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CONTRACTS IN IOWA REVISITED—FRAUD AND MISREPRESENTATION, DURESS AND UNDUE INFLUENCE

RICHARD S. HUDSON*

Although the law permits a great deal of private autonomy and holds persons many times to transactions later regretted by them, there are many escape hatches. Attention was given in a prior article to some Iowa cases in which the cry of "mistake" was uttered, in which a party asked that a written document be reformed to conform to an alleged oral agreement, that an agreement be avoided, or that he not be held to have consented to a certain clause in a document about which he knew nothing.[1] As noted there, the cry did not always produce the desired result. The mental error referred to in that article was principally a mental error not induced by the actions or words of the other party to the transaction. Now some attention should be given to those cases where the party says: "I wouldn't have done it except that he misrepresented things to me, threatened me, and pressured me." The reference, by legal categories, is to fraud and misrepresentation, duress and undue influence.[2] These allegations may appear separately, but commonly the pleadings in this area paint with a broad brush, covering the whole range of topics.[3] An attempt is made here to collect the Iowa cases on these subjects decided since those collected in the publication *Iowa Annotations to the Restatement of Contracts*.[4]

*Professor of Law, Drake University Law School.

[1] Hudson, *Contracts in Iowa Revisited—Mistake*, 7(2) DRAKE L. REV. 3 (1958).

[2] These subjects are discussed extensively in WILLISTON, CONTRACTS (Rev. ed. 1937), referred to subsequently as WILLISTON. RESTATEMENT, CONTRACTS (1932), is referred to as RESTATEMENT. Pertinent sections under fraud and misrepresentation are: WILLISTON §§ 1486-1534; RESTATEMENT §§ 470-91; under duress and undue influence are: WILLISTON §§ 1601-27B; RESTATEMENT §§ 492-99. For other discussions see Ferson, *Fraud and Mistake in Contracts*, 25 U. CINC. L. REV. 296 (1956); Green, *Fraud, Undue Influence and Mental Incompetency*, 43 COLUM. L. REV. 176 (1943); Note, *Undue Influence in Intervivos Transactions*, 41 COLUM. L. REV. 707 (1941).

[3] The additional allegation of incompetency is often inserted, and may, in addition to being a possible independent basis for avoidance, color and strengthen the other allegations. No discussion of incapacity is attempted here. See RESTATEMENT § 18.

[4] This volume is subsequently referred to as IOWA ANNOTATIONS, and includes cases prior to 215 Iowa. There is no pretense that all the cases in which reference is made to these subjects have been collected. Particular note should be made that even though a case, as in note 9,

Misrepresentation has been the basis during this period for relief in various ways:[5] (1) an action for damages, assuming an

infra, is used to illustrate a point, no general collection of defenses of fraud in actions on insurance policies has been made.

[5] See particularly the discussion in PROSSER, TORTS § 86 (2d ed. 1955), referring to the various ways in which misrepresentation may be used in actions. As indicated by Prosser, at page 529, misrepresentation has also been used as a basis for what courts refer to as estoppel. For an example of such language, see Hully v. Aluminum Co. of America, 143 F. Supp. 508 (S.D. Iowa 1956), discussed in Hudson, *Contracts in Iowa Revisited—Mistake*, 7(2) DRAKE L. REV. 3, 12 n. 26 (1958), where the court held an insurance company liable to certain terms on theory of estoppel, because of misrepresentation of fact. In this writer's opinion the *Hully* case should have been treated as a case of reformation or as one for recovery on a promise supported by detrimental reliance (promissory estoppel). Also see Goodwin Tile & Brick Co. v. De Vries, 234 Iowa 566, 13 N.W.2d 310 (1944), in which the Court applied the doctrine of estoppel in favor of a person who paid money to a contractor upon the representation of a materialman as to the amount of a claim; the Court observed fraudulent intent was not necessary.

Simple assertion of fraud as defense is not enough, as illustrated in Poole v. Poole, 219 Iowa 70, 257 N.W. 305 (1934), where the husband, as a defense to an action on a settlement agreement entered into prior to divorce, asserted false representation by the wife that she had not committed adultery. The Court affirmed a directed verdict for the wife because the husband must either rescind and offer to return the property, or set up a counterclaim for damages, and the husband had done neither in his pleading. See RESTATEMENT § 480.

Miscellaneous cases involving claims of misrepresentation, not referred to in other places, are: Nissen v. Nissen, 241 Iowa 474, 39 N.W.2d (1949) (fraud by husband in confidential and fiduciary relationship with wife, in securing deeds to corporation controlled by husband of property jointly held with wife, by representations that documents were for corporation business); Shalla v. Shalla, 237 Iowa 752, 23 N.W.2d 814 (1946) (release of mortgage on real estate ignored in action to foreclose note and mortgage, in part on basis release was executed because of fraudulent statements by mortgagor that he had a buyer and was intending to sell the property); Gage v. Morris, 231 Iowa 689, 2 N.W.2d 63 (1942) (deed set aside for the reason it was not a free and voluntary act, where apparently made as a result of false representation that papers for placing grantor in an insane hospital and signed by another daughter were in existence); Doyle v. Dugan, 229 Iowa 724, 295 N.W. 128 (1940) (agreement for settlement for injuries to minor on job set aside in action for damages for personal injuries because of misrepresentation by employer as to his insurance coverage); Beardsley v. Clark, 229 Iowa 601, 294 N.W. 887 (1940) (action in equity to rescind purchase of popcorn business because of fraudulent representations maintainable against minor seller, who attempted to disaffirm; action is *ex delicto*, not *ex contractu*); Robinson v. Main, 227 Iowa 1195, 290 N.W. 539 (1940) (buyer of vending machine and products to be vended prevailed in action to rescind and recoup purchase price because of misrepresentation of agent, even though not authorized, of heat-resistance character of candy and of nature of surety bond furnished; tender of return of merchandise effective at place of delivery); Bowne v. Bonnifield, 226 Iowa 712, 285 N.W. 144 (1939) (claim by purchaser of bank stock that he thought, because of fraudulent representation, he was buying stock owned by different persons than the actual owner, not supported by record); Humphrey v. Baron, 223 Iowa 735, 273 N.W. 856 (1937) (action for damages sustained, against purchaser of corporate stock, for fraudulent representations as to value of corporate stock and as to net worth of company); Eckhardt v. Bankers Trust Co., 223 Iowa 471, 273 N.W. 347 (1937) (action in equity to cancel certain notes, surety agreement and trust instrument for alleged fraud; evidence not sufficient to meet standard of "clear, satisfactory and convincing"); Moore v. Farmers Mut. Fire & Lightning Ins. Ass'n, 221 Iowa 953, 266 N.W. 12 (1936) (fire insurance policy voided for failure to disclose existence of

affirmance of the agreement, as illustrated in *Hall v. Crow*,[6] where there were alleged fraudulent misrepresentations of yield of corn to obtain a signature to a contract for growing hybrid corn; (2) an action at law for restitution of value conferred, alleging rescission of contract, as illustrated in *Bales v. Massey*,[7] which permitted rescission of a contract for sale of a piano because of alleged misrepresentation that the piano was new; (3) a suit in equity to rescind a transaction, as illustrated in *Smith v. Miller*,[8] an equity action in which the Court decreed rescission and recovery of down payment on a contract for purchase of a house because of misrepresentation that the house was furnace-heated throughout; (4) asserting the defense to an action, at law or equity, by an adverse party, as illustrated in *Crandall v. Bankers Life Company*,[9]

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mortgage); Co-operative Sales Co. v. Van der Beek, 219 Iowa 974, 259 N.W. 586 (1935) (defense, to action for purchase price of hogs, that representation that hogs were doubly vaccinated was false, held not supported by evidence); Norman v. Bennett, 216 Iowa 181, 246 N.W. 361 (1933) (summary proceedings by client to obtain from his former attorney the proceeds of a cash bond because of alleged fraud in securing fee contract; trial court decision for defendant was approved, over dissent).

[6] 240 Iowa 81, 34 N.W.2d 195 (1949).

[7] 241 Iowa 1084, 43 N.W.2d 671 (1950).

[8] 225 Iowa 241, 280 N.W. 493 (1938) (also held principal may not hold on to benefits and repudiate fraud of agent). The equitable remedy for constructive trust may also be available, as illustrated in Rance v. Gaddis, 226 Iowa 531, 284 N.W. 468 (1939), where a grantee procured a deed to property by various misrepresentations, including deceiving an intervenor as to his love for her and promising to hold property as trustee, when he obviously had no intention to do so. See note 29, *infra*, for another case where a promise with an intent not to perform was held to be a fraud. A constructive trust was not ordered in England v. England, 243 Iowa 274, 51 N.W.2d 437 (1952), the Court observing, *inter alia*, that a subsequent refusal to perform an oral agreement for partnership was not sufficient to establish fraud in absence of proof of intent at time of agreement not to perform it further; *accord:* Newell v. Tweed, 241 Iowa 90, 40 N.W.2d 20 (1949) (refusal to hold property in trust did not support fraud and constructive trust).

[9] 245 Iowa 540, 62 N.W.2d 169 (1954). It has been held that a cross-petition, in answer to a suit at law upon a contract, to cancel the contract for alleged fraud, did not entitle the defendants to an order transferring the fraud issue to the equity calendar; Poole v. Poole, 221 Iowa 1073, 265 N.W. 653 (1936) (suit at law upon property settlement from divorce action defended in part by claim of fraud in representing she had not committed adultery); Randolph v. State Farm Mut. Automobile Ins. Co., 216 Iowa 1414, 250 N.W. 639 (1933) (suit on county manager contract against defendant insurance company); Beeman v. Bankers Life Co., 215 Iowa 1163, 247 N.W. 637 (1933) (action to recover double indemnity on a life insurance policy, with defense that reinstatement of policy was procured through fraudulent representations). Also, where the chattel mortgagee had pending a replevin action against mortgagor for property, mortgagor may not move to have case transferred to equity with assertion of defenses of no consideration or fraud, because these may be pleaded in the replevin action. McDonald v. Johnston, 218 Iowa 1352, 256 N.W. 676 (1935). See also the provision of IOWA R.C.P. 167, providing for change of venue where action is brought on a contract in the county where the contract by its express terms is to be performed, when the defendant resides in a different county. Where sworn answer alleging fraud in the inception constituted a complete defense, under the statutory antecedent of this rule, venue was changed to the county of defendant's residence. Iowa Guarantee Mortgage Corp. v. Allen, 217 Iowa 1112, 253 N.W. 43 (1934).

in which the defense of fraud in the application for a life insurance policy was asserted as defense to a law action on the policy. Requirements for relief may vary, however, depending on the manner in which relief is being sought.

A difference in the type of relief sought may have an effect on the degree of proof of misrepresentation necessary. It has been stated, as in *Kilts v. Read*,[10] an action to set aside a settlement between claimants to an estate, where relief was denied, that fraud is not presumed and that there must be more than a preponderance of evidence; the evidence must be clear, satisfactory, and convincing. In law actions, however, it has been held that fraud need be proved only by a preponderance of the evidence. This was announced both in actions for damages, as in *Lungren v. Lamoni Provision Company*,[11] an action for damages for misrepresentation in sale of stock, and in a defense of avoidance in a law action, as in *Crandall v. Bankers Life Company*[12] a defense of fraud in securing insurance. This writer finds it difficult to understand why the facts supporting a claim of avoidance, which is essentially equitable because of its origin, in spite of developments permitting its use in a law action, should be subjected to the requirement of clear, satisfactory and convincing evidence before a judge who is presumably more competent and experienced at weighing evidence, while requiring only a preponderance before a jury. Further perplexing, then, is the recent Iowa case, *Falkner v. Collins*,[13] a suit in equity on a note and mortgage, in which the defendant counter-claimed for damages for alleged fraud in misrepresentation of property sold to the defendants. On demand of the defendants the trial court, affirmed by the Supreme Court, granted a jury trial on the fraud issue, pointing out this was a law action counter-claim. This attitude is different than the one referred to above where the Court considered only the nature of the plaintiff's action and not the essential nature of the defense when the equitable defense of avoidance was asserted to a law action.

An intent to deceive, knowledge of falsity, or some equivalent, commonly referred to as scienter, has been stated, in the prevailing view, to be a requirement of an action for damages, the common-

[10] 216 Iowa 356, 249 N.W. 157 (1933); *accord:* Johanik v. Des Moines Drug Co., 240 Iowa 310, 36 N.W.2d 370 (1949) (insufficient evidence of fraud to set aside settlement between joint adventurers); Dallas Real Estate Co. v. Groves, 228 Iowa 1232, 289 N.W. 900 (1940) (defendant's answer of compromise settlement succeeded against suit on notes because of insufficiency of evidence [more than preponderance needed] of alleged fraud by debtor in concealment of assets; issue of fraud was transferred on motion of plaintiff to equity side); Goff v. Milliron, 221 Iowa 998, 266 N.W. 526 (1936) (claim of fraud, raised in mortgage foreclosure action by one who signed extension agreement, failed because not clear, satisfactory and convincing evidence).

[11] 248 Iowa 887, 82 N.W.2d 755 (1957).

[12] 245 Iowa 540, 62 N.W.2d 169 (1954); *accord:* Tobin, Tobin & Tobin v. Budd, 217 Iowa 904, 251 N.W. 720 (1934) (defense of fraud to action on a note).

[13] 249 Iowa 1141, 91 N.W.2d 545 (1958).

law action for deceit,[14] which may be used when the contract is affirmed. When the relief requested is essentially rescission, and restitution, be it in equity or law, scienter should not be a part of the requirements. Honest misrepresentation should be enough.[15] This was pointed up in *Pickford v. Smith*[16] where the maker of notes, having originally brought an action in replevin for notes allegedly obtained by fraud, was allowed to amend his petition and transfer to equity[17] because there was no need in equity to establish scienter. Several Iowa cases during this period, involving equity action, repeating the phrase that scienter is needed to constitute fraud, should be considered with caution and should not be considered as requiring scienter in the ordinary action of rescission and restitution.[18] For instance, in *Carey v. Drake*,[19] an equity action by a grantor to set aside a deed for fraud, the Court listed scienter as one of the elements of fraud, quoting from *Hootman v. Beatty*.[20] In the *Carey* case the Court found all of the elements of fraud present, reversing a trial court; there is nothing there to indicate the deed would not have been set aside for honest misrepresentation. *Hootman v. Beatty* simply listed scienter as one of the elements of fraud in applying provisions of the Iowa Code[21] that in

[14] PROSSER, TORTS § 88 (2d ed. 1955). A tort action for negligent misrepresentation should theoretically be available, and has been supported in a few states. Apparently there are no cases definitely supporting such an action in Iowa, although the requirement of scienter in fraud and deceit actions has been stretched to include cases of asserting something as the truth when one has no knowledge it is true, which is more like a negligent misrepresentation case. See Hayward, *Negligent Misrepresentation and the Iowa Requirement of Scienter in Fraud*, 36 IOWA L. REV. 648 (1951). In this connection, see American Universal Ins. Co. v. Sherfe Ins. Agency, 135 F. Supp. 407 (S.D. Iowa 1951), in which the court directed a verdict for the plaintiff insurance companies in action for damages against an insurance agency for alleged fraudulent representations as to number of fires a prospective insured had had. As against the defense merely that defendants did not know of other fires, but under circumstances where, when asked, they had asserted he had only one fire, the court states there may be recovery for negligent representations in an action for fraudulent representations.

[15] McCLINTOCK, EQUITY § 80 (2d ed. 1948); PROSSER, TORTS § 86, commencing at p. 524 (2d ed. 1955); RESTATEMENT § 476; WILLISTON § 1500.

[16] 215 Iowa 1080, 247 N.W. 256 (1932).

[17] See, however, cases in note 9, *supra*, where the Court held that where an action at law had been commenced, a cross-petition in defense to cancel for fraud did not entitle defendants to have the case transferred to equity.

[18] IOWA ANNOTATIONS § 476-II-A indicates that prior cases refused to allow relief at law for innocent misrepresentation whether the injured party elected to affirm and sue for damages or attempted to avoid the transaction.

[19] 241 Iowa 1340, 44 N.W.2d 357 (1950).

[20] 228 Iowa 591, 293 N.W. 32 (1940).

[21] IOWA CODE § 614.4 (1958). This statute has been interpreted so that the period begins to run from the time when the fraud might, by use of ordinary diligence, have been discovered. Clingerman v. Koehler, 247 Iowa 105, 73 N.W.2d 185 (1955) (suit to reform deed from vendor so as to vest fee simple title in plaintiff instead of giving life estate to sons; plaintiff succeeded in action; conduct of sons in procuring nonconforming deed from vendor was fraud; there was active concealment

actions for fraud the cause of action shall not be deemed to have accrued until the fraud shall have been discovered; this was discussed in connection with an action to recover on a note and mortgage and an attempt to avoid the statute of limitations by alleging fraud in a statement by one defendant that he would pay the instruments. There was no discussion of scienter in particular; in fact the proper answer is there was no fraud because it was only a promise as to the future, a subject to be discussed below. In *Kilts v. Read*,[22] an unsuccessful attempt to set aside a settlement between claimants to an estate, for alleged fraud and misrepresentation, headnote 1 of the official report lists knowledge of falsity as a necessary element of setting aside the settlement for fraud, and at one place in the opinion[23] the Court refers to the burden to prove that the representations were fraudulent and untrue and so known to be by defendants, but the discussion of the evidence by the Court refers only to a conclusion that there was an insufficiency of evidence that the statements *were made* or that plaintiff *relied*. In *Equitable Life Insurance Company of Iowa v. Mann*,[24] an action to cancel a life insurance policy because of fraud in the application, there is a reference to the fact there was no intent to deceive, but the Court was referring to a section of the Iowa Code[25] which estops an insurance company from setting up a health condition when there is a medical certificate except for "fraud or deceit" in procuring the insurance.

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by sons and reasonable prudence did not call for inquiry by plaintiff); Hay v. Denver Sav. Bank, 229 Iowa 634, 295 N.W. 176 (1940) (action to rescind and cancel an assignment of a note and mortgage held barred, Court also thought there were laches and waiver); Buhman v. Ottrogge, 229 Iowa 449, 249 N.W. 788 (1940). This section does not apply to actions at law for damages, but in those cases another rule may be applied that when a party against whom a cause of action has existed in favor of another has by concealment prevented the other party from obtaining knowledge thereof, then the statute of limitations, such as IOWA CODE § 614.1(5) (1958), does not commence to run until the cause of action is discovered or might have been discovered with reasonable diligence. Cole v. Hartford Acc. & Ind. Co., 242 Iowa 416, 46 N.W.2d 811 (1951) (action against insurance company, in part for alleged fraudulent representation by agent of coverage of burglary insurance policy; Court reversed and directed verdict for defendant, finding no concealment; Court concluded that mere silence was not fraudulent concealment unless a fiduciary relationship was shown to exist but that there was no fiduciary relationship here); Higbee v. Walsh, 229 Iowa 408, 294 N.W. 597 (1941) (action for damages for fraud and deceit in making false representations as to amount received in selling property from a joint investment; Court concluded no affirmative act to conceal fraud was necessary to prevent statute of limitations running, because of relationship of trust and confidence, and fiduciary duty to speak the truth); Smith v. Middle States Util. Co., 224 Iowa 151, 275 N.W. 158 (1938) (action at law for damages growing out of sale of stock by alleged fraudulent representations; reversed for defendant because of improper instructions). See Note, *Representations Reasonably Relied Upon as Against Actual Active Concealment in Tolling the Statute of Limitations*, 22 IOWA L. REV. 704 (1937).

[22] 216 Iowa 356, 249 N.W. 157 (1933). The headnotes in the Northwestern Reporter do not refer to this element of knowledge of falsity.

[23] *Id.* at 365, 249 N.W. at 161.

[24] 233 Iowa 293, 7 N.W.2d 566 (1943).

[25] IOWA CODE § 511.31 (1958).

One stated requirement for relief for misrepresentation, either in equity or in law, has been that there must be a misrepresentation [26] of present fact as opposed to opinions, or to promises of future action.[27] It is especially difficult to distinguish between fact and opinion, that is, between an absolute assertion of the truth and a mere expression of belief in truth, even assuming that an opinion is not itself a fact. The *Restatement of Contracts* treats an opinion as a fact, but then states an opinion will not be a basis for fraud or misrepresentation except in limited situations such as where the opinion is given by one who has or purports to have expert knowledge, or by one whose manifestation is intentional and varies so far from the truth that no reasonable man could have such an opinion.[28] Several Iowa cases during this period illustrate the difficulties of decision. In *Lamasters v. Springer*[29] the Court, as against a motion for a directed verdict, affirmed a jury finding for plaintiff in a suit for damages for fraud and deceit in being induced to enter into an agency agreement, and to put up a cash bond for it. The Court agreed that mere failure to perform a promise in the future is not fraud,[30] but pointed out that the state of a man's mind is a fact,[31] and that there was evidence sufficient to go to the jury that the defendant had no intention to perform promises to spend a certain amount for advertising, which would then constitute fraud; there was also a misrepresentation as to the number of existing franchised agents. It was for the jury to determine whether these representations were of fact or opinion. In *Rowe*

[26] An active concealment, and, under some limited circumstances, silence, may have the same effect as a false statement. WILLISTON §§1497-99; MCCLINTOCK, EQUITY § 83 (2d ed. 1948); RESTATEMENT § 472; PROSSER, TORTS § 87 (2d ed. 1955). Failure to disclose may be actionable, particularly if there is what is described as a fiduciary relationship. This has been referred to in several Iowa cases during this period. Gord v. Iowana Farms Milk Co., 245 Iowa 1, 60 N.W.2d 820 (1953) (Court found fiduciary relationship of director to a stockholder, and failure to comply with duty of fairness in not disclosing value of stock and diluting effect of issuing new shares; plaintiff was permitted to obtain preemptive rights to shares although he previously had waived such rights); Bakke v. Bakke, 242 Iowa 612, 47 N.W.2d 813 (1951) (no fraud from failure to disclose to brother terms of father's will; no fiduciary capacity simply because sister had filed will of mother and had not yet been appointed administratrix at time of settlement agreement); *In re* Estate of Tabasinsky, 228 Iowa 1102, 293 N.W. 578 (1940) (Obligee of a surety bond held under no duty to make disclosure to prospective surety [in probate] in absence of inquiry by him, unless a fit opportunity is afforded); Tobin, Tobin & Tobin v. Budd, 217 Iowa 904, 251 N.W. 720 (1933) (defendant who borrowed money from lawyer for creditor to pay off creditor may not complain lawyer did not disclose all items of relationship with creditor); and cases with reference to dealings of officers of a corporation with the corporation or its stockholders, collected in Hayes, *Iowa Corporations and Partnerships: 1942-1952*, 38 IOWA L. REV. 462, 474 (1953).

[27] MCCLINTOCK, EQUITY § 82 (2d ed. 1948); PROSSER, TORTS § 90 (2d ed. 1955).

[28] RESTATEMENT §§ 470 comment b, 474 comments *a,b,c,d*.

[29] ___ Iowa ...., ... N.W.2d .... (No. 49832, opinion filed November 17, 1959).

[30] See other cases on this in note 8, *supra*.

[31] RESTATEMENT § 473.

Manufacturing Company v. Curtis-Straub Company,[32] involving sale of novelty boxes, where the defendant set up fraud in answer to a suit for the purchase price, the Court held that statements made to the buyer that he would have no trouble in selling were only promises as to the future and not fraud, but that statements the boxes were merchantable and saleable were for the jury as to being fact or opinion. In *K. O. Lee & Son Company v. Sunalberg,*[33] as to a counter-claim for damages for lost commissions, it was held that fraud could be predicated on a statement by a seller to a buyer of binder twine that the sales policy for the coming year would be a price below that of a competitor, on the theory that there was a question of fact involved that the company had worked out a certain sales program. In *Colver v. Continental Assurance Company,*[34] an opinion, characterized by the Court as an opinion of the law given by an adjuster who allegedly falsely represented to a beneficiary widow that the life insurance policy was not valid because of false representation by the insured when the evidence indicated the adjuster knew the statements made by the insured were not made with intent to deceive,[35] was considered to be a basis for a finding of fraud by a jury so as to upset a compromise agreement signed by the widow, for the reason the adjuster held himself out as skilled in the law of insurance. This is an example of the idea expressed in the *Restatement of Contracts* referred to above that an opinion given by an expert may be the basis for a fraud claim.[36] A federal court case, *First Acceptance Corporation v. Kennedy,*[37] is perhaps the most startling example of the difficulties in this field. This was an action by the assignee of a conditional sales contract for air conditioning equipment to keep onions in a safe condition, which was met by a defense of fraud in procurement, based on statements allegedly made by a representative of the seller, an air conditioning engineer who was an expert, that the installation he proposed would do the job [keep onions in a safe condition] and that he had the right answer [to the problem

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[32] 223 Iowa 858, 273 N.W. 897 (1937).

[33] 227 Iowa 1375, 291 N.W. 146 (1940).

[34] 220 Iowa 407, 262 N.W. 791 (1935). An independent reason for upsetting the compromise agreement was that there was no consideration for the compromise, for the reason (not clearly articulated in the opinion) that there was no good faith dispute. See Hudson, *Doctrine of Consideration in Iowa Revisited—Discharge or Modification of Duties,* 5 DRAKE L. REV. 3 (1955). Vande Stouwe v. Bankers Life Co., 218 Iowa 182, 254 N.W. 790 (1934), involving a similar compromise agreement of cancellation of a life insurance policy, though with the insured, was distinguished by the writer of the *Colver* opinion because there the insured was alive and knew whether he had made false statements. The *Vande Stouwe* opinion, however, merely states there was no evidence the statements by the adjuster were false.

[35] See note 25, *supra,* for statutory reference to need for showing intent to defraud before life insurance policy may be cancelled, in certain instances.

[36] RESTATEMENT § 474. See IOWA ANNOTATIONS § 474-E; WILLISTON § 1495.

[37] 95 F. Supp. 861 (N.D. Iowa 1951), *reversed,* 194 F.2d 819 (8th Cir. 1952).

of keeping onions in a safe condition]. The trial court permitted the defense to go to the jury on all matters including whether these statements were fact or opinion. The jury found for the defendant-buyer.[38] The appellate court held that a directed verdict should have been granted, that these statements were not statements of fact but merely opinions of future performance.[39] Two observations occur. First, the court is very extreme, in view of the Iowa cases referred to above and in view of the facts of this case, in stating in effect, no reasonable person could believe these were positive assertions of the truth of the capability of the machines.[40] Second, even if the statements are considered as merely expressions of belief, the court could well have given some attention to the possibility suggested in *Restatement of Contracts* section 474 and in *Colver v. Continental Assurance Company*, above, that the manifestation of an expert, even if an opinion, could be considered at least as a material misrepresentation and grounds for avoidance of the agreement.

Although reliance[41] is a necessary element of actionable misrepresentation, in addition it has sometimes been broadly stated

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[38] The usual exhaustive opinion of Judge Graven discussed many other problems, such as: what the essential nature of defendant's defense was, whether in recoupment or rescission; and if rescission whether offer to rescind must have been made; whether scienter was required; whether there was a waiver in conduct by continuing to use equipment; that fraud would vitiate clause of agreement which purported to bind buyer not to assert any claim against assignee which he might have had against the seller.

[39] 194 F.2d 819 (8th Cir. 1952).

[40] The court states the evidence was not of the clear, satisfactory and convincing charter referred to in Hall v. Crow, 240 Iowa 81, 34 N.W.2d 195 (1949). This was a suit in tort for fraud and deceit, referred to in text accompanying note 6, *supra*, in which the defendant complained of instructions which were confusing, one placing on plaintiff the burden of proving fraud by a preponderance of the evidence and the other stating fraud must be proved by evidence clear, satisfactory and convincing. The Iowa Court found no error, stating that the instruction about "clear, satisfactory and convincing" referred to character or nature of evidence and not to degree of preponderance; that the trial court was saying in effect that to preponderate there must be clear, satisfactory and convincing evidence, which relates not to quantum of proof but to kind of evidence necessary to preponderate. This writer finds it difficult to understand what is this assumed distinction between quantum of proof and character of evidence. Also the Court observed that if there was a conflict the defendant could not complain because it placed an additional burden on plaintiff. The side reference to "clear, satisfy and convincing" in Hall v. Crow was not necessary to that decision, has not been mentioned in other opinions as to damages by the Iowa Court in this period, and is of slight support for the statement in the opinion of the court of appeal. This is particularly so because, in Iowa, in a law action, fraud whether viewed as a defense of avoidance or as an action for damages has been subject to a requirement only of a preponderance of the evidence. See discussion in the text and notes 10-13, *supra*.

[41] There is always, of course, the factual question whether the party actually relied on the statements. See Tobin, Tobin & Tobin v. Budd, 217 Iowa 904, 251 N.W. 720 (1934), in which one of the defenses to an action on a note was misrepresentation of the value of Florida land. The Court in the opinion seems to have doubt such a representation was made, but mostly the Court was not convinced that, if made, such

that this reliance must be reasonable, both in belief as to truth and in taking action (materiality), before relief may be granted.[42] The *Restatement of Contracts* refers to both fraud and material misrepresentation as bases for avoidance.[43] Fraud, although defined in the *Restatement of Contracts* to require knowledge of falsity, is not defined in terms to include reasonable reliance, but includes misrepresentations by any person intending or expecting to cause a mistake by another to exist or to continue, in order to induce the latter to enter into or to refrain from entering into a transaction.[44] Material misrepresentation is defined to include misrepresentations likely to affect the conduct of a reasonable man, thus incorporating a requirement of reasonable reliance.[45] The *Restatement of Torts,* concerning an action for damages, states that recovery is allowable only if reliance is justifiable and material.[46]

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statements had anything to do with persuading the others to act in view of their superior knowledge.

Additionally there must be damage or injury proved in a deceit action for damages. PROSSER, TORTS § 91 (2d ed. 1955); Brickman v. Toriello, 242 Iowa 677, 46 N.W.2d 565 (1951) (in action against doctor for alleged fraudulent representation as to sterility after operation, Court held for defendant for reason that although plaintiff, in reliance on statements, may have married, she was living with her husband in complete matrimonial harmony and no damage was proved). This requirement should not apply to an action that is essentially restitution. RESTATEMENT § 476 comment c; IOWA ANNOTATIONS § 476-III-B. However, see Gipp v. Lynch, 226 Iowa 1020, 285 N.W. 659 (1939), an action, to recover retainer fees paid to an attorney to represent plaintiff in a criminal trial, based upon allegations of misrepresentation by the attorney that plaintiff's insurance company was not interested in defending him in a criminal charge arising out of an automobile accident. The action was in two counts. One was under what is now IOWA CODE § 610.15 (1958), providing in part for treble damages to an injured party against an attorney who is guilty of deceit with intent to deceive a party to an action. The second was on the theory of unjust enrichment. A directed verdict for defendant was affirmed on both counts because there was no showing of damage, no showing of obligation by the insurance company to this attorney to defend in the criminal case, the Court citing Plagmann v. Bray, 193 Iowa 917, 188 N.W. 150 (1922). The *Plagmann* case had proceeded on a tort theory for damages; no mention was made of a theory of restitution for unjust enrichment.

Cases relating to measure of damages in a tort action are: Neal v. Miller, 225 Iowa 252, 280 N.W. 499 (1938); Smith v. Middle States Utilities Co., 224 Iowa 151, 275 N.W. 158 (1937). See PROSSER, TORTS § 91 (2d ed. 1955).

[42] WILLISTON §§ 1515-16A; MCCLINTOCK, EQUITY § 81 (2d ed. 1948); PROSSER, TORTS § 89 (2d ed. 1955). See City of Pella v. Fowler, 215 Iowa 90, 244 N.W. 734 (1932) (statute of limitations barred suit on alleged franchise to operate telephone system in spite of alleged deliberately false representation that the company had never agreed to an ordinance granting the franchise, because of absence of diligence to discover if it had been accepted).

[43] RESTATEMENT § 476.

[44] RESTATEMENT § 471. See RESTATEMENT, RESTITUTION §§ 8, 28 (1937).

[45] RESTATEMENT § 470.

[46] RESTATEMENT, TORTS §§ 537-38, 540 (1938). PROSSER, TORTS § 89 (2d ed. 1955), states the preferred view is that where there is intent to mislead, the recipient of the representation is not required to investigate and reliance is regarded as unjustified only if truth should be apparent to his observation or discoverable without effort.

Iowa cases during this period are in confusion.[47] In *Wead v. Ganzhorn,*[48] involving an attempt to defend against an action on a note, given in payment of shares of stock in a business college, because of alleged fraudulent misrepresentation as to assets of the college, the Court affirmed a refusal to permit such defense on the theory that the defendant as instructor and stockholder in the college had as much opportunity to know the facts as the seller, and had no "right to rely". This should be contrasted with *Andrew v. Baird,*[49] an action by a receiver of a bank to set aside a settlement agreement allegedly obtained by fraudulent representations by a debtor as to insolvency. The Court thought, in affirming the trial court, there could be reliance even though there was other access to the information. The Court attempted to distinguish the *Wead* case, on the basis that the parties there were closely connected with the business. Such a distinction seems too thin unless the Court is actually exercising a judgment that there was actually no reliance in one case but that there was in the other, and not deciding on the basis of care of the party relying. *McTee & Company v. Ryder,*[50] in which the Court reversed the trial court, permitted a defense of fraud as to cost of publishing advertising matter as against a motion for directed verdict based on grounds that the misrepresentations concerning cost of publishing were so unreasonable that a reasonable man would not have relied on them; the opinion stated this argument was not available "as we have many times decided."[51] In *Horton v. Reynolds,*[52] a federal court case, the court refused rescission of a land contract for claimed fraud as to Texas land because there was an individual investigation, and the buyers had no right to rely upon the representations. There is in this opinion some indication of belief there was actually no reliance but the court placed its opinion squarely upon the "no right to rely" rule.

Negligence has also been used as a defense to assertion of fraud in cases that are concerned with lack of understanding of terms in a written document to which a party has manifested his general

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[47] Apparently the prior Iowa cases are also in conflict. See IOWA ANNOTATIONS §§ 476-III-D, 475-II, III. Section 475 itself is concerned with negligence as it affects the void character of consent to a transaction; the void character, as opposed to mere voidability, is important as against bona fide purchasers. The IOWA ANNOTATIONS, however, go beyond this and refer to the cases where negligence precluded even voidability between the parties.

[48] 216 Iowa 478, 249 N.W. 271 (1933). Apparently there were some statements the defendants knew were false.

[49] 221 Iowa 83, 265 N.W. 170 (1936).

[50] 221 Iowa 407, 265 N.W. 636 (1936). The headnote to the official report adds a phrase not in the opinion: "The credulity of humankind remains unmeasured."

[51] The Court cited: Sutton v. Greiner, 177 Iowa 532, 159 N.W. 268 (1916); Shores-Mueller Co. v. Knox, 160 Iowa 340, 141 N.W. 948 (1913); Hamilton v. Augustine, 145 Iowa 246, 212 N. W. 373 (1909); and Riley v. Bell, 120 Iowa 618, 95 N.W. 170 (1903). See the reference in note 47, *supra,* indicating the confusion in prior cases.

[52] 65 F.2d 430 (8th Cir. 1933), reversing a decision of the district court for the Northern District of Iowa.

assent. The general argument that a person who has manifested consent to a document he knows to be a contract is bound by all the terms that appear thereon whether he reads them or not has been met by the argument there has been misrepresentation of the contents of the instrument which has been met in rebuttal by an argument as to negligence in not reading the document. Several Iowa cases during this period with diverse results were discussed in a prior article, to which reference is made to avoid needless repetition.[53]

Duress is also a basis for avoidance, being based on threats of various types.[54] Several Iowa cases during this period involve this allegation. In *Guttenfelden v. Iebsen*[55] the Court, reversing the trial court, found for the plaintiff in an action to cancel a note and mortgage because of duress in obtaining them by threatening criminal prosecution for alleged illegal relations with defendant's wife; the Court observed the duress was applicable whether the party was guilty or not.[56] Reluctantly entering into a compromise agreement as to a decedent's estate was held not to be duress in *In re Dayton's Estate*.[57] In *Utley v. Boone*,[58] a quiet title action against a defaulting contract purchaser of real estate, the Court found no duress in the purchaser's allegation he took a lease in place of a contract because he feared being removed from the land and was ill; the Court concluded there was insufficient evidence (clear, satisfactory and convincing) the transaction was not voluntary.

There remain the cases involving undue influence, in which the allegations in actions to set aside many inter-vivos transactions, mostly gifts of real estate, but some involving contracts, contain catch-all claims of "I wouldn't have done this except for unfair persuasion." Courts have apparently refused to be bound by definitions, thus perhaps inviting attack on and court surveillance of many transactions under the broad charge of unfair persuasion.[59] Section 497 of the *Restatement of Contracts* states:

> Where one party is under the domination of another or by virtue of the relation between them is justified in assuming that the other will not act in a manner inconsistent with his welfare, a transaction, induced by unfair persuasion of the latter, is induced by undue influence, and is voidable.

Comment c to that section then observes that the degree of persuasion that is unfair depends upon the circumstances and that

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53 Hudson, *Contracts in Iowa Revisited—Mistake*, 7(2) DRAKE L. REV. 3, 20 (1958). See also the discussion at page 9 of the cited articles of cases in which negligence is stated as one objection to granting reformation of a written agreement.

54 See WILLISTON §§ 1601-24; RESTATEMENT §§ 492-96.

55 222 Iowa 1116, 270 N.W. 900 (1937).

56 See WILLISTON §§ 1612-16.

57 246 Iowa 1209, 71 N.W.2d 429 (1955).

58 230 Iowa 979, 299 N.W. 437 (1941).

59 See Note, *Undue Influence in Intervivos Transactions*, 41 COLUM. L. REV. 707 (1941).

the ultimate question is whether the result was produced on the one hand by influencing a freely exercised and competent judgment or by dominating the mind. Also Section 498 of the *Restatement* states a rule that as between a fiduciary and his beneficiary the transaction is voidable unless fair and reasonable, and is assented to with knowledge of all relevant facts. The principles applied are too vague and the results too dependent on varying fact patterns to justify extensive reference to the Iowa cases in this area.[60] However, a few general observations might properly be made. Iowa cases during this period have continued the position apparently expressed in prior cases[61] of treating the confidential relationship situation covered by section 497 of the *Restatement* the same as the fiduciary relationship referred to in section 498, in that the cases have stated that if a confidential relationship is shown, one of dependence or trust and confidence, there is a presumption

[60] Miscellaneous cases involving allegations of undue influence, not otherwise referred to, are: *In re* Hewitt's Estate, 245 Iowa 369, 62 N.W.2d 198 (1954) (no clear, satisfactory and convincing evidence of confidential relationship so as to impose constructive trust on property deeded from father to son); McGaffie v. McGaffie, 244 Iowa 879, 56 N.W.2d 36, 58 N.W.2d 357 (1953) (plaintiff sued son and daughter-in-law for accounting and return of property of business; reversed, for plaintiff; whether called fiduciary or confidential relationship, because of unfair dealing plaintiff is entitled to have transfer set aside); Olssen v. Pierson, 237 Iowa 1342, 25 N.W.2d 357 (1946) (fact grantee subsequently became guardian does not show confidential relationship at time of deed); Orr v. Graybill, 237 Iowa 628, 23 N.W.2d 414 (1946) (used as defense to action for specific performance; affirmed for plaintiff); Booth v. Mann, 234 Iowa 675, 13 N.W.2d 701 (1944) (action in equity to cancel a deed for various reasons, including undue influence, was sustained; other bases include that it would be inequitable and unreasonable); Dibel v. Meredith, 233 Iowa 545, 10 N.W.2d 28 (1943) (aunt transferred property to nephew; reversed, against grantee); Boyles v. Cara, 232 Iowa 822, 6 N.W.2d 401 (1942), previous opinion in 300 N.W. 281 (1941) (affirmed decree cancelling deed from plaintiff's deceased husband to defendant; burden of establishing fraud and undue influence successfully carried and defendant did not show transaction was fair in all respects); Gruber v. Palmer, 230 Iowa 587, 298 N.W. 926 (1941) (deed to widow upheld over objection of daughter by prior marriage); Sinco v. Kirkwood, 228 Iowa 1020, 291 N.W. 873 (1940) (set aside deed to adopted daughter's sister; confidential relationship, so must show good faith and fairness); Stout v. Vesely, 228 Iowa 155, 290 N.W. 116 (1940) (deed from father to son set aside); Tiernan v. Fitzgerald, 227 Iowa 1152, 290 N.W. 53 (1940) (deed from mother to daughter set aside; Court refers to fact that unfortunately family fights are frequent); Tedemandson v. Morris, 227 Iowa 774, 289 N.W. 1 (1939); Lawson v. Boo, 227 Iowa 100, 287 N.W. 282 (1939) (deeds to children of second wife upheld); Robbins v. Daniel, 226 Iowa 678, 284 N.W. 793 (1939) (deed to son upheld); Mastain v. Butschy, 224 Iowa 68, 276 N.W. 79 (1937) (no confidential relationship; grantee prevailed as against disinherited daughter); Craig v. Craig, 222 Iowa 783, 269 N.W. 743 (1937) (in absence of relationship of trust and confidence, must show undue influence by clear, satisfactory and convincing evidence); Marsh v. Hanna, 219 Iowa 682, 259 N.W. 225 (1935) (deed set aside for mental condition, advantage taken, fiduciary relationship).

[61] See IOWA ANNOTATIONS §§ 497-I, III, IV, V, 498.

of undue influence,[62] sometimes called constructive fraud. The cases have also emphasized fairness and reasonableness as an independent requirement even in the confidential relationship cases as well as in the fiduciary relationship cases.[63] If a confidential or fiduciary relationship is shown, it is then necessary to assume the burden of proving no unfair persuasion, that the action of the party was clearly a voluntary one, and perhaps that it was fair and reasonable.[64] Although certain relationships are sometimes treated

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[62] Kramer v. Leinbaugh, 219 Iowa 604, 259 N.W. 20 (1935); Ennor v. Hinsch, 219 Iowa 1076, 260 N.W. 26 (1935) (reversed for plaintiff in action to set aside deeds from son to daughter-in-law). The early case most often cited is Curtis v. Armogast, 158 Iowa 507, 138 N.W. 873 (1912).

[63] Thomas v. Strauss, 247 Iowa 660, 75 N.W.2d 268 (1956). This was a suit by an administrator and heirs to set aside a contract (to convey real property in exchange for an agreement to pay so much per month), and a deed for fraud, undue influence, and mental incompetency. The trial court's decision for defendants was affirmed. In its opinion the Court states, 247 Iowa at 665, 75 N.W.2d at 271: "There is no evidence of any influence having been brought to bear on decedent. . . . We now reach what may fairly be called plaintiff's real reliance—the issue of constructive fraud growing out of alleged abuse of fiduciary, or at least confidential, relationship. The law recognizes there is a difference between 'fiduciary' and 'confidential' relations. But the two are often loosely used interchangeably by both lawyers and judges. Once the fact of relationship is established there is probably no important reason for the distinction." See also Sours v. Calvin, 244 Iowa 40, 55 N.W.2d 462 (1952), a suit by vendor to set aside a real estate contract on grounds of undue influence, breach of confidential relationship and plaintiff's weakened condition. Decree for plaintiff was affirmed. The Court pointed out, 244 Iowa at 46, 55 N.W.2d at 465: "Confidential relationship is not restricted to any particular association of persons. It exists wherever there is trust and confidence, regardless of origin. . . . The relationship between the parties, while not directly indicating any particular dependence of plaintiff upon defendant in business matters, nevertheless was such as to establish confidence and reliance tending to preclude any transaction between them at arms length. . . . We must conclude the burden is on defendant to show the entire fairness of the transaction. . . . Courts have been careful not to limit by definition the area of equitable power to cancel contracts where the parties are unequal in situation and the fact has operated to the advantage of the dominant person." Other cases are: Salem v. Salem, 245 Iowa 62, 60 N.W.2d 772 (1953) (refers to necessity, where confidential relationship, to show fairness, etc.); Daniels v. Fackler, 244 Iowa 1163, 58 N.W.2d 309 (1953) (in action to quiet title because of alleged abuse of confidential relationshop, to set aside a deed, escrow and agreement whereunder grantees promised to pay for rental and care, the Court observed that where there is a confidential relationship the burden of upholding "fairness" is on grantee); Woolwine v. Bryant, 244 Iowa 66, 54 N.W.2d 759 (1952) (burden of upholding transaction, as to its fairness, rests upon the grantee). Merritt v. Easterly, 226 Iowa 514, 284 N.W. 397 (1939), however, refers merely to the necessity of showing grantor acted with freedom, intelligence and full knowledge of the facts.

[64] In *In re* Estate of Lundvall, 242 Iowa 430, 46 N.W.2d 535 (1951), the Court directed the administratrix of her husband's estate to account for proceeds of a United States Savings Bond which she, before his death, had induced him to change to a joint-ownership form. The Court found a confidential relationship, and concluded also that the burden on the dominant party is more than a burden of going forward, it is a burden of proof to *affirmatively* establish that no advantage was taken and that the subservient one acted voluntarily, with freedom and intelligence. Woolwine v. Bryant, 244 Iowa 66, 54 N.W.2d 759 (1952), Daniels v. Fackler, 244 Iowa 1163, 58 N.W.2d 309 (1953), and Laufert

as confidential relationships, it should be noted there is no presumption of confidential relationship, even for example in such relationship as parent and child, and such confidential relationship must be affirmatively established.[65] It has been held that the presence of such a confidential relationship must itself be proved by evidence that is "clear, satisfactory and convincing."[66]

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v. Wegner, 245 Iowa 472, 62 N.W.2d 759 (1954), state the proof to overcome the presumption must be "clear and convincing," "clear, satisfactory and convincing."

[65] *In re* Sterling's Estate, 249 Iowa 1260, 92 N.W.2d 138 (1958) (brother to brother); Groves v. Groves, 248 Iowa 682, 82 N.W.2d 124 (1957) (deed by mother to son, not set aside); Stephenson v. Stephenson, 247 Iowa 785, 74 N.W.2d 679 (1956) (father to children); Else v. Fremont Methodist Church, 247 Iowa 127, 73 N.W.2d 50 (1955) (clergyman-parishioner relationship; trial court which set aside deed to church reversed); Knigge v. Dencker, 246 Iowa 1387, 72 N.W.2d 494 (1955) (grandparent to granddaughter—no showing of confidential relationship in which grantee played dominant part); Wagner v. Wagner, 242 Iowa 480, 49 N.W.2d 508 (1951) (no showing of confidential relationship between father and sons so as to require proof by them to sustain instruments); Leonard v. Leonard, 234 Iowa 421, 12 N.W.2d 899 (1944) (deed from father to son upheld); O'Brien v. Stoneman, 227 Iowa 389, 288 N.W. 447 (1939) (stepmother and stepson); Ennor v. Hirsch, 219 Iowa 1076, 260 N.W. 26 (1935) (deed to son and daughter-in-law set aside, by reversal in Supreme Court); Kramer v. Leinbaugh, 219 Iowa 604, 259 N.W. 80 (1935) (deed by father to two sons in consideration for money to pay alimony, etc.; no confidential relationship found; trial court's holding for grantees affirmed).

[66] Else v. Fremont Methodist Church, 247 Iowa 127, 73 N.W.2d 50 (1955) (clergyman-parishioner relationship).

SCHOOL REORGANIZATION IN IOWA

In its past few sessions, the General Assembly of Iowa has passed much legislation aimed at facilitating school reorganization in Iowa. However, many voters oppose reorganization, some because they anticipate an increased tax burden and others because they do not want their children to travel long distances to attend school; still others feel that the education their children receive is not as good in a large school. As borne out by supreme court decisions and newspaper articles, the two sides have drawn sharp battle lines and heated controversies have arisen over the interpretation of the reorganization laws.

Prior to 1953 the reorganization procedure was obscure, but in that year the Fifty-fifth General Assembly repealed and then re-enacted Chapter 275 of the Code of Iowa in an attempt to define its objectives and lay out an orderly procedure.[1] Since that year, three general assemblies have met, numerous court decisions have been handed down, and two law review articles have been written.[2] The purposes of this article are to explain the present procedure of reorganization and of appealing from actions taken, to comment upon the legislative changes and supreme court decisions since 1953, and to discuss certain problems which still remain.

I. THE PROCEDURE

Proposing the plan to be voted on. The first step is the initiation of a survey by the county board of education to study the county reorganization problem.[3] Each county makes its own survey. The survey may cover territory in adjacent counties.[4] The scope of the survey is to include adequacy of the present educational program, average daily pupil attendance, property valuations, existing buildings and equipment, natural community areas, road conditions, transportation, economic factors, and other matters which may have a bearing upon the county's reorganization.[5] There must be at least three hundred pupils in a proposed new district, with one exception.[6] In making the survey studies,

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[1] The determination of the legislature to reorganize school districts is most emphatically found in the first sentence of section 275.1: "It is hereby declared to be the policy of this state to encourage the reorganization of school districts . . ."

[2] *Some Aspects of the 1953 School Reorganization Law,* 3 DRAKE L. REV. 57 (1954); and Davis, *Reorganization of Iowa School Districts,* 39 IOWA LAW REV. 570 (1954).

[3] IOWA CODE § 275.1 (1958).

[4] IOWA CODE § 275.8 (1958).

[5] IOWA CODE § 275.2 (1958).

[6] IOWA CODE § 275.3 (1958). The exception is that the State Superintendent of Public Instruction may grant permission to the county board to form a plan in which a proposed area contains less than 300 pupils if the county board so requests. This request must be "accompanied by evidence tending to show that sparsity of population, natural barriers or other good reason makes it impractical to meet said school population requirement."