions of law and fact are treated as questions of fact unless the evidence presents a situation warranting a directed verdict or summary judgment.

C. *De Novo*

All cases tried in equity are reviewed de novo on appeal.[53] The de novo standard is a holdover from the early days of our judicial system. Its roots are firmly embedded in the common law.[54] Because de novo review is the least deferential of all the standards, it gives the reviewing court free rein to substitute its judgment for that of the trial judge. This substitution in judgment occurs even though the trial judge had the opportunity to hear all the testimony, observe the witnesses' demeanor, and judge the witnesses' credibility. The appellate court, limited to the trial record, is allowed to overturn a decision of the trial judge who was privy to all the circumstances surrounding the litigation, including circumstances that could not be made a part of the transcript.

Although attorneys are required to disclose in their petitions whether an action is "at law" or "in equity,"[55] this disclosure is not necessarily determinative. In cases in which the appropriate docket is not apparent, "[t]he decision whether [the] case should be heard in equity is discretionary with the trial court."[56]

The problem inherent in granting this discretion to the trial court is illustrated in the following hypothetical: The plaintiff files suit against the defendant for an accounting. In so doing, the plaintiff designates the suit as an equity action because the method of accounting is so complex that he feels a jury cannot understand the evidence sufficiently to render a fair and informed decision. The defendant promptly moves to have the action transferred from the equity docket to the law docket, arguing that the plaintiff has an adequate remedy at law and the material is not so complex that it would confuse a jury. Noting the question of complexity is close, the trial judge exercises his discretion and grants the defendant's motion to transfer. If the plaintiff appeals on this ground, the trial judge's decision to transfer the action from equity to law will not be disturbed by the appellate court's application of the abuse of discretion standard unless there is no evidence to support the judge's decision.[57]

Now suppose, at trial the jury returns a verdict for the plaintiff that is substantially less than that sought by the plaintiff and the plaintiff appeals the judgment. Because of the change in dockets from equity to law, on ap-

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53. Iowa R. App. P. 4.

54. R. Stern, *supra* note 22, at 4.

55. Iowa R. Civ. P. 70.

56. Kreamer v. College of Osteopathic Medicine & Surgery, 301 N.W.2d 698, 700 (Iowa 1981).

57. *See supra* notes 9-14 and accompanying text.

peal the plaintiff is confronted with the deferential substantial evidence standard with a miniscule likelihood of succeeding. Had the action remained on the equity docket, and the trial judge returned a similar verdict, the plaintiff would have enjoyed the nondeferential de novo standard on appeal, with a better chance of convincing the appellate court of the merits of his claim.

This inequity might not be as troublesome if there was a bright line between law and equity. But that is not the case in Iowa today. The standard of review for an appeal of a case that might arguably fall under either the law docket or the equity docket, should not be determined by the trial court's controverted ruling as to which docket should ultimately be utilized. As illustrated in the hypothetical, the trial court's discretionary decision on whether a case should be tried at law or in equity may be determinative of the likelihood of a successful appeal.

Another problem with the de novo standard is that it invites litigants to appeal as a matter of course. The litigant's chances on appeal are theoretically as good as his chances at the underlying trial. This open invitation to appeal burdens the appellate court's docket with cases that would not be before the court if the standard of review was more deferential.[58] De novo review merely transforms the trial court into a stepping stone on the pathway to the appellate court.

In equity cases, the reviewing court "gives weight to the fact findings of the trial court," but the court is not bound by them as it is in cases tried at law.[59] The sole basis for this nondeferential standard is the case was tried in equity rather than at law. The respect for and deference to the trial court's findings of fact are unexplainably diminished, merely because a case arises under equity.

D. *Substantial Evidence to Support the Findings*

In Iowa, the substantial evidence standard is restricted to review of findings of fact determined by a jury.[60] The problem with this standard is the interpretation of the term "substantial," which is susceptible to a qualitative as well as a quantitative definition. If defined in a purely qualitative sense, an appellee may have a large quantity of evidence to support his judgment, yet that evidence may not have the quality necessary to uphold the judgment on review. Likewise, if defined in a purely quantitative sense, an appellee may have a small amount of highly qualitative evidence supporting his judgment, yet lack the volume of evidence necessary to meet the

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58. The disproportionate number of domestic relations cases appealed is indicative of the problems presented by retaining de novo review. In 1988, the Iowa Court of Appeals disposed of a total of 499 civil cases. Of these 499 civil cases, 242 (over 48%) were domestic relations cases, and were reviewed de novo. 1988 IOWA SUP. CT. ANN. REP. 14, 25.

59. IOWA R. APP. P. 14(f)(7).

60. IOWA R. APP. P. 14(f)(1).

substantial evidence standard.

The United States Supreme Court has defined "substantial evidence" as "more than a scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."[61] This definition considers both the quantitative and qualitative meanings. Despite the aid of the United States Supreme Court, a truly predictable definition of "substantial evidence" remains elusive. One commentator has noted: "[J]udges as a matter of practical fact have a good deal of elbow room to vary the intensity of review as they deem necessary or desirable in particular cases."[62]

E. *Carried Burden as a Matter of Law*

At first glance, the carried burden as a matter of law standard of review simply appears to be another way of stating the substantial evidence standard. If the appellant carried his burden as a matter of law, there could not be substantial evidence to support an adverse decision. On closer analysis, however, the difference between the two standards is discernable. An appellant may be able to show there is not substantial evidence to support the findings of the trial court, yet be unable to show that he carried his burden of proof as a matter of law. This is so because the Iowa appellate courts have stated that "[i]n the absence of an admission by his adversary it is not often that one who has the burden on an issue establishes his claim as a matter of law."[63] Therefore, meeting the carried burden as a matter of law standard is almost impossible. Practically speaking, under the carried burden as a matter of law standard, to succeed on appeal the appellant must show that he was entitled to a directed verdict at trial.

Application of this standard sets up an all-or-nothing proposition because the appellate court is limited to reversing or affirming the decision of the trial court. The case cannot be remanded for further determinations, nor can a new trial be granted—either the appellant carried his burden or he did not. Thus, the appellate court looks at the case narrowly, considering only whether the evidence was "so conclusive as to compel recovery" for the appellant.[64]

By viewing the outcome of a case tried at law to the bench as a finding that the appealing party failed to carry his burden, the court ignores that all cases at law resulting in a defendant's verdict necessarily imply the plaintiff failed to carry his burden. This is true whether tried to the bench or to a jury. Yet, when tried to the jury, the appellate court does not interpret the verdict as holding the appellant failed to carry his burden. The appealing plaintiff must only show there is not substantial evidence to support the

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61. Consolidated Edison Co. v. NLRB, 305 U.S. 197, 229 (1938) (citations omitted).
62. 4 K. DAVIS, ADMINISTRATIVE LAW TREATISE § 29.01, at 118 (1958).
63. Ruble v. Carr, 244 Iowa 990, ____, 59 N.W.2d 228, 230 (1953) (citations omitted).
64. *Id.*

verdict. When tried to a jury, the plaintiff is not held to the stricter standard on appeal of showing "overwhelming evidence in [his] favor that only one reasonable inference could be drawn."[65] This distinction is elusive.

Under the present system in Iowa, a case tried at law to the bench is given as much deference on appeal as can be given. In comparison, the same judge hearing a case in equity is given very little deference on appeal under the de novo standard. Therefore, based solely on the docket in which the case arose, the judge's decision is reviewed under completely divergent standards. Again, this distinction is elusive.

One logical inference drawn from this distinction is that a judge sitting at law is less fallible than the same judge sitting in equity. The use of the carried burden as a matter of law standard implies that the aura of sitting in equity in some manner limits the judge's ability to reach a reasonable determination of the facts or a reasonable decision on the merits.

Under the carried burden as a matter of law standard, a trial judge hearing a case tried at law to the bench is accorded more deference on appeal than a jury case. Apparently, since the judge enjoys the role of both finder of fact and determiner of law, the trial judge is less likely to render an irrational or erroneous decision. The judge alone is held to be the hypothetical "reasonable person," but only when he is not sitting in equity.

As a matter of public policy, if the courts are interested in encouraging efficiency of time, money, and administration, they should consider applying standards of review promoting efficiency. Bench trials advance efficient administration of justice by saving both time and money. Time consuming tasks such as *voir dire* and other procedures unique to jury trials are eliminated. The expense of empanelling jurors is avoided. The burden on citizens called to serve as jurors is decreased.

Under the present system, however, the burden carried on appeal by one who waives his right to a jury trial effectively discourages litigants from electing the more efficient bench trial option available to them. A plaintiff is not likely to waive his right to a jury trial when, in the event of appeal, he will be confronted with the impossible task of demonstrating he carried his burden of proof as a matter of law.

IV. Proposals

A. *Distinctions Based on the Factfinder*

Little justification exists for maintaining an appellate review system with completely diverse standards based solely on whether a case arose at law or in equity, when the judge in each situation is the factfinder. If the critical question in deciding which standard of review applies turns on who is the ultimate finder of fact, a uniform standard should be applied regard-

65. Bebensee v. Ives, 409 N.W.2d 710, 712 (Iowa Ct. App. 1987) (citation omitted).

less of whether the case was tried at law or in equity.

If the appellate courts continue to apply the de novo standard for all equity cases, this standard should also be applied to cases at law tried to the bench. The illusory difference between cases tried at law to the bench and equity proceedings does not justify according minimal deference on review in equity and ultimate deference on review at law.

As a practical matter, the solution may be to apply the substantial evidence standard uniformly, regardless of whether a judge or a jury acts as the factfinder. Applying the substantial evidence standard in both instances would equitably settle questions of fact, both at law and in equity, without prejudicing either party. First, the appellant would still be required to show that the evidence presented at trial did not support the verdict. Second, no insurmountable burden would be placed on an appellant based solely on the identity of the factfinder.

B. *Distinctions Based on the Type of Case*

Equity cases enjoy the single, uniform de novo standard on appeal. Cases at law, however, are subject to the substantial evidence and correction of errors standards if tried to a jury or the carried burden as a matter of law standard if tried to the bench.

If the at law or in equity procedural distinctions are to be maintained in Iowa, each should be subject to a uniform standard regardless of whether the factfinder is a judge or jury. Cases tried at law to the bench should not be given any more deference than cases tried at law to a jury. Reviewing courts should apply the substantial evidence standard to the judges' findings of fact and the correction of errors standard to their determinations of law. Nothing would be lost by applying the substantial evidence and correction of errors standards to appeals from decisions in cases tried at law to the bench. The appellant would still face a difficult task on appeal without subjecting him to the improbable and unrealistic task of proving he was entitled to a directed verdict at trial. These standards are fair and equitable to the appellee, without placing the appellant in the impossible position of proving he carried his burden of proof as a matter of law.

V. Conclusion

The multiple standards of review currently used in Iowa confuse appellants, crowd dockets, and place insurmountable burdens in some litigants' paths. The carried burden as a matter of law standard currently used in cases tried at law to the bench should be abandoned and replaced by a more reasonable and realistic standard formulated to effect an equitable and attainable review.

Across the board application of the substantial evidence standard to all findings of fact, regardless of the identity of the factfinder or the type of case, would substantially alleviate the confusion, delay, and inequities pre-

sent in the current Iowa appellate system. The same may be said of a uniform application of the correction of errors standard if applied to all questions of law. Application of these two standards would adequately address the constitutional and statutory mandates regarding appellate review and at the same time provide an equitable review for all parties. Further, simplification of the current appellate review system would aid practicing attorneys by informing them of the applicable standard confronting them on appeal.

VI. Addendum

Since this Note was originally written, the Iowa Supreme Court has amended Iowa Rule of Appellate Procedure 14. The amendment requires attorneys filing appellate briefs to set forth the proper standard of review under each division of the brief.[66] This change magnifies the need for a simplified system of standards of review that can be readily ascertained by practicing attorneys.

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66. The following language was added to Iowa Rule of Appellate Procedure 14(a)(5):

> Each division of the argument shall begin with a discussion, citing relevant authority, concerning the scope or standard of appellate review (e.g., "on error," "abuse of discretion," "de novo") and shall state how the issue was preserved for review, with references to the places in the record where the issue was raised and decided.

Iowa R. App. P. 14(a)(5) (as amended June 29, 1990).