Please read the facts set forth below. Then, follow the instructions set forth on page two.

Sy Co ("SC") has been suffering from mental delusions, and has recently sought the therapeutic counsel of Dr. Donbe Afreud ("DA"). Afreud diagnoses Sy's problem as paranoid schizophrenia, and prescribes an experimental drug that has, in early clinical trials, shown promise of relieving some of the more serious effects of this mental illness. But these same tests have indicated that the drug can cause a host of side effects, including low blood pressure, nausea, and fatigue. Other side effects have been reported, but in numbers insufficient to draw any firm link to the drug. There are other drugs available, which are somewhat less effective; these, however, are not discussed with Sy, since Afreud believes that Sy's condition is so serious that the other, less effective drugs, should be rejected in favor of the new, experimental drug.

During one of their sessions, Sy tells Afreud of his recurring dream, in which he is pursued and attacked by a man he can't exactly identify, but who is somewhat older, strong and authoritative in bearing. In the dream, Sy resists, and ultimately kills, the attacker. From Sy's description, Afreud has reason to believe that the man being described is Sy's father, Will Co ("WC"), and he ventures his opinion to Sy, who dismisses it. Afreud continues to believe that the "dream man" is Will, but is hopeful that the counseling and the new drug will improve Sy's condition so that the dream will no longer haunt him.

Several days after one of his sessions with Afreud, Sy realizes that the man in the dream is, in fact, his father, and decides that he must kill him. In a last-ditch effort to prevent himself from doing his, he calls Afreud at home. Afreud is indeed at home, but is rather tired. So he lets the telephone ring until the answering machine is activated; he then hears the following: "Doc, you gotta help me. It's that dream. If you're there, pick up." Afreud does not pick up, and Sy eventually hangs up. It is customary for psychiatrists in a position similar to Afreud's to sometimes ignore such calls, as they might otherwise be overwhelmed.

Sy then proceeds to the apartment complex where his parents, Will Co and Gwen Stefani ("GS") live. Although he has a key that his parents gave him, he does not need to use it, since the lock on the front door is broken. The landlord, Les Hart ("LH") has known of the broken lock for some time, and indeed of the generally deteriorated security system, but has done nothing to remedy the problem. As Sy proceeds down the hall towards his parents' apartment, he falls through a rotted floor board. The defective condition was not apparent to the eye of ordinary vigilance, although Hart knew of the problem.

Sy knocks on the door to his parents' apartment. Without checking on who might be there, Will allows his son to enter. Once in, Sy lunges at Will, and begins to strangle him. Hearing the commotion, Stefani, who had been in a back room, comes onto the scene, and from a place of hiding, witnesses the horrifying scene before her, too shocked to respond.

Will's muffled cries, however, draw the attention of another tenant, Cal Valeer ("CV"), who simply walks past without doing anything. But another tenant, Jonny Quest ("JQ"), races into the apartment, and cries out: "Now, cut that out!" Suddenly realizing what he has been doing, Sy races out of the apartment.

Will is still breathing. Quest decides, rather than calling and waiting for an ambulance, to transport Will to the hospital himself. Quest and Stefani place Will in Quest's car, and the three head for the hospital. As they are speeding down a neighborhood street, traveling at 60 mph in a 20 mph zone, Pig Skin ("PS"), an 11-year-old child, races into the street to retrieve a football that has landed there. Quest, who is 90 years old, slams on the brakes, but can't avoid hitting Skin, who is then flung several feet. He lands against a building and suffers further injuries as a result. The building is owned and occupied by Dy-No-Mite!, Inc., ("Dy!") and houses explosives. The explosives, however, do not detonate.

Meanwhile, Quest's car, in a skid from the sudden braking, crashes into a car owned by Bizy Guy ("BG"), which is illegally parked in front of a fire hydrant. When Quest's car hits Guy's, Stefani and Quest are injured, and Will Co's injuries are made worse. Guy's car is also damaged. Quest is nonetheless able to continue his drive, and the three eventually make it to the hospital without further complications.

Well, that's about enough of that, don't you think? Based on the facts set forth above, please set forth all claims and defenses that any of the parties denominated by a parenthetical abbreviation might have against each other: For example, WC v. DA; GS v. SC, etc.

There may be intentional torts in the facts above. DO NOT discuss these possible claims. You will receive NO CREDIT for doing so. However, if a particular act by a party might be characterized as either an intentional tort or some other tort, you should discuss the "other" tort.

THAT CONCLUDES THE EXAM. IT'S BEEN A PLEASURE (THE COURSE, NOT THE EXAM). HAVE A HAPPY HOLDIDAY AND STAY IN TOUCH.

Grading Sheet for Torts W3 Final – Fall, 1996

SC v. DA:

For negligence in failing to provide informed consent. Define IC (what must be disclosed), then ask: Material? Causal difference?
And what harm materialized as a result? Unless could show that the attack on his father, or some other psychotic episode, occurred as a result of the drug, no claim here.

WC v. DA: For negligence. First, in failing to warn or to confine SC.

Duty to WC might, under the Restatement and cases such as *Tarasoff*, arise out of the special relationship between SC and DA. And WC was certainly a foreseeable plaintiff, as the facts state that "Afreud has reason to believe that the man...is Sy's father...." Yet he did not actually predict the violence that occurred; in fact, he thought the drugs would take care of the problem. So a court might not extend the duty so far.

But things change when the phone call takes place, because now he has more reason to think that WC might be in danger; SC's language is cryptic, though.

Is there a breach of duty?

Again, probably not originally, unless a reasonable psychiatrist in DA's position would have either warned WC or sought SC's confinement (and would that have even been successful?)

But a breach of duty might occur when DA doesn't pick up, even when he hears the message. Usually custom is a defense in the medical profession; a court that followed that rule might allow the custom to prevail. But this isn't a technical case; rather, it's one where most people would understand what's involved. So the custom might be overruled. Then the Q becomes: What would a reasonable psychiatrist have done what DA did – nothing?

Next comes causation: *But for* DA's breach, would WC have been attacked? This is clear for plaintiff only if confinement should have been done; otherwise, with warning WC or trying to talk SC out of this, harder to establish. What steps could WC have taken? Could SC have been "talked down"? A court might create a presumption here for WC, since DA's negligence makes cause in fact too difficult to determine.
Proximate cause would be easy to establish; the injury is exactly the harm created by the foreseeable risk.

Damages are clear if he gets this far. But would he be liable for the additional Ds from the accident? Probably yes, since such accidents are deemed foreseeable (but here? Note the unusual circumstances of this particular further injury; see WC v. JQ, below.)

SC v. DA for the injury from the floorboards: This is the only injury that SC suffers. But only cause in fact seems established; he could have been at his parents' apt for any reason, and that's not what makes the negligence risky. Plus, no Ds are stated.

GS v. DA: For NIED.
The primary Q many courts would ask here is duty: Does the duty run this far? Courts might say there's no duty to her, as she's never mentioned, and there's no K betweeen DA and her. But if a court doesn't set up this kind of artificial barrier, she might well qualify, because from a *Palsgraf* standpoint, she's foreseeable once the actions of SC v. WC are.

Then, whether she'd qualify for NIED recovery would depend on the jurisdiction (go through three views; she wins *Dillon v. Legg* (foreseeability), maybe on ZofD, not impact. But what about her damages? None are stated; and most states still require phys. injury.

GS v. SC: For NIED. See above; except she's even more foreseeable from his perspective; as to his insanity defense, see elsewhere (top of next page).

SC v. LH: For negligence in failing to maintain the premises in a safe condition. What is SC's status? Is he a trespasser or a licensee? On one hand, even though he's usually welcome, he's not now because he's come for an improper purpose (so trepasser); BUT he's still a guest of his parents, regardless of motivation (so licensee).

If a trespasser, would have to argue that the defective condition, which the Ll. knew of, amounts to wilful and wanton misconduct. Hard standard. If licensee, recovery seems stronger: a defective condition, "not apparent" but a problem that the Ll. knows about.

Even courts unwilling to recognize a landlord's duty to protect v criminal conduct would allow recovery here, since the landlord is charged with the responsibility of maintaining the common areas in a safe condition.

GS/WC v. LH: The issue of the key is a red herring here; since the key would only be relevant to a third party who didn't have a key getting in, and then injuring another or injuring himself. Neither happened here, since SC could have gotten into the building with his own key. Plus, his parents let him in anyway. Might be relevant to showing the landlord's general negligence in the maintenance of his premises.

WC v. GS: For failing to rescue. Even if the H/W relationship is deemed to impose such a duty, her "shock" and probable fear would probably excuse her from acting.

WC v. CV: Easy; no duty to rescue. Nothing to change the common law result here.

PS, GS, BG v. SC: For putting them at risk. Did he negligently do so? Foreseeable that taking someone to hospital could impose risks, and insanity usually no excuse (maybe this case is the exception, since it's temporary insanity, but there seems enough warning).

JQ v. SC: He created a situation that required a rescue, which JQ then performed. Rescuers are deemed foreseeable, so Q is whether JQ acted recklessly (see below).

PS v. JQ: For negligent driving. He would say he's reasonable under the circumstances, including: (1) emergency; and (2) his advanced age (he's 90, with slow reflexes).
(1) might work, although it could be argued he acted unreasonably in not waiting for an ambulance, and in going 60 in a neighborhood, even under the circumstances.
(2) no go, because no allowance for age; if you're too old to drive safely, cts say don't.
His argument that he's reasonable, though, is made more difficult because speeding is negligent per se: go through arguments about class of persons it's trying to protect.

Causation easy, as to impact and to further injuries (people get flung by cars all the time). The only open issue here is whether a reasonably driven car would have been able to stop in time; if not, then the negligence didn't cause the injury and there's no recovery.

What about PS's comp. negligence in running into the street? This would certainly be negligent if PS were an adult, but he's only 11, so he gets the benefit of a subjective standard: He's compared against a child of the same age intelligence and experience. But an 11 year old would *probably* be found old enough to know better, so, Ds reduced.

PS v. Dy!: For strict liability. This activity is abnormally dangerous, but that's because of the possibility of explosion, not injury from slamming into a building.Once the strict liability disappears, can see that there's not even negligence on Dy!'s part here.

JQ, PS, BG, GS v. DA: For injuries from the car accident. Probably not; these seem too remote from the initial negligence of the defendant, although argue: If WC can recover for his *further* injuries, why can't they for their initial injuries? (But they seem even less foreseeable; except maybe for PS, who didn't know what he was getting into).

BG v. JQ: Again, must first ask whether JQ was acting reasonably under an objective standard. Here an add'l causation Q would be whether a reasonable driver could have pulled out of the skid; if so, he may be liable even if he hasn't been to that point.
Is BG contributorily negligent in parking in front of a hydrant, which is illegal? Probably not; the law is designed to facilitate access by fire trucks. So as to BG's car being there, that would be considered just a coincidence.

JQ v. BG for injuries sustained when the cars made contact. Reverse arguments to above.

GS v. JQ: For negligent driving. See PS v. JQ above. Here add possible assumption of risk, in driving with a 90-year old, whose reflexes she might expect to be slower. But she hasn't relieved him of a duty in doing this (primary assumption of risk), and did she even fail to proceed as a reasonable person would have, given injury to her husband. (Would a reasonable spouse have, in emergency, tried to persuade JQ to get an ambulance?)

WC v. JQ: For negligent driving. Difference from above is that A of R not available.