vanced.[77] The common underlying purpose, however, is ensuring that communities in growing metropolitan regions assume their "fair share"[78] of the area demand for low and moderate income housing.[79] Such planning would require communities like Arlington Heights to make available at least some opportunity for low income housing within their confines.

Emphasis on regional considerations is desirable and should be further extended by legislative implementation of "fair share" programs. Until this occurs, however, under the Court's decision in *Arlington Heights*, metropolitan communities will retain the power, through exclusionary zoning, to effectively dictate the racial and economic characteristics of their residents.[80]

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was being excluded. Noting the urgent need for this type of development, the *Mount Laurel* court held that "proper provision for adequate housing of all categories of people is certainly an absolute essential in promotion of the general welfare required in all local land use regulation." *Id.* at ____, 336 A.2d at 727. *See also* Oakwood at Madison v. Township of Madison, 117 N.J. Super. 11, 283 A.2d 765 (1970); Appeal of Kit-Mar Builders, Inc., 439 Pa. 237, 268 A.2d 765 (1970); Appeal of Girsh, 437 Pa. 237, 263 A.2d 395 (1970); National Land & Invest. Co. v. Kohn, 419 Pa. 504, 215 A.2d 597 (1965).

77. As to the pressing need for regional planning, and for a variety of suggested approaches to its implementation, *see generally* Becker, *Municipal Boundaries and Zoning: Controlling Regional Land Development*, 1966 WASH. U.L.Q. 1 (1966); Haar, *Regionalism and Realism in Land-Use Planning*, 105 U. PENN. L. REV. 515 (1957); Cerchione, Rahenkamp & Yannacone, *Impact Zoning: Alternative to Exclusion in the Suburbs*, 8 URBAN LAWYER 417 (1976); Note, *Looking Beyond Municipal Borders*, 1965 WASH. U.L.Q. 107 (1965).

78. For discussion of this concept, as well as some suggested criteria for apportioning "fair share," *see* Rose, *Fair Share Housing Allocation Plans: Which Formula Will Pacify the Contentious Suburbs?*, 12 WASH. U. URBAN L. ANN. 3 (1976).

79. This goal is also expressed in the Housing and Community Development Act of 1974, 42 U.S.C. § 5304(a)(4) (IV Supp. 1974).

80. Although the Supreme Court in *Arlington Heights* refused to find an equal protection violation, the case was remanded to the circuit court for determination of whether the Village's refusal to rezone violated the Fair Housing Act of 1968, 42 U.S.C. § 3601 (1970). The circuit court held that in order to effectuate the Act's purpose of fair housing throughout the United States, a violation could be established by a showing of discriminatory effect without a showing of discriminatory intent. The court concluded that if no other site for the plaintiff's proposed project was available in the Village, the Village's refusal to rezone would violate the Fair Housing Act, and remanded the case to the district court for a determination of the availability of an alternative site. Village of Arlington Heights v. Metropolitan Hous. Dev. Corp., 558 F.2d 1283 (7th Cir. 1977).

STATUTORY NEGLIGENCE—AN EMPLOYER'S VIOLATION OF AN OSHA OR IOSHA STANDARD IS NEGLIGENCE PER SE AS TO HIS EMPLOYEE AND EVIDENCE OF NEGLIGENCE AS TO ALL PERSONS WHO ARE LIKELY TO BE EXPOSED TO INJURY AS A RESULT OF THE VIOLATION.—*Koll v. Manatt's Transportation Co.* (Iowa 1977).

Manatt's, Inc. was engaged to resurface the shoulder of an interstate highway. Koll, plaintiff's decedent, had been employed by Manatt's, Inc. as a member of a "patching crew" whose job was to stand on the shoulder of the highway and sweep gravel deposited on the highway onto the shoulder. A dump truck, owned by Manatt's Transportation Co., a separate legal entity from Manatt's, Inc.,[1] was delivering gravel to a gravel spreader near where decedent was working. The dump truck was equipped with a back-up bell and two attached rearview mirrors. The driver of the truck, while in the process of positioning the truck to deliver gravel to the gravel spreader, backed over the decedent thereby causing his death.

Plaintiff contended the truck negligently struck decedent or his broom causing him to trip over the broom and fall into the path of the truck's right rear wheels. The defendant alleged that decedent tripped over the broom of his own accord, fell to the pavement and was then run over. Trial to a jury resulted in a verdict for the defendant. On appeal, plaintiff challenged three trial court rulings,[2] including the court's decision to exclude evidence of defendant's violation of two provisions of both the federal and state occupational safety and health acts (OSHA and IOSHA).[3] The Iowa Supreme Court *held*, reversed.[4] An employer's viola-

1. Koll v. Manatt's Transp. Co., 253 N.W.2d 265, 267 (Iowa 1977). Although Manatt's Transportation Co. and Manatt's Inc. are distinct legal entities it was noted that management of both corporations was identical. However, there was no challenge as to the legitimacy of the separate corporate entities. *Id.* at 269 n.1.

2. *Id.* On appeal, the plaintiff challenged the "unavoidable accident" instruction, the trial court ruling striking certain specifications of negligence, and the trial court ruling denying a motion for permission to amend to conform with the proof.

3. Federal Occupational Safety and Health Standards § 1518.601(b)(4)(i),(ii), 36 Fed. Reg. 7386 (1971) and IOWA BUR. LAB. DEPT. RULE 10.1 (88) (1972).

4. The Iowa Supreme Court reversed the lower court's decision in *Koll* on the basis of an outright condemnation of the unavoidable accident doctrine. "An unavoidable accident has been defined as a 'casualty which occurs without the negligence of either party and when all means which common prudence suggest, have been used to prevent it.'" Berry, *The Unavoidable Accident Instruction*, 17 DEF. L.J., 259, 261 (1968). Although the court had never formally rejected the unavoidable accident instructions, its worth was questioned in Cavanaugh v. Jepson, 167 N.W.2d 616 (Iowa 1969). There, the court held that the doctrine

tion of the federal and state safety standards statutes (OSHA and IOSHA) is admissible as negligence per se as to his employees and evidence of negligence as to all persons who are likely to be exposed to injury as a result of the violation. *Koll v. Manatt's Transportation Co.*, 253 N.W.2d 265 (Iowa 1977).

To alleviate the multitude of problems associated with varying state and private safety codes, Congress enacted the comprehensive Occupational Safety & Health Act (OSHA) of 1970.[5] The purpose of OSHA was to regulate working conditions in the hope of reducing on-the-job injuries.[6] The Secretary of Labor has authority to promulgate and enforce[7] standards for every industry in the country which preempt all conflicting state health and safety plans.[8] However, a state may still assume responsibility for the development and enforcement of its own occupational safety and health standards by submitting a plan to be approved by the Secretary of Labor.[9] Iowa submitted such a plan, the Iowa Occupational Safety and Health Act (IOSHA), which was approved and became law in 1972.[10] IOSHA, which is administered and supervised by the Bureau of Labor, replaces the formerly applicable Health and Safety Appliance Act and the Employment Safety Act as a means for ensuring safe and healthful working conditions in Iowa.[11]

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could have no application where the issue is which of two litigants was negligent. The court's holding in *Cavanaugh* would have required a reversal in *Koll* because negligence and contributory negligence were both issues. The court in *Koll* preferred, however, to follow the trend of many other jurisdictions by abolishing completely the rule's applicability in Iowa. For a party to contend that the accident was unavoidable is merely to deny his negligence; it is not a separate defense; it merely insists that the plaintiff has not carried his burden. The court criticized the doctrine as being an obsolete remnant, prior to the time negligence was based on fault. The unavoidable accident rule overemphasizes the defendant's case and fosters jury confusion because the instruction is already covered by proper instructions on negligence, burden of proof and proximate cause. In essence, the unavoidable accident doctrine was found to be superfluous as it did not serve any useful purpose. Koll v. Manatt's Transp. Co., 253 N.W.2d 265, 268 (Iowa 1977). *See* Annot., 65 A.L.R.2d 12, 21, 72 (1959).

5. 29 U.S.C. § 651 (1970) (commonly referred to as OSHA). *See* Comment, *The Occupational Safety and Health Act of 1970: Its Role in Civil Litigation*, 28 Sw. L.J. 999 (1974).

6. It is the policy of this nation "to assure so far as possible every working man and woman in the Nation safe and healthful working conditions and to preserve human resources." 29 U.S.C. § 651(b) (1970).

7. 29 U.S.C. § 658 (1970). Enforcement of OSHA is by criminal sanction, civil penalties and the right to injunctive relief. For a discussion of enforcement procedures, *see* Note, *OSHA: Employer Beware*, 10 HOUSTON L. REV. 426, 431-34 (1973).

8. *See* 29 U.S.C. § 667(a) (1970). *See* Hornberger, *Occupational Safety and Health Act of 1970*, 21 CLEV. ST. L. REV. 1 (1972).

9. 29 U.S.C. § 667(c)(2) (1970). *See* Note, *Federal Common Law Remedies Under the Occupational Safety and Health Act of 1970*, 47 WASH. L. REV. 629, 655-56 (1972).

10. IOWA CODE § 88 (1975). The IOSHA standard pertaining to the backing of trucks is identical to the federal standards. All further references will be made to OSHA.

11. IOWA CODE § 88 (1977).

In *Koll*, the Iowa Supreme Court was faced with a case of first impression involving the admissibility of federal and state occupational safety and health statutes on the issue of an employer's negligence. The plaintiff argued that defendant, Manatt's Transportation Co., violated both the OSHA and IOSHA statutes which read as follows: "No employer shall use any motor vehicle equipment having an obstructed view to the rear unless: (i) the vehicle has a reverse signal alarm audible above the surrounding noise level or: (ii) the vehicle is backed up only when an observer signals that it is safe to do so."[12] The plaintiff contended the alleged violation of the standards was negligence per se or, in the alternative, evidence of negligence.[13] In determining this issue, the *Koll* court first stated that such standards may clearly be excluded where the standards have no bearing on the issue of negligence, or where no proper foundation has been laid.[14] The standards in the case at bar were found to be relevant and material on the issue of defendant's negligence; however, the court found that the standards had been properly excluded for the lack of competent evidence as to their violation.[15]

The *Koll* court clearly indicated that the laying of a proper foundation is essential for the admission of an OSHA standard. A proper foundation consists of competent evidence that the standard was violated. Where "negative" testimony is offered to prove the violation, the laying of the foundation may become especially difficult. This was well illustrated in *Koll*. The plaintiff needed to prove that defendant failed to provide a reverse signal alarm audible above the surrounding noise level. The only evidence introduced by the plaintiff was the negative testimony of one witness. The witness testified that he did not recall hearing the bell immediately prior to the accident. Such testimony did not satisfy the requirements for the introduction of negative testimony. The court explained that "[i]n order for negative evidence to qualify as sufficient it must be shown the witness was so situated that in the ordinary course of events he would have heard or seen the fact had it occurred." Thus, it is essential that a witness testify directly that a fact did not occur. It is not enough for a witness to testify that he does not remember a past fact occurring.[16] As most of the cases based on OSHA violations will involve negative testimony to prove the defendant did not act according to the OSHA standards, it is obvious that the sufficiency and propriety of the foundation proof will be of the utmost importance.

Although finding that the standards in question were properly excluded in *Koll*, the Iowa Supreme Court did proceed to examine the effect of

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12. *See* note 3 *supra*.
13. Koll v. Manatt's Transp. Co., 253 N.W.2d 265, 269 (Iowa 1977).
14. *Id.*
15. *Id.*
16. *Id.* at 271.

such a violation, if proven, on the issue of an employer's negligence. The Iowa court declined to pronounce the OSHA violation as negligence per se because prior Iowa cases have adhered to traditional limitations for classifying statutory violations as negligence per se. The plaintiff must be within the class of persons designed to be protected, and the harm must be one which the act in question was designed to prevent.

In considering the effect of an OSHA violation in regard to employees, the court in *Koll* first examined the purpose of the Act. OSHA establishes a standard of conduct which requires each employer to furnish to his employees a place of employment free from recognized hazards that are likely to cause death or physical harm.[17] Thus an employee is within the class of persons intended to be protected and the regulations were designed to protect employees against the type of risk created. In such a situation a violation resulting in employee injury should be treated as negligence per se.[18] In the instant case a violation of the OSHA standard would not give rise to negligence per se because the decedent was not an employee of Manatt's Transportation Co., the alleged tortfeasor, and therefore not a member of the privileged class intended for protection.[19]

A review of OSHA interpretations and an examination of the parties' relationship played a major role in the court's refusal to expand the scope of the protected class to nonemployees. The federal courts have strictly construed the language of OSHA because of the specific wording and definitions in the Act.[20] The Fifth Circuit in *Skidmore v. Travelers Insurance Co.*[21] referred to the restrictive terms of the statute in denying a private cause of action for civil damages against executive officers of a corporation for noncompliance with the Act. OSHA was held to apply only to employers. No authority was cited for imposing any duty on employees of an employer, executive or otherwise.[22] Another decision emanating from the federal courts, *Hare v. Federal Compress & Warehouse Co.*, [23] followed the same conservative pattern in refusing to expand the common law duties of a property owner or a prime contrac-

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17. 29 U.S.C. § 654 (Supp. 1971).

18. When noting the existence of worker compensation programs which bar employee suits against employers, the significance of such a ruling is slight.

19. Koll v. Manatt's Transp. Co., 253 N.W.2d 265, 270 (Iowa 1977).

20. Jeter v. St. Regis Paper Co., 507 F.2d 973 (5th Cir. 1975); Russell v. Bartley, 494 F.2d 334 (6th Cir. 1974); Skidmore v. Travelers Ins. Co., 356 F. Supp. 670 (E.D. La. 1973).

21. 356 F. Supp. 670, 671 (E.D. La. 1973).

22. *Id.* at 672.

23. 359 F. Supp. 214 (N.D. Miss. 1973). The general rule is that employers of independent contractors are not liable for the torts of the independent contractor. An exception is made in the case of inherently dangerous activities. However, some courts have extended the exception only to third persons and not to coemployees of the independent contractor. *E.g.*, Sword v. Gulf Oil Corp., 251 F.2d 829, 835 (5th Cir. 1958).

tor.[24] For purposes of OSHA, employees of an independent subcontractor were not deemed employees of the property owner or prime contractor.[25] OSHA is very explicit in its definitions of employer and employee and its extent of coverage: "[i]n the event a standard protects on its face a class of persons larger than the employees, the standard shall be applicable under this part only to employees and their employment and places of employment."[26] Thus, it would appear that the requirements of OSHA apply strictly between employers and employees. Therefore the alleged violation of OSHA in *Koll* could not be used as negligence per se.

The Iowa court also reviewed the potentiality for deriving a direct cause of action from the Act itself. Although legislative silence cannot be considered determinative,[27] the OSHA statute does not expressly provide any private civil remedies. And although some courts have been willing to imply independent actions on other occasions when a statutory purpose would be served,[28] nevertheless, the federal courts have so far denied a private remedy to employees under OSHA.[29] The Sixth Circuit in *Russell v. Bartley*[30] refused to imply any type of private civil remedy in favor of employees because of the clear language of OSHA: "[n]othing in this chapter shall be construed to supercede or in any manner affect any workmen's compensation law or diminish or affect in any other manner the common law or statutory rights, duties or liabilities of employers and employees. . . ."[31] In the absence of legislative history or case law supporting the proposition that OSHA created a private civil remedy, the court found that the language of the Act evidences an intent to the contrary.[32]

The possibility of a private civil remedy for third parties was also foreclosed in the Fifth Circuit decision of *Jeter v. St. Regis Paper Co.*[33] There, OSHA was held to provide no federal cause of action to an employee of an independent contractor to whom the contractor's employer owed no duty.[34] The Iowa court, in reliance on the foregoing

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24. Hare v. Federal Compress & Warehouse Co., 359 F. Supp. 214, 218 (N.D. Miss. 1973).

25. *Id.*

26. 29 C.F.R. § 1910.5(D) (1973).

27. Note 28 *infra.*

28. *See, e.g.*, Chicago & North West Ry. Co. v. United Transp. Union, 402 U.S. 570 (1971) (private suit allowed under the Railway Labor Act); Brown v. Bullock, 194 F. Supp. 207 (S.D.N.Y. 1961), *aff'd*, 294 F.2d 415 (2d Cir. 1961); Kardon v. National Gypsum Co., 69 F. Supp. 512 (E.D. Pa. 1946) (private suit allowed under the Securities Exchange Act); Note, *Implying Civil Remedies from Federal Regulatory Statutes*, 77 HARV. L. REV. 285, 292 (1963).

29. Russell v. Bartley, 494 F.2d 334 (6th Cir. 1974); Skidmore v. Travelers Ins. Co., 356 F. Supp. 670 (E.D. La. 1973).

30. 494 F.2d 334 (6th Cir. 1974).

31. 29 U.S.C.A. § 653(b)(4) (1975).

32. 494 F.2d 334 (6th Cir. 1974).

33. 507 F.2d 973 (5th Cir. 1975).

34. *Id.*

federal cases,[35] disposed of the issue in *Koll* by categorically stating that the OSHA regulations, both federal and state, do not give rise to a direct civil suit against an employee's employer or third party.[36]

Finding the *Koll* decedent not to be employed by Manatt's Transportation Co., and thus not within the limited class to be protected, and additionally finding that OSHA does not enlarge an employer's liability to third parties, the court proceeded to examine the theory and that absent a specific statutory duty, a general duty arises whenever a person is likely to be exposed to injury from the nonobservance of a prescribed standard of conduct.[37] Some jurisdictions recognize that where a statute sets up standard precautions, although only for the protection of a different class of persons or the prevention of a distinct risk, its violation is deemed a relevant fact concerning the issue of the conduct of a reasonable person.[38]

Iowa adopted the general statutory duty doctrine in the leading case of *Hansen v. Kemmish*.[39] There, a statute specifying the type of fence to be used in confining hogs in order to prevent misbreeding was held to be some indication of the kind of fence required to keep hogs out of the way of passing motorists. The court in *Hansen* declared that disregard of a statutory duty may still be evidence of negligence although the injury complained of is not within the scope of the statute.[40] Likewise, the disregard of a statutory duty may be evidence of negligence although the complaining party is not within the class of persons intended to be protected.

The court in *Koll* relied primarily on *Hansen v. Kemmish* in determining the treatment an OSHA violation should receive in the course of litigation with nonemployees. A person working on the same construction site as an employee of a violator of OSHA, and engaged for the completion of the same project is someone likely to be endangered from the nonobservance of the safety measure.[41] The court concluded that standards enacted for the protection of employees are to be considered as a *guide* to the type of precautions a reasonable person would undertake in preventing injuries to others.[42] A variance from the standards of conduct established by legislative bodies should be at least evidence of

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35. Jeter v. St. Regis Paper Co., 507 F.2d 973 (5th Cir. 1975); Russell v. Bartley, 494 F.2d 334 (6th Cir. 1974); Skidmore v. Travelers Ins. Co., 356 F. Supp. 670 (E.D. La. 1973); Hare v. Federal Compress & Warehouse Co., 359 F. Supp. 214 (N.D. Miss. 1973).

36. Koll v. Manatt's Transp. Co., 253 N.W.2d 265, 269 (Iowa 1977).

37. *See* W. PROSSER, HANDBOOK OF THE LAW OF TORTS 202 (4th ed. 1971) [hereinafter cited as PROSSER].

38. *Id.*

39. 201 Iowa 1008, 208 N.W. 277 (1926).

40. *Id.* at 1011, 1012, 208 N.W. at 279.

41. Koll v. Manatt's Transp. Co., 253 N.W.2d 265, 270 (Iowa 1977).

42. Koll v. Manatt's Transp. Co., 253 N.W.2d 265 (Iowa 1977).

negligence; to hold otherwise would be to excuse in part such variance, a result totally inconsistent with basic legislative intent.[43]

Noncompliance with an OSHA or IOSHA provision may thus result in increased liability for Iowa employers. An examination of the parties' relationship will indicate the role that the statute is to play in the course of any subsequent litigation. As an employer owes a special duty to his employees, a violation which proximately results in an employee injury will constitute negligence per se.[44] Such cases should be rare, however, because worker compensation plans preclude most private employee suits against employers.[45] If the plaintiff is a nonemployee, the statute becomes relevant evidence for the jury's consideration in resolving the question of defendant's negligence. Thus, the plaintiff, with what might otherwise be a weak or unprovable case were OSHA not in effect, is now encouraged and aided by the OSHA standards to bring an action in tort.[46]

Allowing the plaintiff in an action to introduce an OSHA violation as evidence of negligence achieves much the same purpose as a judicial ruling on negligence per se;[47] the defendant is in the unenviable position of having to explain the reasonableness of his noncompliance. Juries are not generally sympathetic to defendants who disobey a law.[48]

Certain advantages are accorded to the employer when the violation is evidence of negligence rather than negligence per se, however. Since negligence has not been established conclusively, as would be the case with negligence per se, there does exist the possibility of an excused violation. For example, where a greater harm may result from obedience to the law, community standards might permit a reasonable person to

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43. Brief for Plaintiff-Appellant at 19.

44. Koll v. Manatt's Transp. Co., 253 N.W.2d 265, 270 (Iowa 1977).

45. For a discussion of the inadequacies of worker's compensation, *see* Bernstein, *The Need for Reconsidering the Role of Workmen's Compensation*, 119 U. PA. L. REV. 992 (1971).

46. *See* Knight v. Burns, Kirkley & Williams Const. Co., Inc., ___ Ala. ___, 331 So. 2d 651 (1976) (action brought against prime contractor for failure to shore, sheet and brace the sides of a trench to avoid cave-in as required by OSHA); Dunn v. Brimer, ___ Ark. ___, 537 S.W.2d 164 (1976) (action brought against prime contractor for failure to provide for the fastening of portable ladders as required by OSHA); Disabatino Bros., Inc. v. Baio, ___ Del. ___, 366 A.2d 508 (1976) (action brought against housing inspector for failure to properly secure a manhole cover as required by OSHA).

Although nonobservance of an OSHA regulation may evidence negligence, the nonemployee plaintiff still retains the responsibility for establishing the necessary causal connection between breach of duty and the resultant injury. Many minor infractions may have little, if any, bearing on the actual injuries sustained. It is important that the employer's conduct be shown to have proximately caused the harm. Even though the theory of recovery is based on statutory negligence, all of the traditional criteria for negligence must still be satisfied. *See* PROSSER, *supra* note 37, at 143.

47. Morris, *The Role of Criminal Statutes in Negligence Actions*, 49 COLUM. L. REV. 21 (1949).

48. *E.g.*, Wilson v. Long, 221 Iowa 668, 266 N.W. 482 (1936); Thayer, *Public Wrong and Private Action*, 27 HARV. L. REV. 317, 322 (1914).

disregard the law. At other times physical circumstances beyond a party's control create the statutory violation.[49] Not to recognize certain instances of blameless conduct would run counter to the basic underlying concept of fault implicit in tort law.[50]

The *Koll* court's treatment of the OSHA provisions is consistent with previous decisions on the generic issue of statutory negligence. An instruction on negligence per se is not to be given unless the risk is of the type intended to be prevented and the plaintiff falls within the class of individuals intended to be protected. The restrictive language of the Act militates against the likelihood of expanded liability for employers. Nonemployees do not fall within the privileged class of the statute. Other states considering the question have also allowed the OSHA regulations to be introduced as evidence of negligence.[51] The jury may then accept or reject the OSHA regulations in determining the standard of care that an employer-defendant should have followed.

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49. PROSSER, *supra* note 37, at 198-99.

50. *Id.*

51. Knight v. Burns, Kirkley & Williams Const. Co., Inc., ___ Ala. ___, 331 So. 2d 651 (1976); Dunn v. Brimer, ___ Ark. ___, 537 S.W.2d 164 (1976); Disabatino Bros., Inc. v. Baio, ___ Del. ___, 366 A.2d 508 (1976).

TORTS—OWNERS OF DOMESTIC GEESE ARE NOT EXCUSED FROM NEGLIGENTLY PERMITTING GEESE TO RUN AT LARGE THEREBY CREATING A HAZARD TO MOTORISTS EVEN THOUGH GEESE HAVE "FREE COMMONER" STATUS AND ABSENT SPECIFIC PROHIBITION AGAINST FOWL RUNNING AT LARGE.—*Weber v. Madison* (Iowa 1977).

Upon rounding a curve on a gravel road, plaintiff Weber was severely injured when she drove her automobile into a ditch to avoid colliding with a flock of geese on the road. Plaintiff alleged the deceased owner of the geese negligently violated his statutory duty[1] and his common law duty to restrain the geese, negligently allowed the geese to be on the road and negligently failed to warn motorists of the hazard. Defendant Madison, executor of the estate of the deceased owner of the geese, moved to dismiss asserting "there was no legal obligation requiring an owner to restrain geese from running at large."[2] The trial court sustained the motion to dismiss and plaintiff appealed contending that owners of geese who permit their fowl to create a hazard on a public road may be found negligent. The Supreme Court of Iowa *held*, reversed. "[N]either the 'free commoner' status[3] of geese nor the failure of the legislature to statutorily prohibit the owner from permitting geese to run at large will excuse an owner from negligently permitting them to be unattended on a traveled highway if their presence there creates a hazard to the motoring public."[4] *Weber v. Madison*, 251 N.W.2d 523 (Iowa 1977).

At the outset, an examination of Iowa jurisprudence in animal law will be helpful in placing the *Weber* decision in a proper perspective. The Iowa courts and the Iowa legislature early recognized the need for the control of animals. In 1851, a statute was enacted which allowed a county judge to "submit to the people of his county, the question, 'whether stock

1. IOWA CODE § 188.2 (1973).

2. Weber v. Madison, 251 N.W.2d 523, 525 (Iowa 1977). More specifically, defendant asserted in his motion to dismiss that "the common law does not require geese to be restrained from going on the gravel roadway, the petition contained no allegations defendant's decedent knew or should have known that the geese were or ever had been on the roadway, plaintiff failed to allege facts showing a duty to warn of the geese on the road, and § 188.2, The Code, 1973, does not apply to geese." *Id.*

3. The court defined "free commoner" status of geese according to the definition given to the word "commoners" found in *Black's Law Dictionary* 347 (rev. 4th ed. 1968). Commoners are "[p]ersons having a right of *common*. So called because they have a right to pasture on the waste, in common with the lord." *Id.* Weber v. Madison, 251 N.W.2d 523, 527 (Iowa 1977). *See also* Hinman v. Chicago, R.I. & Pac. R.R. Co., 28 Iowa 491, 494, 110 N.W. 466, 468 (1870).

4. Weber v. Madison, 251 N.W.2d 523, 528 (Iowa 1977).