of the intruder's presence. Second, when the owner or occupier gives his consent to the entrance of other people upon his land, he may place any terms or conditions he wishes upon that consent. Third, one should not be allowed to invite another into a place which is likely to cause injury to the person so invited.

RICHARD E. RAMSAY (June 1961)

ENFORCEMENT OF RESTRICTIVE COVENANTS IN IOWA

The United States is in the midst of a great population expansion. New additions and subdivisions are being platted as the cities expand to meet the housing needs created by the increased population. Many of these subdivisions are "restricted additions", the developers inserting restrictive covenants in the deeds to lots in these additions to make their purchase more attractive.

Today the cities are caught in the trap of "urban blight" as many people move to the new subdivisions and the older neighborhoods are encroached upon by commercial development and multiple dwelling use. Many of these old established neighborhoods came into existence as platted subdivisions, and the lots were conveyed with restrictive covenants upon them. These may no longer serve the purpose for which they were intended, or may stand to shield the area from engulfment.

In either new area or old, restrictive covenants limiting the use of land primarily in the form of building restrictions, are of increasing importance today. This article is undertaken in an attempt to analyze from past decisions what the Iowa Court's position is in enforcing restrictive covenants on real estate. It attempts to interpret what the court feels a restrictive covenant is, how it is created, how it should be interpreted, what the defenses against its enforcement are, and how it should be enforced.

I. THEORY OF RESTRICTIVE COVENANTS

The Iowa Court has adopted a theory which treats a restrictive covenant "as creating an equitable property interest in the burdened land, and as an appurtenance to the benefited land."[1] Most frequently these equitable servitudes are created by restrictive covenants placed by subdividers in deeds conveying lots in a restricted subdivision as a part of a general plan for the protection of the subdivision.[2] It is not necessary that the same restrictions

[1] Thodos v. Shirk, 248 Iowa 172, 79 N.W.2d 733 (1956).
[2] Grange v. Korff, 248 Iowa 118, 79 N.W.2d 743 (1956); 2 DEVLIN, REAL ESTATE § 990e (3d. ed. 1911).

be placed in all deeds so long as the plan of creating a uniform subdivision is apparent.[3] The Iowa Court has held that there is no distinction between restrictions which are a part of a general plan and personal transaction cases in which the use of one or more lots is restricted for the benefit of one or more lots.[4] Although these deeds are usually signed only by the grantor, the acceptance of the deed by the grantee binds him as much as if he had signed as well.[5] The end purpose of restrictive covenants relating to building restrictions is the protection of property values so as to increase the desirability of the benefited land.

If the restrictive covenant touches and concerns the land, and tends necessarily to enhance the land's value or render it more beneficial to the owner for the use contemplated, it is a covenant running with the land.[6] Where prior conveyances in the chain of title show restrictive covenants, subsequent grantees are bound by them if they have notice, though the covenants are omitted from their deeds.[7] Constructive notice as provided by the recording acts is sufficient notice,[8] or it is sufficient notice if the tract is a publicly and notoriously platted restricted area.[9] One who takes land with notice, actual or constructive, of a restriction upon it, will not in equity be permitted to violate the terms of the restriction. This is the doctrine of equitable notice described in *Tulk v. Moxhay*,[10] and adopted by the Iowa Court in *Thodos v. Shirk*.[11]

When restrictive covenants as to the purposes for which land may be used are created by placing them in deeds conveying lots in a subdivision, these restrictions extend to the benefit of all the grantees, and each grantee may, in equity, enforce these restrictions against all the other grantees.[12] The restrictions may have formed a part of the inducement to each purchaser, and he may have paid more because of their benefit. The buyer is willing to submit to a burden upon his land because a like burden is imposed on his neighbor's lot. The covenant or agreement between the grantor and grantee is therefore mutual as it forms a part of the original consideration.[13] A breach of the restrictive covenants

[3] Thodos v. Shirk, 248 Iowa 172, 79 N.W.2d 733 (1956); Grange v. Korff, 248 Iowa 118, 79 N.W.2d 743 (1956).

[4] Baker v. Smith, 242 Iowa 606, 47 N.W.2d 810 (1951).

[5] Thodos v. Shirk, 248 Iowa 172, 79 N.W.2d 733 (1956).

[6] *Ibid.*; Sexauer v. Wilson, 136 Iowa 357, 113 N.W. 941 (1907); Peden v. Chicago, R.I. & P. Ry, 73 Iowa 328, 35 N.W. 424 (1887).

[7] Burgess v. Magarian, 214 Iowa 694, 243 N.W. 356 (1932); Hegna v. Peters, 199 Iowa 259, 201 N.W. 803 (1925).

[8] Thodos v. Shirk, 248 Iowa 172, 79 N.W.2d 733 (1956); Grange v. Korff, 248 Iowa 118, 79 N.W.2d 743 (1956).

[9] Shuler v. Independent Sand & Gravel Co., 203 Iowa 134, 209 N.W. 731 (1927).

[10] 2 Phil. 774, 41 Eng. Rep. 1143 (1848).

[11] 248 Iowa 172, 79 N.W.2d 733 (1956).

[12] Grange v. Korff, 248 Iowa 118, 79 N.W.2d 743 (1956); Hegna v. Peters, 199 Iowa 259, 201 N.W. 803 (1925); Iowa Improvement Co. v. Aetna Explosives Co., 186 Iowa 1186, 165 N.W. 408 (1917); 2 DEVLIN, REAL ESTATE § 990e (3d ed. 1911); Annot., 89 A.L.R. 812 (1934).

[13] Annot., 21 A.L.R. 1281 (1922).

may be restrained by the grantees or their successors in interest for whose benefit the restrictions were created. Under some circumstances a tenant of one of the parties may also enforce the restriction.[14]

Each grantee is a beneficial owner of the right of enforcement.[15] The equitable rights which have attached to the land to enforce the restrictions against other lots can not be destroyed as to purchasers of the lots by the subsequent acts of the common grantor. Having created the equitable right to enforce the restrictive covenants, the grantor can not thereafter discharge or effect the restrictions or the right of enforcement by the grantees. The Iowa Court treated this problem in *Hegna v. Peters*,[16] where a tract of land had been subdivided and lots sold with restrictive covenants. The grantor subsequently sold without restrictions several lots upon which the grantee intended to erect buildings which were in violation of the restrictive covenants placed on the other lots in the tract. The Court held that the common grantor, having created the restrictions by the covenants in the deeds, had conclusively established that it was his intent and plan to make the tract a restricted area, not only for his own benefit, but for the benefit of the grantees of the lots in the tract. This being so, he could not unilaterally thereafter release the restrictions.

II. CREATION & INTERPRETATION—INTENTION OF THE PARTIES

In *Thodos v. Shirk*,[17] the Iowa Court stated that courts of equity will enforce restrictive covenants "where the intention of the parties is clear in creating them and the restrictions are reasonable." The Court further stated that if, by a general plan, it was the intention to mutually benefit the land conveyed, and this actuated both the grantors and grantees, the restrictive covenants run with the land. The test for whether the restrictive covenants runs with the land is this intent to impose a servitude upon the land, as distinguished from a personal promise of the present owner. The Court also stated that the one seeking to enforce the equitable servitude as appurtenant to his land has the burden of proving the intention of the original parties to the agreement.

The intent of the parties is also looked to by the Court in enforcing and construing the conditions or restrictions. The Court held in *Melson v. Ormsby* that it is important to determine the object and purpose intended, in order to ascertain whether en-

[14] Johnson v. Robertson, 156 Iowa 64, 135 N.W. 585 (1912) (owners of all lots in a block fronting on a street in downtown Des Moines mutually covenanted not to erect any structure on the north four feet of their lots and to construct a sidewalk thereon; lessee of successor of one of the parties to the covenant was allowed to enforce the restriction against another party thereto).

[15] PATTON, TITLES § 350 (1938).

[16] 199 Iowa 259, 201 N.W. 803 (1925).

[17] 248 Iowa 172, 79 N.W.2d 733 (1956).

forcement would accomplish them, or, if it would accomplish them, whether they have now been abandoned.[18] Before a strict literal performance of the restrictions will be exacted, this must affirmatively appear to be necessary to effectuate the intent of the parties in making the restrictions. Where their intent has been accomplished by a substantial compliance with the restrictions, it will satisfy the requirements. It is thus necessary to look beyond the restrictive covenants themselves, to the parties, the subject matter, the conditions that existed, the surrounding area, and the plan and purpose intended to be accomplished in order that the intent of the parties may be ascertained.

Several Iowa cases have been concerned with interpretation of specific phrases in restrictive covenants. *Curtis v. Schmidt* held that a restrictive covenant against "buildings" is to be construed in accordance with the intention of the parties. To effectuate the purpose of the restriction intended, the word "building" can mean any structure which obstructs the view.[19] *Baker v. Smith* held that the phrase in a restrictive covenant "for residential purposes only" does not restrict use to single family dwellings, but allows multiple dwelling use and apartment buildings.[20] The *Baker* case would seem not to follow the court's previous comments as to the importance of the intention of the parties. It appears doubtful that a restriction in a "high-class restricted addition" of single family homes such as was before the court in the *Baker* case, was intended to allow multiple dwellings, let alone apartment buildings.[21]

It might be noted at this point that the cases reveal numerous instances where restrictive covenants are expressed in terms of dwellings to be constructed at a cost of not less than a certain dollar amount. Many of the higher priced additions of fifty years ago were restricted to dwellings to cost not less than $5,000. In light of today's inflation it can readily be seen how ineffective any restriction to a dollar amount may prove to be in the future to effectuate the original intent.

III. ENFORCEMENT

In *Beck v. Heckman*[22] the Iowa Court adopted a strict approach to the enforcement of restrictive covenants. The court stated:

> It is wholly aside from the point to say that the enforcement of such covenant works a hardship to the appellant, or is unreasonable or inequitable as is urged

[18] 169 Iowa 522, 151 N.W. 817 (1915). See also Grange v. Korff, 248 Iowa 118, 79 N.W.2d 743 (1956); 26 C.J.S. *Deeds* § 163 (1956).

[19] 212 Iowa 1279, 237 N.W. 463 (1931). Land was sold with a restrictive covenant against erecting buildings on a portion of the land conveyed. The grantee erected on the restricted portion a large derrick and a structure used to separate sand and gravel. The Court affirmed a permanent injunction against violation of the restriction.

[20] 242 Iowa 606, 47 N.W.2d 810 (1951).

[21] The Court's position in the *Baker* case, *ibid.*, was well supported by authority cited in its decision.

[22] 140 Iowa 351, 118 N.W. 510 (1908).

> in argument. Under the decree of the district court, the appellant gets everything he purchased or bargained for. He was under no compulsion to make the purchase, and, if the ownership of this acre of ground seemed sufficiently desirable to induce him to agree to the terms demanded and to accept a deed containing the restriction, it is neither unjust nor inequitable that he be required to observe its limitations.
>
> It is not a question whether the appellee really needs the right or easement which he claims or whether he may discontinue its use without serious detriment to his remaining land. He reserved or excepted from the conveyance to appellant the right to thus use and occupy the strip in question, and the court will protect his right thereto without stopping to consider whether such right has any substantial money value.

In subsequent cases the court has retreated from this strict position. *Van Duyn v. Chase & Co.*[23], just two years after the *Beck* case, adopted a new approach. The court stated:

> Moreover, it is not to be overlooked that the law favors the utmost freedom in dealing with real property. It is recognized as an article of commerce. As new wants develop, and business increases and expands, the uses to which devoted are constantly changing. To tie up realty with restrictions and prohibitions, where the fee is conveyed, is opposed to the settled business policy of the country; and for this reason, in construing deeds containing restrictions and prohibitions as to the use, doubts are to be resolved in favor of the free use of the property.

Two years later, following this new liberal approach, *Johnson v. Robertson*[24] held that restrictive covenants would be enforced only where there is such a showing as in good conscience entitles the plaintiff to enforcement. Enforcement of restrictive covenants is largely a matter for the sound discretion of the court, and if enforcement will subject the defendant to great hardship, or the consequences would be inequitable, relief will not be granted. The Court further stated, however, that mere pecuinary loss to the defendant resulting from specific performance of a restrictive covenant will not prevent a court of equity from enforcing it.

Subsequently in *Melson v. Ormsby*[25] the Court cited authority to the effect that an injunction to restrain a violation of restrictive covenants is granted almost as a matter of course, and whether the owner of the benefited land has suffered damage of pecuniary loss is wholly immaterial; the moment a court finds that there has been a violation of the covenants, that is an injury, and the court has no right to measure it, or refuse the injunction. The Iowa Court *did not* adopt this approach, however, but took the position that it should look to the spirit of the contract rather than to its exact letter to effectuate the intention of the parties.

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[23] 149 Iowa 222, 128 N.W. 300 (1910).
[24] 156 Iowa 64, 135 N.W. 585 (1912).
[25] 169 Iowa 522, 151 N.W. 817 (1915).

It further took the position that it would not strictly enforce restrictive covenants against one who has substantially performed them, and in so doing has effectuated the purpose intended to be accomplished. The Court stated that in construing the instrument creating the restrictions, the restrictive covenants would be construed strongly against the party seeking to enforce their performance, and any doubts would be resolved in favor of the one against whom they are sought to be enforced. The Court again stated that specific performance of a building restriction covenant rests largely in the sound discretion of the court, and that relief will be denied if the one against whom enforcement is sought will be subjected to greater hardship, or if the consequences of enforcement would be inequitable; but pecuniary loss alone will not itself prevent enforcement.

In *Grange v. Korff*[26] any remaining doubts as to the Court's position were dispelled. The Court stated that while mere pecuniary loss from the enforcement of restrictive covenants will not prevent a court of equity from enforcing the restrictions, their specific performance is not a matter of absolute right. The enforcement of restrictive covenants rests in the sound discretion of the court and "if a defendant will be subject to great hardship or the consequences would be inequitable, relief will be denied".

Among other considerations in enforcement of restrictive covenants are the effect of zoning ordinances, the type of neighborhood involved, and whether the covenant has been discharged or extinguished. The rule in *Burgess v. Magarian*[27] is that restrictive covenants are not abrogated or displaced by restrictions contained in a zoning ordinance, if the provision in the ordinance is less restrictive than that in the restrictive covenant; *i.e.*, if the zoning ordinance allows commercial use but the restrictive covenants on the same land limit it to dwelling use only, then the restrictive covenants continue to control.[28] In the *Burgess* case, however, the Iowa Court had before it an ordinance which specifically disclaimed any effect on restrictive covenants. The Court held that there was no intention to void restrictive covenants and, therefore, they were not affected. However, it would seem clear from the Court's language that even if a zoning ordinance purported to affect restrictive covenants making them less restrictive, the restrictive covenants would still control.

The Iowa Court has looked to the character of the neighborhood both to sustain restrictive covenants, and as a test for their extinguishment. In one case[29] in sustaining and strictly construing restrictive covenants the Court pointed out that the purpose of the platting of the addition was to make it a "selective, restricted

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[26] 248 Iowa 118, 79 N.W.2d 743 (1956).
[27] 214 Iowa 694, 243 N.W. 356 (1932).
[28] Equally, the opposite would seem to be true as well; *i.e.*, that if the zoning ordinance were more strict, then it would control.
[29] Shuler v. Independent Sand & Gravel Co., 203 Iowa 134, 209 N.W. 73 (1926).

and high-class residential district", that "the homes that had been built therein are expensive and very valuable." In a later case[30] the Court again pointed to the quality of the neighborhood stating that "beautiful residences had been constructed in pursuance of and under the provisions and restrictions in the various deeds", . . . and also set out the average valuation of the buildings constructed on the lots. Again in 1951[31] the Court pointed out that the neighborhood was a "high-class residential addition" occupied by houses 35 to 40 years old but apparently in good condition.

IV. EXTINGUISHMENT AND DISCHARGE

The Iowa Court has recognized certain specific circumstances under which restrictive covenants are extinguished or discharged. As stated in *Thodos v. Shirk* covenants running with the land are subject to discharge at law by (1) merger of the lands benefited and burdened; (2) duly executed release; and (3) a new covenant operating as a release or modification of the original. As the Court noted, these manners of discharge are also recognized in equity; but it said there are also in equity the additional types of discharge of (4) abandonment; (5) the personal defenses of acquiescence, laches and estoppel; and (6) a change in the character of the neighborhood such as to defeat the purpose of the original restriction and make equitable interference to enforce such restriction both unjust and futile.[32]

A. ABANDONMENT

Abandonment depends upon conduct by the owners of the benefited land showing an intent to relinquish the benefit of the restrictive covenants. The abandonment may be found where the developer has failed to carry out the plan, or where by general consent or agreement the owners of the restricted land have substantially violated the restrictions. It must, however, be such a general abandonment as to frustrate the object of the plan so that the enforcement of the restrictive covenant would seriously impair the value of the burdened land without substantial benefit to the benefited land. Sporadic and distant violations are not in themselves adequate evidence of abandonment. Violations as to types of buildings will be given a greater weight than use violations, because violations as to types of buildings create permanent changes which are not easily corrected.[33]

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30 Burgess v. Magarian, 214 Iowa 644, 243 N.W. 356 (1932).

31 Baker v. Smith, 242 Iowa 606, 47 N.W.2d 810 (1951).

32 248 Iowa 172, 79 N.W.2d 733 (1956). See generally Note, *Duration of Restrictive Covenants*, 1 DRAKE L. REV. 14 (1951).

33 Thodos v. Shirk, 248 Iowa 172, 79 N.W.2d 733 (1956); Gilliland v. Leiter, 242 Iowa 497, 47 N.W.2d 142 (1951); Melson v. Ormsby, 169 Iowa 522, 151 N.W. 817 (1915); 5 RESTATEMENT, PROPERTY § 558 (1944).

B. ACQUIESCENCE, LACHES AND ESTOPPEL

The equitable defense of acquiescence arises where the owner of benefited land has acquiesced in a violation by another of the same type of which he is now complaining.[34] If the other violations did not interfere with his rights as the owner of benefited land, he will not be held to have acquiesced when one of the parties to the agreement or his grantee attempts to violate the restrictions which would result in injury to his benefited land. If the violation is immaterial, minor, or not offensive to the complainant, or remote from his land, he will not be held to have acquiesced.[35] Acquiescence by others in the breach of a restrictive covenant will not deprive this owner of benefited land of the right to enforce the restrictive covenant so long as it remains of any value to him.[36]

The basis of the doctrine of laches is that public policy requires the discouragement of stale demands. Only a clear and pronounced delay in commencing an action after knowledge of the breach of the restrictive covenant which has justified the violator in believing that the owner of the benefited land has acquiesced, will be the basis for a refusal to grant relief. What constitutes a clear and pronounced delay in bringing suit is a question of fact depending on the circumstances of each case.[37] The court has held that a minor and inconsequential violation of the restriction by the owner of the benefited land will not estop him from complaining of a contemplated violation by another.[38]

C. CHANGE IN CIRCUMSTANCES

A change of circumstances which destroys or nullifies the essential purpose intended to be accomplished by the restrictive covenant will justify the court in refusing an injunction for its enforcement.[39] The usual case is where the neighborhood has so changed that it is no longer possible for the benefited land to receive the intended benefit of the restrictions. Such a condition may result from the growth of a city when commercial areas engulf a restricted tract so that it is no longer possible for the benefited land to receive the intended benefit from the restrictions.[40] The

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[34] Thodos v. Shirk, 248 Iowa 172. 79 N.W.2d 733 (1956); 14 AM. JUR. *Covenants, Conditions and Restrictions* § 295 (1938); 5 RESTATEMENT PROPERTY § 561 (1944); Annot., 85 A.L.R. 936 (1933).

[35] Thodos v. Shirk, 248 Iowa 172, 79 N.W.2d 733 (1956); Johnson v. Robertson, 156 Iowa 64, 135 N.W. 585 (1912).

[36] Johnson v. Robertson, 156 Iowa 64, 135 N.W. 585 (1912).

[37] Thodos v. Shirk, 248 Iowa 172, 79 N.W.2d 733 (1956); Shuler v. Independent Sand & Gravel Co., 203 Iowa 134, 209 N.W. 731 (1927). See generally 5 RESTATEMENT, PROPERTY § 563 (1944).

[38] Johnson v. Robertson, 156 Iowa 64, 135 N.W. 585 (1912).

[39] Thodos v. Shirk, 248 Iowa 172, 79 N.W.2d 733 (1956); Beck v. Heckman, 140 Iowa 351, 118 N.W. 510 (1908) (dictum); 5 RESTATEMENT, PROPERTY § 564 (1944). See generally, Annots., 88 A.L.R. 405 (1934); 4 A.L.R.2d 1111 (1949).

[40] There are three notable instances of a change of neighborhood reported in Iowa. In Burgess v. Magarian, 214 Iowa 694, 243 N.W. 356 (1932), the defendants desired to construct a service station on a corner lot in a subdivision restricted to residences. A service station had been

questions for the court are whether the enforcement of the restrictive covenants would be oppressive and inequitable without any appreciable value to the benefited land and whether the change has rendered the restrictive covenants valueless to the owners of the benefited land, and oppressive to the owner of the burdened land.[41] The one who proposes to violate the restrictions has the burden to show that the conditions are such that equity in good conscience would not compel compliance with them.[42]

CONCLUSION

The key to an evaluation of the Iowa Court's decisions on restrictive covenants is the intent of the original parties in making them. Intent has been looked to as a test for the creation of covenants, as a solution to their interpretation, as a test for their extinguishment, and as a guide for their enforcement. The Court has made it clear that enforcement of restrictive covenants is a matter for court discretion according to the usual equitable rules; yet the Court in its decisions has been strict in enforcing restrictive covenants, and loathe to find they have been discharged or extinguished. It would seem that enforcement is the rule, and a refusal to enforce is the exception. The Court's decisions would seem to indicate that well drafted restrictive covenants aptly expressing the intent of the parties are an effective means of protecting property values and neighborhood in Iowa.

JAMES B. WEST (June 1960)

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constructed diagonally across the street from the lot in controversy, but outside the subdivision. It was held this was not such a change in condition that the Court would refuse to enforce the restrictions. In Baker v. Smith, 242 Iowa 606, 47 N.W.2d 810 (1951), the character and use of the buildings across the street from a restricted subdivision had changed to include apartments and medical offices. This was held not to be such a change in the character of the neighborhood as to justify the refusal to enforce restrictive covenants for residential use only, and for setback provisions. In Thodos v. Shirk, 248 Iowa 172, 79 N.W.2d 733 (1956), an addition was restricted to residential purposes. Defendants had started construction of a trailer camp. At the time of subdivision the road fronting the subject lots was a little used shale road, and the area was sparsely populated and devoted mostly to agriculture. The road was at the time of the decision a paved primary highway, and seven or eight businesses had been established on the other side. In 248 Iowa at 187, 79 N.W.2d at 742, the Court stated: "It may be true that this adjacent development of a rather substantial business district with little or no restrictions may tend to reduce Suburban Farms properties' desirability as residential, but we think the showing falls short of disclosing a surrounding isolation or residential destruction of Suburban Farms by business and commercial property. . . ."

[41] Thodos v. Shirk, 248 Iowa 172, 79 N.W.2d 733 (1956); Grange v. Korff, 248 Iowa 118, 79 N.W.2d 743 (1956).

[42] Thodos v. Shirk, 248 Iowa 172, 79 N.W.2d 733 (1956).

CASE NOTE

CRIMINAL LAW—Does crime of lascivious act with a child sixteen years or under apply to acts with person who has passed his sixteenth birthday but is not yet seventeen?

Petitioner was indicted under *Iowa Code* section 725.2 (1958), making it a crime to commit any lascivious act with a child of the age of sixteen years or under. At the time of the alleged offense the prosecuting witness was sixteen years and six months old. Petitioner's motion to dismiss the indictment, on the ground that the prosecuting witness was not sixteen or under within the meaning of the act, was overruled by the respondent judge. Petitioner brought certiorari to determine the legality of the trial court's action. *Held,* writ sustained. Sixteen years is an exact and definite period of time and does not mean or include sixteen years and six months. *Knott v. Rawlings,* 250 Iowa 892, 96 N.W.2d 900 (1959).

The established rule is that penal statutes are to be construed most strictly in favor of the accused.[1] In some states this rule of statutory interpretation has been fixed by the legislature.[2] Also, in the event of any ambiguity, statutes are to be given their plain and ordinary meaning.[3] Applying the foregoing rules, the Iowa Supreme Court concluded that the words "sixteen and under," used in their ordinary sense as intended by the legislature, would not include a person having passed his sixteenth birthday as he or she would thereafter be "over" sixteen years of age.

The inherent ambiguity in penal statutes fixing the age limit of those subject to their provisions and the resulting necessity of attaching the ordinary meaning thereto is a problem other courts have faced. The leading case on the construction to be given an act employing the exact phraseology of the one in question is

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[1] State v. Di Paglia, 247 Iowa 79, 71 N.W.2d 601, 49 A.L.R.2d 1223 (1955); State v. Hill, 244 Iowa 405, 57 N.W.2d 58 (1953); State v. Hansen, 244 Iowa 145, 55 N.W.2d 923 (1952); State v. Cooper, 221 Iowa 658, 265 N.W. 915 (1936); State v. Campbell, 217 Iowa 848, 251 N.W. 717, 92 A.L.R. 1176 (1934); State v. Andrews, 167 Iowa 273, 277, 149 N.W. 245, 247 (1914) ("The rule that penal laws are to be construed strictly is perhaps not less old than construction itself. It is founded on the tenderness of the law for the rights of individuals, and on the plain principle that the power of punishment is vested in the Legislature, not in the Judicial department. It is the Legislature, not the Court, which is to define crime and ordain its punishment."); State v. Wignall, 150 Iowa 650, 656, 128 N.W. 935, 937, 34 L.R.A. (N.S.) 507, 510 (1910) ("Criminal statutes are to be strictly construed, and in case of doubt, these doubts are to be solved in favor of the accused".); Rohlf v. Kasemeier, 140 Iowa 182, 118 N.W. 276, 23 L.R.A. (N.S.) 1284 (1908); 3 SUTHERLAND, STATUTORY CONSTRUCTION § 5604 (3d ed., Horack, 1943); 50 AM. JUR. *Statutes* § 407 (1944).

[2] Examples of these states are: LA. REV. STAT. § 14.3 (1950); PA. STAT. tit. 46, § 558 (Purdon 1936).

[3] Flood v. City National Bank, 218 Iowa 898, 253 N.W. 509, 95 A.L.R. 1168 (1934); Rohlf v. Kasemeier, 140 Iowa 182, 118 N.W. 276, 23 L.R.A. (N.S.) 1284 (1908); 2 SUTHERLAND, STATUTORY CONSTRUCTION § 4919 (3d ed., Horack, 1943); 50 AM. JUR. *Statutes* § 238 (1944).