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## **Alberta Court Of Appeal Continues To Reject “Conditional Consent”. Owners, Not Third Parties Are to Bear Risk.**

Reported Case: Ireland (Next Friend of) v. Perez  
T. (E.) Estate v. Tran

Citation: 2007 ABCA 12  
2007 ABCA 13

At Issue: Whether consent to possession and use of an automobile could be implied.

The Court: Alberta Court of Appeal

Judgments Rendered: February 12, 2007

Factual Summary: These companion cases were heard on June 14, 2006. In the *Ireland* decision, the insured gave the keys to his vehicle to his son. The son was at a party and was very intoxicated. Subsequently, he passed out and was placed in the vehicle. The son claimed the driver of the vehicle must have taken the keys from his pocket. Other people in the vehicle at the time of the loss claim they saw the son give the keys to the driver. The driver was unlicensed and intoxicated as well. The insured's son did not know the driver. An accident occurred and a passenger was killed and others were injured.

In the *Tran* decision, the insured's brother was given the keys by the insured to run an errand. The brother subsequently gave the keys to a third party (who was unknown to the insured) and the vehicle became involved in a drug deal related car chase and gun play ensued. The vehicle was involved in a collision in which one person was killed and another was seriously injured.

At Trial: In both cases, the trial judge found implied consent.

Appellate Decision: In both cases, the Court applied the leading Alberta case, *Mugford v. Webber*, which rejects the concept of “conditional consent”. The Court stated that to imply consent to foreseeable circumstances does not result in unfairness to the owner given the owner's ultimate choice to avoid liability by not lending the vehicle. Further, as between the owner and innocent victims involving the owner's vehicle, the Court expressed the view that the risk of failure to abide by conditions rests with the owner and not with the innocent members of the traveling public. Appeals dismissed.