of stockholders.[37] In the recent case of *State ex rel. Weede v. Bechtel*,[38] a plan of reclassification was held invalid for the sole reason that it was inequitable to the preferred shareholders.[39] On the basis of this decision, the Iowa court should follow the New Jersey concept and refuse to uphold any scheme of reclassification or reorganization which is not fair and equitable.

Second, a remedy is provided by statute in many states for shareholders dissenting from the plan of reclassification or reorganization. Such statutes permit a dissenting shareholder to require the corporation to pay him, in cash, the fair appraisal value of his stock at the time of amendment,[40] or merger.[41] In Iowa, this remedy is provided only in the latter situation.[42]

Conclusion

The methods of recapitalization open to an Iowa corporation are limited. At the present time, an attempt to eliminate accumulated preferred dividends by a mere charter amendment would be declared invalid. A similar financial manipulation probably can be achieved by merging two corporations, or by issuing prior preferred stock. What cannot be done directly can be accomplished by a mere change of form.

In any recapitalization plan, the relative value of all classes of stock would have to be accounted for in issuing new shares. No class of stockholders would have to submit to an unfair scheme. In the case of a merger, any member of a dissenting minority could demand and receive, in cash, a fairly appraised value of his old shares. The methods available, though somewhat cumbersome, assure equitable consideration of all stockholders.

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[37] Hubbard v. Jones & Laughlin Steel Corp., 42 F. Supp. 432 (W.D. Pa. 1941). *Accord*: Western Foundry Co. v. Wicker, 403 Ill. 260, 85 N.E.2d 722 (1949); Franzblau v. Capital Securities Co., 2 N.J. Super. 517, 64 A.2d 644 (1949). *Cf.* Barrett v. Denver Tramway Corp., 146 F.2d 701 (3rd Cir. 1945); Porges v. Vadsco Sales Corp., 27 Del. Ch. 127, 32 A.2d 148 (1943). See Comment, 44 Ill. L. Rev. 389 (1949).

[38] 239 Iowa 1298, 31 N.W.2d 853 (1948).

[39] The net assets of the corporation were several million dollars less than the value of the preferred stock plus accumulated dividends, therefore the common stock was practically worthless. The plan called for a new issue of stock in exchange for all old issues, with the common shareholders being allowed to share with the preferred shareholders in approximately a one to six ratio. The court held that since the old common stock was worthless, the common shareholders should have no interest in the new issue.

[40] N.Y. Stock Corp. Law § 21; Ohio Gen. Code § 8623-15 (Pages, 1939).

[41] Del. Gen. Corp. Law § 61; N.Y. Stock Corp. Law § 87; Ohio Gen. Code § 72 (Pages, 1939). The appraisal remedy is provided in considerably more states for merger than for mere charter amendment. Note, 89 U. of Pa. L. Rev. 789 (1949).

[42] Iowa Code § 491.112 (1950). See Note, 34 Iowa L. Rev. 67 (1949).

DURATION OF RESTRICTIVE COVENANTS

In a 1948 decision of the Supreme Court of Pennsylvania,[1] the plaintiffs invoked a unique argument to support their contention that a restrictive covenant against the use of the property for commercial purposes should be enforced by injunction despite the fact that it was no longer necessary to preserve the residential character of the community because of changes in the condition of the neighborhood. The plaintiffs, trustees of an estate, had conveyed parts of an original tract of farm land by deeds, all of which contained similar restrictions confining the use of the land to residential purposes. A definite change in the predominant character of the neighborhood from residential to commercial had taken place by reason of the natural demands of concentrated population. The trustees claimed that the restrictions in the deeds still remained of value to them in that enforcement would enable them to retain control of the potential commercial uses of the land, which in turn would enhance the value of the remaining property. Therefore, they sought to enjoin a subsequent grantee of a restricted lot from erecting store buildings in violation of the restriction.

The Pennsylvania court, in denying the relief sought, held that the trustees could not avoid the effect of the rule that equity does not enforce long-continued business restrictions which have become useless from the standpoint of practical utility. The restrictions were intended to prevent intrusion of business pursuits in a residential district, and because of the predominant change in the character of the neighborhood, the enforcement of this intention would no longer practical.[2]

With the growth of cities, the determination of home owners to secure desirable surroundings led to the practice of limiting neighborhoods to development for residential purposes. Problems arise because of two conflicting desires: on the one hand, the desire of home owners to limit land to residential purposes; on the other, the abhorrencé of courts as a matter of public policy of restrictions on the future use and alienability of land. Each controversy must be decided on the equities of the particular case. The test to be applied is whether the conditions in the neighborhood have so predominantly changed as to render the purpose and intention of the restrictive covenants unnecessary from a practical point of view.

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[1] Price v. Anderson, 358 Pa. 209, 56 A.2d 215, 2 A.L.R.2d 593 (1948).

[2] *Cf.* Taylor Improvement Ass'n v. Detroit Trust Co., 283 Mich. 304, 278 N.W. 75 (1938); Barton v. Moline Properties, 121 Fla. 686, 164 So. 551, 103 A.L.R. 725 (1935); Brown v. Huber, 80 Ohio St. 183, 88 N.E. 322, 28 L.R.A. (N.S.) 705 (1909). See 4 POMEROY, EQUITY 3971, 3972 (4th ed. 1919).

The extent of the change in the neighborhood which will prevent enforcement of restrictive covenants presents a question which cannot be answered categorically. Minor changes do not effect a change in the neighborhood within the meaning of the rule.[3] Only where the restrictions have become a burden[4] because of the gradual encroachment of business activity and only where the intent of the planners to preserve the strictly residential character can no longer be accomplished, will equity refuse an injunction and leave the complainant to his remedy at law, if any.[5] In fact, equity may remove the restriction as a cloud on the title in such a case.[6] While an extreme change in the neighborhood surrounding restricted property will deter practically all American courts from granting injunctive relief,[7] an analysis of the cases discloses that equity will enforce restrictive covenants imposed for the benefit of the complainant's property, if they remain of substantial value, notwithstanding a resulting hardship to the servient estate.[8] The complainant must come into court with clean hands,[9] and must not have abandoned his intention. He must be guiltless of laches[10] or waiver or acquiescence.[11]

Dean Roscoe Pound offers the most logical explanation of the rule. "It is submitted that the sound course is to hold that when the purpose of the restriction can no longer be carried out, the servitude comes to an end, that the duration of the servitude is determined by its purpose. . . . When the original purpose can no longer be carried out, the same reasons that establish its existence are valid to establish its termination."[12]

It is submitted, however, that the prevailing doctrine of terminating restrictive covenants is at best unsatisfactory. Ameri-

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[3] Stewart v. Finkelstone, 206 Mass. 28, 92 N.E. 37, 138 Am. St. Rep. 370, 28 L.R.A. (N.S.) 634 (1910).

[4] Humpreys v. Ibach, 110 N.J.Eq. 647, 160 Atl. 531, 85 A.L.R. 980 (1932).

[5] Robinson v. Edgell, 47 W.Va. 157, 49 S.E. 1027 (1905); Jackson v. Stevenson, 156 Mass. 496, 31 N.E. 691, 32 Am. St. Rep. 476 (1892); Columbia College v. Thacker, 87 N.Y. 311, 41 Am. St. Rep. 365 (1882); 4 THOMPSON, REAL PROPERTY §§ 3361, 3468 (1924 ed.).

[6] Barton v. Moline Properties, 121 Fla. 686, 164 So. 551, 103 A.L.R. 725 (1935); Osius v. Barton, 109 Fla. 556, 147 So. 862, 88 A.L.R. 394 (1933).

[7] *Contra*: Reeves v. Comfort, 172 Ga. 331, 157 S.E. 629 (1931).

[8] Marra v. Aetna Construction Co., 15 Cal.2d 375, 101 P.2d 490 (1940); Taylor Avenue Improvement Ass'n v. Detroit Trust Co., 283 Mich. 304, 278 N.W. 75 (1938); Barton v. Moline Properties, 121 Fla. 686, 164 So. 551, 103 A.L.R. 725 (1935); Brown v. Huber, 80 Ohio St. 183, 88 N.E. 322, 28 L.R.A. (N.S.) 705 (1909); Zipp v. Barker, 55 N.Y.S. 246 (Sup. Ct., 1898); Rowland v. Miller, 139 N.Y. 93, 34 N.E. 765, 22 L.R.A. 182 (1893); 13 Boston U. L. Rev. 553 (1933); 18 Va. L. Rev. 439 (1932); 5 RESTATEMENT, PROPERTY § 564 (1944); 4 POMEROY, EQUITY 1701 (4th ed. 1919).

[9] Johnson v. Robertson, 156 Iowa 64, 135 N.W. 585, Ann. Cas. 1915B, 137 (1912).

[10] *Ibid.*

[11] Curtis v. Rubin, 244 Ill. 88, 91 N.E. 84, 135 Am. St. Rep. 307 (1910).

[12] Pound, *Progress of the Law—Equity*, 35 Harv. L. Rev. 813, 821 (1920). In McArthur v. Hood Rubber Co., 221 Mass. 372, 109 N.E. 162 (1915), the court took this view.

can courts seem inclined to strike a balance between the benefit to the complainant and the detriment to the defendant which would result from the enforcement of the restriction. This "balancing of equities" in granting or refusing an injunction has distinct social disadvantages as a general theory of property law since each case will depend generally on a particular judge's view of justice. While the better view is that the restrictive covenant of unspecified duration should be limited to such time as seems reasonable from the nature of the case,[13] the judge in each case will have an individual interpretation of "reasonable".

The General Assembly of Massachusetts recognized this difficulty first in 1887,[14] and enacted a statute which provided that conditions[15] or restrictions, unlimited as to time, should not continue beyond thirty years after their creation.[16] The effectiveness of the statute was seriously impaired because the courts confined it to restrictions of unlimited duration. It was held that the grantor could prolong the duration of the condition or restriction beyond the thirty-year period merely by expressly indicating its exact duration.[17]

Minnesota in 1927,[18] Michigan in 1936,[19] and Wisconsin in 1943[20] also attempted to place some limitations on the duration of restrictions. The difficulty in all three statutes is that their precise applicability is not clear,[21] and there has been a dearth of clarifying litigation. The legislation took a standard form, limiting land restrictions to the time during which they continued to be of substantial benefit to the persons who imposed them. A judicial determination is necessary to tell whether the condition is merely "nominal" or of "actual and substantial benefit", again leaving the question of when the condition has terminated to the courts.

Minnesota, however, has taken further steps to define specifically the potential duration of restrictions, and it is submitted that the legislatures of other states might well examine the present

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[13] Gardner v. Maffitt, 335 Mo. 959, 74 S.W.2d 604, 95 A.L.R. 452 (1934).

[14] Mass, Acts and Resolves, 1887, c. 418. MASS, GEN. LAWS c. 184, § 23 (Ter. Ed., 1932). In Snow v. Van Dam, 291 Mass. 477, 197 N.E. 224 (1935), it was held that the 30-year period began to run with the date of the registration of the conveyance.

[15] Conditions subsequent and special limitations as well as restrictive covenants are devices for controlling the use of land. On the distinction between them, see 1 RESTATEMENT, PROPERTY §§ 23, 24 (1936).

[16] Cf. Riverbank Improvement Co. v. Bancroft, 209 Mass. 217, 95 N.E. 216, 34 L.R.A. (N.S.) 730, Ann. Cas. 1912B, 450 (1911).

[17] Flynn v. Caplin, 234 Mass. 516, 520, 126 N.E. 776 (1920). See Goldstein, *Restrictions on Use of Land.* 54 Harv. L. Rev. 248, 255 (1940).

[18] MINN. STAT. § 8075 (Mason, 1927).

[19] 7 MICH. STAT. ANN. §§ 26, 46 (Henderson, 1936).

[20] WIS. STAT. § 230.46 (1943).

[21] Sioux City & St. P. R. Co. v. Singer, 49 Minn. 301, 307, 51 N.W. 905, 906 (1892); Johnson v. Warren, 74 Mich. 491, 42 N.W. 74 (1889).

Minnesota statute.[22] It applies the actual and substantial test to terminate conditions and also provides for a definite thirty-year period of duration for all restrictions. The statute provides:

Defeasable Estates.

(1) *Normal conditions and limitations.* When any conditions annexed to a grant, devise or conveyance of land are, or shall become, merely nominal and of no actual and substantial benefit to the party or parties to whom or in whose favor they are to be performed, they may be wholly disregarded; and a failure to perform the same shall in no case operate as a basis of forfeiture of the lands subject thereto.

(2) *Restrictions of duration of conditions.* All covenants, conditions, or restrictions hereafter created by any other means, by which the title or use of real property is affected, shall cease to be valid and operative 30 years after the date of the deed, or other instrument, or the date of the probate of the will, creating them, and after such period of time they may be wholly disregarded.

Minnesota has the most comprehensive statute limiting the duration of restrictive covenants and conditions. This legislation is, of course, designed primarily to further the policy of free transferability of land, unencumbered by out-dated restrictions. It prevents the whimsical tying-up of property at the point where the interest of society becomes superior to personal inclination. Further, if the interest is of great value to the grantor, it can always be created as a definite, though limited, estate.[23]

Iowa has no legislation of this type.[24] It seems probable that Iowa will follow the general rule as to the effect of a change of conditions on restrictive covenants.[25] Some legislative action

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22 MINN. STAT. ANN. § 500.20 (1945).

23 Clarke, *Limiting Land Restrictions.* 27 A.B.A.J. 737, 739 (1941).

24 In Iowa there is no statutory limitation on the potential duration of the possibility of reverter or the right of entry (See Swenson, *Possessory Estates and Future Interests in Iowa,* 36 Iowa Code Ann., 80, 118), except possibly in connection with conveyances and leases of agricultural lands where rent is reserved. IOWA CONSTITUTION, ART. I, § 24. Moreover, it is not believed that the merchantable title Statute of Limitations has applicability prior to breach of the condition. See IOWA CODE § 614.17 (1950), discussed in Iowa Land Title Examination Standards 52-53 (pamphlet: Iowa State Bar Association, 1950).

25 See Baker v. Smith, 47 N.W.2d 810 (Iowa, 1951) in which the court found there was no such substantial change in circumstances as would justify a refusal to enforce a restrictive covenant.

Only California has applied the doctrine of change of conditions to *conditions subsequent.* Letteau v. Ellis, 122 Cal. App. 484, 10 P.2d 496 (1932); Forman v. Hancock, 3 Cal. App.2d 291, 39 P.2d 249 (1934), approved in Walsh, *Conditional Estates and Covenants Running With the Land.* 14 N.Y.U.L.Q.Rev. 162, 191 (1937); Goldstein, *Rights of Entry and Possibilities of Reverter as Devices to Restrict the Use of Land,* 54 Harv. L. Rev. 248, 268 (1940). Also to the same effect is the rather strong statement in Koehler v. Rowland, 275 Mo. 573, 587, 205 S.W. 217, 221 (1918); *Contra,* Strong v. Shatto, 45 Cal. App. 29, 187 Pac. 159 (1919). See Stevens v. Galveston N. & S. A. Ry. Co., 212 S.W. 639, 645 (1919) (Comm. of App., Tex.). *Cf.* Gray v. Blanchard, 8 Pick. (Mass) 284 (1829).

should be taken in Iowa to define the duration of restrictions of the type here involved so as to avoid leaving the solution to the personal predilections of the particular judge and to clear titles of archaic encumbrances.