

## Complicated Issues concerning Consent to Drive

If you allow your child to drive your vehicle with the strict agreement that only he/she will drive it and that they will not let anyone else drive it, you would think that if in fact your child allowed someone else to drive your vehicle and your child was a passenger only, contrary to your instructions, and an accident occurred, you, the owner, would not be held responsible for injuries sustained in the accident. Not so.

Section 192 (2) of Ontario's Highway Traffic Act states:

- The owner of a motor vehicle or streetcar is liable for loss or damages sustained by any person by reason of negligence in the operation of the motor vehicle or streetcar on the highway, unless the motor vehicle or streetcar was without the owner's consent in the possession of some person other than the owner or the owner's chauffeur.

The courts have considered the issue of possession of the vehicle to be more important than restrictions on the use of the vehicle.

Therefore in situations where children are operating vehicles owned by their parents, or employees are operating vehicles owned by their employers, even though there is a specific instruction from the owner of the vehicle not to do certain things, if the driver does those things and an accident occurs, the owner is still liable for damages.

The situation becomes even more complicated when, for example, a child takes a vehicle owned by a parent without their permission and gets into an accident.

Again the courts will look at each case on a fact specific basis but there are many situations where the owner has been found liable for damages sustained in this situation.

The courts will look at factors including whether or not the vehicle was reported stolen to the police, whether the keys were left easily accessible, and whether the child had operated the vehicle before.

These issues also often arise in employment situations where an employee is allowed to drive the company vehicle back and forth between work and home, but is prohibited from using the vehicle for any other purpose.

Notwithstanding that prohibition by the employer, and the employee's written consent that he will comply, when employees take the vehicle for other uses and get into accidents, the courts have consistently found that the employer, as owner, is also responsible for damages notwithstanding that the employee was operating the vehicle contrary to the agreement with the employer.

Here again the courts take the position that the employer, by giving possession of the vehicle to the employee, even for limited purpose, is responsible for damages caused if the employee uses the vehicle for other purposes.

There are also cases where an owner, or an employee, leaves the keys in the vehicle, and someone else steals the vehicle and subsequently gets into an accident with that vehicle.

The courts will consider whether or not the person who left the keys in the vehicle was negligent by failing to secure that vehicle from theft. The courts will consider whether it would be foreseeable to the person that, by leaving the keys in the vehicle, it would be stolen and then, if stolen, is it foreseeable that the vehicle would be operated in a negligent fashion. The answer is often "yes" and in those circumstances the owner can be held liable for damages.

It seems that the courts are constantly stretching to find a way to attach liability to the owner of the vehicle, who is usually insured.

It seems that even employers who obtain written acknowledgments from employees about the use of the vehicles still cannot escape liability.

Other than be aware of the issues and the risks, making certain that an owner has adequate insurance is crucial.

Even the existing \$1 million limits in many policies will prove grossly insufficient in the event that serious injuries are sustained in the circumstances. Advice from a knowledgeable insurance agent or broker concerning increased coverage and/or umbrella coverage may be helpful.

This article is not legal advice.