**Teno v. Arnold (1969)**

**Followed by several appeals:**

**Arnold v. Teno (1978)**

On 1 Jul 1969 the infant plaintiff, Diane Teno, a four-and-a-half-year-old child, crossed a street with her six-year-old brother (having first obtained permission and money from her mother, Yvonne Teno to make a purchase from an ice cream vending truck owned by the defendant J.B. Jackson Limited and operated by the defendant Stuart Galloway. The children were served at a service window of the truck on the curb (right) side. The infant plaintiff was served first and while Mr. Galloway was serving her brother, Diane left to return to the opposite side of the street. After passing around the front of the truck, she was struck by a car owned by the defendant Wallace Arnold and driven by his son Brian Arnold. The car had been approaching from the rear but was not seen by Mr. Galloway through his rear windows as, at the time, he was reaching into the freezer to fill the order of Diane’s brother. As a result of the injuries sustained by Diane, her mobility was seriously lessened although technically she was not paralyzed, and she suffered a considerable degree of mental impairment.

The trial judge (in 1969) gave judgment against the four defendants apportioning the negligence between them in the following percentages: one-third against the defendants Brian Arnold and his father Wallace; one-third against the defendants J.B. Jackson (owner of the ice cream truck) and Stuart Galloway (driver of the ice cream truck), and one-third against the defendant J.B Jackson. Damages were awarded to Diane ($950,000)

In 1978, The Court of Appeal varied the apportionment of negligence as follows: Brian and Wallace 25 per cent; J.B Jackson 25 per cent; Stuart Galloway 25 per cent and Yvonne Teno 25 per cent. Damages were reduced to $850,000.

The Tenos appealed the decision to the Supreme Court of Canada, where the Court of Appeal decision was overturned. The Supreme Court ruled that Mrs. Teno could not be blamed for the accident, but all other defendants were still held liable. The damages were further reduced to $540,000.

**Think carefully, answer based on what you know…**

1. Why were Brian and Wallace Arnold held one third at fault? Why? I know it’s because of Vicarious Liability, but why does this exist?
2. Why were J.B. Jackson Ltd. And Stuart Galloway also each held one third at fault? I know about Vicarious Liability…
3. Should Diane Teno have been held partly responsible for her own accident? Why or why not?
4. Why did the court of Appeal find Yvonne Teno at fault for the accident?
5. Why do you think the Supreme Court reversed this decision? Do you agree? Explain.
6. Why were the damages reduced each time the case went to court from 1969 to 1978? There could be more than one reason.
7. Explain the meaning of the following statement from the Court of Appeal as it relates to liability in this case, “A pied piper cannot plead his inability to care for his followers when it was he who played the flute!”. (look up the “pied piper” story…something about a person playing a “flute” and luring children away from a village…in other words, children will always respond to the music and make their way toward the sound…like the music coming from an ice cream truck.)