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In all of the claims described below, given that there is a survival statute in this state, in claims against M, the estate of M will step into his shoes as the Δ and the claim will continue. Since there is no wrongful death statute, claims where M was the π will be unsuccessful b/c a separate claim for M's beneficiaries will not be created. Still, even if this were allowed it would likely not be possible since M does not have children or a spouse, and his parents, while they had to pay funeral expenses, may not be considered his beneficiaries under the law in claims not relating to their loss of consortium. Income is not an option since M is presumably over 18 and therefore an independent and not allowed under the law.

Tevez (T) v. Messi (M) – negligence

Messi, as the Δ, always owes a legal duty, unless a no duty rule applies. In regard to the Lazy-Boy chair, M was not the landowner, he was a tenant and therefore he cannot claim that the chair was an open and obvious danger (since he had to warn T of it in the first place and T clearly did not realize it was dangerous since he sat down on it after looking around the room at it, and the law school is really the land owner) and he owes no duty. However, M will argue that this was a case of nonfeasance b/c there is no duty to act if the Δ not did create the risk that caused the harm to the π (T). While it is true that there is no duty to act for the π's benefit, there is likely an exception that is applicable which would kick in the duty rule. Because M knew or should have known that his even innocent conduct, of not first warning T about the chair before he came in and had the chance to sit down on it since he did have the time to scream back to him to make himself at home prior to T sitting in the chair would cause harm to the T. M could still argue that he does not fall within this exception b/c he did not really get the chance to warn T and if T had knocked on the door or been more specific in letting him know when exactly he would arrive (rather than just a plan to get together later to celebrate) he would have had the chance to really warn him. M will argue that his screaming back from the shower was just an automatic reaction and that he did try to warn as soon as he remembered. Still, M will likely not be successful in this argument b/c he waited 2 minutes to inform him of the chair and it seems likely that even if he had known he was coming over he still would not have told him of the chair soon enough for him not to sit in it. Still, even innocent conduct can kick in a duty and a reasonable standard of care. Also, T could argue that M should have kept his door locked if he had known that there was something wrong with the chair so that T could not just walk in and he would be reminded of the chair or put a sign on the chair to say it was broken.

M could also argue that T was actually a trespasser and not an invitee or licensee and therefore he only owed a duty to not act wantonly, recklessly, or willfully. M would argue that he did none of this b/c he did the best he could in remembering the chair before he sat down on it and given that he was not told exactly when he would be there, he was not legally allowed to be on the property b/c there was no express invitation and even an implied invitation was not to be at his apartment but rather for them to go out that night (meaning they could just meet somewhere and

go out). Still, M would likely lose this argument b/c T could say he was an invitee or licensee since there was an implied invitation that he would see the apartment since obviously he would not know about it without M telling him and they had agreed to go out and without M having a car, there was no other way for them to do that but for T to come over and pick him up. Regardless, T could also say that they were coventures, in a common undertaking of going out that night to seek revenge on Gomez and therefore M had a duty, which would be reasonableness to T.

Whichevere argument is used, it is likely that the judge will find that M owed a duty to T. The standard of care (SOC) will likely be that of a person with superior knowledge (this does not change the standard from reasonable, ordinary prudent person would act under the same or similar circumstances to recognize risks and avoid or minimize a risk of harm, but it should be taken into account under Breach b/c someone with superior knowledge is expected to use that knowledge). In this case, M had superior knowledge b/c he knew that the chair was broken since he was able to warn of it both to the Law School earlier and also to T.

Given that he was discovered, it would not matter whether he was classified as a discovered trespasser, discovered licensee, or an invitee b/c the SOC for all three would still be reasonableness. He would be classified as discovered b/c when he came in he screamed to announce himself and M clearly acknowledged and knew that he was there since he screamed back to him and this would mean that M needed to still act reasonably.

According to the judge determined SOC (likely to act reasonably), we must analyze whether M breached his duty of care. Justice Hand's BPL formula can be used b/c we are dealing with the reasonable standard of care. The jury will likely be able to just use their own common knowledge to decide if there has been a breach (they will not be told of BPL but may subconsciously or even consciously weigh things out) b/c this case does not involve much expert issues or testimony but rather a common day experience that could easily be imaginable. The burden that M should have taken would have been to either lock his door (so that T would then have needed to knock and he would not be able to enter alone) or to put a sign on the chair warning that it was broken or to move the chair to the side of put it on it's side so that it was clearly not for use or to throw the chair outside so that it could never be used. The first of these options would be a very low burden b/c people typically lock their doors and even if M doesn't it would be easy for him to do so. Also, writing a note is very easy and may be more reasonable if M knows that he is very forgetful and even not being in the shower and seeing the chair it would have taken him 2 minutes to remember it was broken). Probably throwing the chair out is too high a burden since it is not his chair and he would likely be fined for it or in trouble with the Law school. The probability of something happening is high since T just plopped himself on the chair and that was all it took for the back cushion to fall back suddenly. Still, the gravity of the loss (L) is low b/c typically no one would really get hurt by the kind of malfunction this chair has. Still, glasses as happened here could fly off and be broken. Therefore, M will likely be found to have breached the SOC b/c the burden is less than the probability and gravity of the

loss. Res ipsa is inappropriate in this case b/c it is known what happened and there is proof of it in the chair being there and M knowing it was busted.

There is a legally cognizable harm b/c T's glasses were broken and therefore there was property damage that would change the market value of the glasses since no one would pay for even Versace glasses that are broken what they would have paid prior to the incident.

There is likely cause in fact b/c it can be proven be a preponderance of the evidence that the Δ caused the harm. But for M's failure to act reasonably and lock his door or put a sign on the chair, T would not have sat in the chair and had his glasses flung off of him and broken. Still, M could argue that it fails b/c but for M's failure to act reasonably, T may still have sat down in the chair and broken his glasses. Since they were ready for a night out and T plopped on the chair rather than just sit down like a normal person would and then his glasses would not have flown off of him. M could also argue that the law school was a superseding cause b/c by not responding to his call to have it fixed, they allowed the broken chair to be there and while M was negligent in not putting a sign on it or locking the door, the law school's failure to get the chair or tell him to put it to the side or put a sign on it was a superseding cause to his own negligence. This argument will likely fail since the law school did not really act after his negligence occurred. Some j. will use the substantial factor test and in this case it will likely still be found that M was negligent even if the law school was also the but for cause of the incident since he was an independently sufficient Δ since his negligence alone would have been efficient.

It is within the scope of the risk that having T's glasses fly off his face and break would occur given M's failure to put a sign or lock the door. It is likely that if a chair is broken some one will suddenly be pushed or dropped in one direction and this would cause something they have on or are holding to fall. Still, this should be an issue for the jury to decide since there is a triable issue of fact. M will argue that it is not within the scope of the risk b/c while he created a risk of physical harm in sitting down on a broken chair, he did not create the risk of damage to property b/c sitting down is about the physical body sitting down and not putting things on the chair or having something fall off someone. Still, it is likely it was within the scope of the risk since glasses are really an extension of T's personhood. T is also the class of person who would be risked by Δ's negligence since he was a guest in his house (regardless of his statuts he was discovered and therefore known to be there and told to make himself at home) and therefore it is expected that someone in M's house who is told to make himself at home would sit down on the chair. In some j. M could argue there was a termination of risk given that there was time before T sat down and he actually looked around first. Stil, this will likely fail since the time was so short and T was told to make himself at home which usually encourages people to sit down. Still, M can still use this argument as an affirmative defense that T was contributorally negligent b/c he first entered the apartment without giving M a lot of warning, he looked around so he must have seen the chair and perhaps it was visible that it was borken, he plopped himself down (rather than just sitting down), and therefore in a traditional contributory neg. j. his claim would be barred. Still, T will likely win and he will be awarded the cost of his glasses.

T v. Law School (LS) - negligence

T could also hold the law school liable for the broken glasses. T could argue that there is always a duty unless a no duty rule applies. While the law school may argue that it is nonfeasance b/c they owe no duty to benefit the π since they did not really create the risk (it was likely a past tenant or even M who broke the chair and not the law school itself), they will not succeed. Since, as the landlord, the law school already undertook to make a repair since M told them it was broken and they said they would come back to fix or replace it soon, they were under a duty to repair it and if not they were subject to liability for physical harm caused to his lessee and others upon the land with lessee's consent. Still, the law school will argue that it had only been 2 days and therefore the law school was acting reasonably and given the size of the school and that a broken chair does not pose such a serious risk and high likelihood of risk (BPL), the time was short and it was in fact M who should have taken some precaution if he was going to invite someone over to warn of the chair in the reasonable interim. Still, given that they likely contracted before to repair problems and verbally consented to doing so, they will likely be held to need to have followed through even within 2 days. Even if it is found that it is M who should have acted, they will likely find that while there is no duty to control the act of 3rd persons, they are a landlord with a right to control the tenant and they should have told M to do something in the interim to protect himself and invitees/licensees from the chair. Also, it could be considered negligent entrustment to have left him with the dangerous chair knowing that he has all these plans to be intoxicated and is a student who perhaps doesn't really care much about what happens to the furniture and therefore isn't so worried about it. This will likely fail since he was not intoxicated when they talked to him or gave him the apt. Still, they will be found to have a duty.

The SOC will fall under the special relationship of landlord-tenant, which typipcally would mean no duty, but since they already undertook to repair the chair, there will be a duty and the SOC will be reasonableness. The landlord, if they did not K to make the repair in the lease at minimum, they had knowledge of the defect since M told them about the chair. Also, given that they actually have control of the chair since it is their property and not M's, they also will be found to have a duty or reasonableness.

It is questionable whether that duty was breached b/c the burden of coming out and fixing the chair or replacing it within the 2 days that would have been necessary to prevent the harm from happening is quite high. LS is a large institution and likely has to deal with many of these issues. It may have cost more to pay someone extra to work the extra hours to get there and take care of it quickly. Still, LS could have just told M to put a sign on it and then they would be able to take more time. This would have taken them very little to do and would have likely stopped the harm from occurring. The probability of a loss is medium since people tend to sit in chairs and having someone over means they will typically sit down. Still, it is rare that someone is in the shower and someone else enters without knocking. Therefore, the probability is still low-medium. The loss/gravity of injury is likely also low since the chair did not fall to pieces and there was no

piece of wood or something sharp that poked out to really injure someone. Still, glasses can be expensive and under the thin skull rule you take the π as you find them and therefore LS will likely need to pay the whole damage of the glasses, even if they are spendy, if they are found liable for negligence. Still, the burden is likely higher than the loss and probability of loss and therefore the LS was not negligent.

Assuming they are found to have breached there is a legally cognizable harm as described before in the loss of the market value of the glasses.

There is cause in fact b/c "but for the LS's failure to fix the chair or remove it, T would not have had his glasses broken". Still, the LS will argue that there is no cause in fact b/c "but for the LS's failure to fix the chair or remove it, T would still have plopped himself on the chair (and not sat down lightly as people normally do) and his glasses could still have flown off of him. This argumemt will likely fail since the chair was in fact broken and his glasses were not already broken from plopping on chairs too hard.

There is proximate cause for the same reasons as described above.

Still, LS could argue that T was contributorally negligent for failing to notice the broken chair and/or for plopping onto the chair too hard. In a trad'l j. this would bar T's claim. This argument will likely fail b/c the causation is so strong.

Gomez (G) v. Messi (M) – assault

G will likely have a successful claim of assault against M. M intended to put G in imminent apprehension when he ran at him in a drunken rage and swung to hit G (he intended to commit an assault at minimum and really desired to cause a battery). It was imminent b/c M was running up to him and there was apprehension b/c G was facing M and therefore aware that he was running toward him and attempting to punch him in the face. It is irrelevant whether G was actually afraid of him or not since he is a black belt. The result was that G actually apprehended the harmful or offensive contact because he saw that he was coming toward him. M could still argue that he did not actually apprehend it given that typically the sign that someone apprehends someone coming to punch them is that they move or do seomthing to try and block their face. Still, G could argue that given M had drunken so much already and was coming at him in a clearly drunken rage, the chance of the punch actually landing on him (and given that in fact objectively it was 2 feet away) was so low that it was unnecessary to move and actually not moving allowed him to avoid the punch rather than accidently moving to where the punch was in fact thrown.

Still, G did reasonably apprehend a harmful or offensive contact to himself since having someone run at you in a bar with their fist swinging to punch you is reasonable to be understood as someone trying to commit a battery (or at minimum an assault).

Any defense that M may have will likely fail since G was just walking into the bar and not trying to hit him or anyone else and it would be unreasonable to even assume that G consented to a bar fight or any contact with a student. Furthermore, even if M tried to plead self defense or defense of others, it will still be clear that this was in revenge for the hard torts exam and came much later than any kind of threat from G could have been. Therefore, G will likely be successful in a claim for assault and since there is no harm necessary to show in an intentional tort case, it does not matter that the punch did not actually hit him. Still, his recovery may not be much given that he is a black belt who did not experience any great fear and the jury will therefore just need to decide what kind of compensatory damages are necessary.

Gomez v. Messi - battery

M had intent to cause a battery b/c he had desire to cause contact when he charged G and had discussed earlier with T his desire to get revenge on G. In a dual intent j. M will likely try to argue that he did not desire or have knowledge with substantial certainty that the contact would be harmful or offensive b/c as he told T earlier, it was a joke and maybe he even knew somehow G was a black belt or atleast that he had seen him before not even flinch when something came at him and therefore it would just be taken as a joke. Still, this will likely fail since in his drunken rage he did not seem to be trying to make a joke but actually desired to hit him and did not make it b/c he was drunk. Even if the intent is difficult to establish, the intent for the assault would transfer to the battery. The result was that M caused direct contact with G when he vomited on him. The contact resulted in G's body and the contact, while it may not have offended G, offensiveness is determined objectively and most juror's would likely find that having someone vomit on you is offensive. Given that G still had to leave the bar afterwards (likely b/c he was covered in vomit) it also shows that he likely found it offensive and could not continue to go on with his night as planned and this would be further evidence that the vomit hitting him was offensive. Therefore, he will be successful in a claim of battery against M.

Again, M will not have any defenses based on the above reasoning for the assault claim.

M v. T - assault

If M's parents were considered beneficiaries by the court, then they could step into M's shoes, they would have a weak claim for assault against T. When T intentionally swerved the car, he intended to put M in imminent apprehension of an assault or even a battery (if he swerved in such a way as to make it feel actually and reasonably possible that they would hit something and therefore make a harmful contact). Since M actually apprehended the harmful contact to himself b/c he was frightened and perhaps he did think they were going to contact something and that is why T had to swerve in the first place, especially given he was not wearing glasses. Still, this claim will likely fail b/c it would not be reasonable to apprehend a harmful or offensive contact since they were only driving 10 mph and this is so slow that swerving is even difficult to do in

such a way as to create some imminent apprehension of a battery or assault. Still, this would be for the jury to decide and will likely find that there was not enough for an assault.

Ed v. T

Ed will be successful in a claim of negligence infliction of emotional distress (NIED) against T. T owed a legal duty to Ed, unless a no duty rule applies. T will likely argue that there was no duty b/c it was a case of nonfeasance in that he had no duty to act b/c he did not create any kind of risk to Ed since he was just driving down the street and he had no duty to stop for Ed, especially since Ed was walking where he should not have been since he was not at a crosswalk. Ed will likely argue that negligence per se applies b/c there is a statute in Oreglorida that says that it is a misdemeanor to drive without corrective lenses if the operator would normally require them. Therefore, even if it is nonfeasance, there is a statutorally imposed duty which kick the duty back in. Since there is no express private civil cause of action provided but it does prohibit driving without glasses if they are needed, the specific conduct is set out in the statute since it says the glasses are required for driving. Ed will argue that the statute is intended to deter the precise harm that happened to him b/c the statute is there to "promote the safety of pedestrians and drives of motor vehicles". He will argue that if there is not safety for pedestrians b/c people fail to wear their glasses, then it is likely that someone will not be able to see someone in the street and will either hit them or come so close to hitting them that they will suffer severe emotional distress. T will argue that the statute was not intended to prevent that type of harm but rather is there to prevent harm that occurs when a community lacks the common promotion of safety for others that is essential in creating good law-abiding and cautious citizens. This argument will likely fail as it is rather extreme and probably untrue if the judge looked at the legislative history. Still, T could argue that Ed does not fall within the class of person the statute is designed to protect b/c it is for pedestrians who are acting lawfully and crossing at a crosswalk. Ed was crossing in the middle of the street. Still, Ed will argue that the statute is designed to be interpreted more broadly to include any pedestrian. Furthermore, the judge will likely find this in the legislative history and will conclude that if at 10mph he could not properly slow down and stop for the pedestrian in the street then it would not have mattered if he was in fact at a cross walk given it was the middle of the night anyways and he would not have seen it soon enough either.

Since it is likely that the jury will find that T violated the statute, T should request the judge also give the jury the legally acceptable excuse of it being reasonably unable to comply and impossibility. T could argue that compliance would have led to an increased risk of harm than noncompliance b/c he needed to get his friend home to safety since he was so drunk. If he had allowed M to drive then he would have been following the statute since he would not need his glasses as a passenger, but then he would have allowed a drunk driver and this would have been negligent entrustment and likely would have resulted in greater harm to T, M, Ed, and anything or anyone else he may have hit. Also, T will argue that he exercised reasonable care in trying to comply with the statute b/c he chose to walk earlier to the other bar instead of driving and he was

only driving now b/c it was absolutely necessary and he the other choice was to have M, who was drunk, drive.

Still, Ed should argue that these are not excuses that should be given to the jury since T had his glasses broken at 4pm and still had time to follow the statute and drive to his house for his other paid or glasses before going out for the night. Therefore, it was not the only way to get around and the incident would not have occurred. T could also try to argue that he did not know or could not know about the statute b/c the glasses were really more of a fashion accessory and his vision was actually not so low that the DMV had told him he must wear them. Therefore, while the glasses are helpful to him seeing properly, he does not normally require wearing them b/c typically he drives during the day and he can see at a level which is good enough and below the level which would necessitate wearing the glasses by the statute. Still, he will likely fail and these excuses may be viewed as frivolous in light of the jury being able to hear the whole story and they jury will need to decide if he violated the statute or not. If negligence per se is found, then Ed will still need to prove causation. If it is not found, then it will be a reasonable standard.

Without an excuse, there would be breach under negligence per se. If it is a reasonable standard, then the burden to go to his house first is low given he did not live too far away and with M in the shower he would have time anyways to go get them or swing by his place on their way out. The probability of something happening was high egiven he knew he needed glasses to drive when it was dark and they were going out for a whole night of celebrating and it is winter so it gets dark probably at about 5pm. The gravity of loss is very high since driving, especially after a late night where one is tired and may still be a little intoxicated, and with someone very drunk makes driving safetly difficult anyways. Therefore, he did breach the reasonable standard since the burden was less than the probability and gravity of the loss.

The fact that Ed is a child does not change the SOC since it is focused on the Δ (T) and not the π. Still, it could come in as him contributing b/c he should not have been outside walking his dog and not using the crosswalk. In a trad'l contributory negligence j. his claim would be barred. But the fact that he is a child and the jury will see that he is (regardless of whether they are told to not take it into account) means that they will likely find that he was not contributorally negligent even though he probably should not be out so late not using a crosswalk.

There is a legally cognizable harm b/c emotional distress, depending on the j., falls into this category. In a trad'l j., there must be a physical impact/injury/contact. Since this is what this state follows, that means that Ed will have more difficult proving his claim b/c while he fell to the ground in fear, had severe distress, and constant nightmares, it may not necessarily be enough for a legally cognizable harm. As a 14 year old boy, he likely is no longer having many nightmares, but children often do suffer from nightmares and therefore this may not be found to be above and beyond what he dealt with emotionally as a young child anyways. Still, if Ed could make emotional distress as a parasitic damages b/c it would be a component of what he would get for pain and suffering from his falling down in the street, perhaps hurting himself when he did so,

and maybe there could be some amount put on his inability to go to school b/c lack of sleep or a fear to go outside and therefore he cannot enjoy life or contribute to his family (if perhaps his family runs a family business and he cannot work for them anymore and this could be shown and documented in lost wages). While the modern trend would allow for his compensation with the level of evidence he has for emotional distress, it would be necessary to see if he suffered something more (for instance if he had acid reflux problems now b/c he was so terrified). The judge should also look to see if this is the kind of harm that the legislature was trying to deter—if it is, then harm could be fulfilled more easily and causation would be left to prove.

Causation would be successful b/c but for T's driving negligently, Ed would not have suffered severe emotional distress. Still, T could try to argue that "but for T's failure to wear his glasses, Ed would not have suffered emotional distress" and this would be untrue if the glasses were more for fashion rather than necessity. This would likely fail since T clearly needs the glasses to see at night and he knows that so it is unreasonable (and the jury will likely not be sympathetic) to his intentionally disregarding that risk and acting recklessly by driving without the glasses.

Ed could also have a claim for NIED against M b/c M, even if it was not really him who caused the harm since he was not driving, he did could be held liable for policy reasons since he was acting in concert with T. They had planned to go out this evening together and they were driving back together. Part of their playing pranks on each other (T swerving the car and the two wanting revenge on G), shows that the whole evening was done as a conspiracy and in concert and therefore M could be held vicariously liable as well. ~~Res ipsa could~~ be used to show that both are negligent and this would then shift the burden of proof to M to prove that it was not him and that causation lands only on T. This would likely be unsuccessful and both could probably be held liable for NIED.

There was proximate cause b/c Ed fell within the scope of the risk that T negligently created. It was foreseeable that by failing to wear glasses when he needed them, T would not be able to see a pedestrian until it was too late to slow down properly and he would cause them severe emotional distress. Also, Ed falls within the class of persons risked by Δ's negligence since he was a pedestrian and it is likely that by not wearing one's glasses you will hit something on the road, which Ed was. No exception would apply. T could try, although likely unsucessfully to frame the issue such that having a 14 year old out at that hour walking his dog was not a foreseeable risk and therefore not something he would look out for regardless of his failure to wear glasses. This would likely fail and Ed would be successful.

M v. T - negligence

When M's face hit the dashboard and he started bleeding from his nose as well as bleeding his brain b/c of his special condition, T could be held liable for negligence. T had a duty, unless a no duty rule applies. In this case, there is no duty rule that applies b/c even if T argued it was nonfeasance since he did not actively cause T to hit his face, there would still be an exception

that would apply since T undertook gratuitously to render services in the form of driving M around for the night, which he knew would reduce the risk of harm to M since he chose to drive rather than have M drive since he understood that having M, who was drunk, drive would cause him to get in a worse wreck or not make it home at all, he therefore owed a duty. Failure to perform the duty would have resulted in an increased risk of harm since M would have probably passed out somewhere or he would have driven himself and gotten in a wreck and likely died. Still T could argue that it would not have increased the risk of harm since M had this special condition and if he hadn't hit his head maybe nothing would have happened. Still, since part of the condition being aggravated was due to him being drunk, this is likely not going to be successful b/c he would have already been at higher risk and could have passed out and knocked his head on something anyways and died. Regardless, M relied on T driving and therefore T had a duty to do so reasonably.

There was a breach of T's duty to act reasonably b/c he failed to drive in such a way as to be safe b/c he did not wear his glasses. Furthermore, negligence per se instruction could be given as described in Ed v. T b/c he failed to wear his glasses. Still, T must prove that the statute was also meant to protect passengers in the car. This would likely be difficult since it specifies drivers of motor vehicles and not passengers. Still, the judge should check the legislative history and see if this is not broadened there. Even if negligence per se instruction was not given b/c of this fault, he would owe a reasonable SOC. This was described above in the BPL analysis with Ed and would be the same.

There was a legally cognizable harm b/c he hit his nose on the dashboard and was bleeding. Furthermore, under the thin skull rule for damages, T would also be liable, if he was found liable for negligence, for the harm that resulted from M's special condition and his death. This would include economic/pecuniary costs like the $6,000 in funeral expenses and perhaps non-pecuniary costs like the pain and suffering he experienced before his death in being left at the LRC. Although if he were unconscious the entire time then he would need to be in a j. that allowed this for someone who is unconscious since most j. would not do so since he would not really need to be compensated for something he could not actually experience. Also, York would likely be viewed as a superseding cause and therefore he would not be held liable for her negligence which came after his own. Still, he could be liable for his loss for a better outcome since his chances of survival were decreased b/c he did not take M to the hospital when he first busted his nose. Since T responded that it should be checked out he clearly understood the gravity of the injury. Furthermore, T knew that he was drunk and like most drunks probably not really able to ascertain the kind of pain he was in or the injury that had occurred and therefore, as someone who was not drunk and under a duty to act reasonably, he should have taken him for care anyways. M could also argue that the pain he experienced in his nose and head—even if they were only temporary—would suffice for a legally cognizable harm. At minimum he could argue that the blood got on his clothing and therefore was property damage and he could try to attach the claims for pain and suffering onto that as a parasitic damage to get more recovery.

There is causation b/c but for T failing to wear his glasses, M would not have hit the dashboard. Also, it is within the scope of the risk that if you don't wear glasses and you need them to drive that a passenger will hit the dashboard and have a bloody nose. Still, T could argue as a defense that M was contributorally negligent in not wearing a seat belt and given that T was wearing one and did not get injured, he was not the but for cause of the injury and he was also contributorally negligent and in the trad'l contributoary negligence j of this state, he would be barred from recovering against T.

Even if T was found liable for negligence and M was not contributorally negligent, there could still be adjustments made for the damages. Given that M failed to mitigate his damages. First, M failed to anticipatory mitigation/ fictionally avoidable consequences b/c he did not wear a seat belt. Because there is causation for this, as described above, the compensatory damages would be decreased. Also, he failed to mitigate damages after his nose was hit b/c he did not go to the hospital and he continued to party and not take care of himself. T could argue there is a clear causal apportionment making T liable perhaps for the nose, but M would be liable for the death b/c his failure to get medical attention led to him dying when it could have been avoided. Even if it were not divisible, the damages will likely be reduced for M's failure to mitigate damages.

T was also negligent b/c he negligently entrusted M to then go on with the night on his own. This is not nonfeasance b/c the greater act had already begun in T's affirmative choice to go out with M in concernt. He therefore had a duty to him and could not just leave him now knowing he likely needed medical attention as he had stated before and that he was drunk.

M v. York – Trespass to Chattels and/or Conversion

M could bring a successful claim for trespass to chattels and/or conversion when York took M's wallet threw it in the trash and took the $50. She intentionally disposes M of his wallet and the $50 b/c she took it from him (even if done initially in good faith b/c sjhe was trying to figure out where he lived, this is irrelevant). The result was that she dispossessed him of his wallet and likely will be conversion for the wallet since she so seriously interefered with his right to control it since she threw it in the trash, that she would be liable for the full value of the wallet. It does not matter if she did not intend this to be harmful or offensive to him (although she likely did and may be considered). It may be trespass to chattels if she ended up giving M (or his parents/the police) the $50 back after taking it since although she did disposes M of the money and it did deprive him of the use of it for a substantial amount of time, the time was not very long since she found out about the incident and reported it to the policy and maybe turned over the money right away at that point and there would be no harm done to the money. The inconvenience would be minimal since he could not use it anyways since he was passed out.

M v. York – negligence

York had duty to M unless a no duty rule applies. While York will argue that it was nonfeasance b/c she owed no duty to benefit M, she will likely be incorrect b/c she had already affirmatively

begun to help him when she offered him a ride home. Therefore it was in fact misfeasance. The standard of care will be reasonableness. There was a breach b/c the burden of calling 911 or taking him to a hospital is low in comparison to the probability of something bad happening to him when she left him at the LRC (he was drunk and regardless of his condition was likely to freeze (perhaps to die there b/c of it) given it was winter and the gravity of the loss was high since he was passed out, could be dead, or die and the LRC is far away from medical help or even a passerby seeing him and being able to assist him. Therefore, the burden was lower than the loss and probability and therefore was negligent.

There was a legally cognizable harm b/c he died and therefore there was a wrongful death. There may also be pain (discussed with M v. T and would apply here) and the loss of chance of a better outcome b/c she did not take him to get medical attention or call 911.

She was likely the cause in fact b/c but for her leaving him at the LRC he would not have died since he could have gotten medical attention and it had not been 24 hours yet so he could have been cured. While she may argue that she was an intervening cause that did not rise to the level of being superseding b/c it was T who was negligent in leaving him there, this will likely fail since her affirmative act of driving him, shaking him, and clearly attempting to assist him broke the chain of causality.

It was within the scope of the risk since her leaving him in the cold outside the LRC clearly already slumped over and unable to make it home made it likely that he could die. It does not matter the exact manner in which he died (his special condition does not exempt her of her liability for negligence) bu tit was likely that leaving someone who is not responding at all in the cold passed out on the weekend when school is not even going to start back up again reasonably until Monday or even longer since it is break would lead to someone dying. Also M was within the class of person's risked by her negligence since he was drunk and she purposefully left him there. There could be an excpetion if this is a j where Cardozo's rescue doctrine applies b/c she could argue that really she was rescuing him when she drove him and it was foreseeable that she would be negligent (although she could not and was not reckless) and therefore it is T who is still liable for the negligence and not her. Still, this will likely fail b/c she was with T for so long.

York v. M – false imprisonment

York may have a claim against M for false imprisonment b/c she may be able to argue that he had knowledge with substantial certainty that he was so drunk that he would not be able to function on his own and she would be trapped with him. Still, this would be weak and he could argue that this is not true b/c he was so incapacitated at that point he was just following her and he was not able to intend anything. Still, she was directly confined b/c she could not reasonably leave him (although he could argue she did and therefore she could) nad she was aware of that confinement b/c she felt trapped with him for 20 minutes.

Question 1:

Teves (T) v. Lewis & Clark Law School (L)

T should successfully be able to bring a claim of negligence against L for negligently failing to repair the chair in Messi (M)'s apartment. In negligence, there is always a duty unless a no duty rule applies. In this case, there is no duty to act. However, there are two exceptions that T may look to. First, landlords and tenants have a special relationship. This is tenuous since the relationship is actually between L and M. More convincingly, when a Δ has undertaken to do something, particularly when a landlord (L) has undertaken to make a repair (fix the armchair) they must do it within a reasonable amount of time and the π should be expected to reasonably rely on their undertaking. T probably reasonably relied on the undertaking. So there is a duty owed to the tenant and his guests. The standard of care is reasonable person because they are in this special relationship. The only arguable matter would be whether 2 days was sufficient for a reasonable landlord to get a repair person out there. Because the furnishings are a major component of their obligation to the tenant because it is a specifically furnished apartment, this should be considered sufficient time. L breached its duty to T by not repairing the chair in a reasonable amount of time. The burden of repairing the broken chair within two days was likely to be small since they are landlord to many tenants and are likely accustomed to working with this type of probable. It is likely they even have a procedure for this problem. (while the presence of an established procedure is not dispositive, it will help T show the extent of the burden on L) The likelyhood of harm resulting from the broken armchair was great considering that it was a prominent piece of furniture in their tenant's home and it is unlikely that M will be able to stop every guest from sitting in the chair. The type of harm could be large considering that T fell with enough force to make his glasses fly away. Therefore, the burden of fixing the chair in a speedy manner (within 2 days) was not greater than the potential multiplied by the harm. (B<PL) Breach is satisfied. Cause in fact is also satisfied because but-for the broken chair, T's glasses would not have broken. Proxmate cause is also satisfied because damage to a person sitting in the chair's property is a foreseeable harm given the risk that T posed. T should be able to recover for the damages to his glasses. However, T will not be able to recover from the damage incurred over the rest of the night from his lack of glasses because him driving at night without his glasses is not a foreseeable risk posed by the Δ's negligence. Additionally, T's driving at night was a violation of the statute, making him likely liable himself. Because we are in a contributory negligence jurisdiction, this will bar his claim altogether on that point.

T v. M negligently not warning about broken chair

If T is unable to recover against L in negligence for the chair, he will probably be able to recover against M. The duty here is of a landowner to an entrant. In a classical category jurisdiction, T would be an invitee and M owes a duty to discover and warn T of dangers. (the chair being broken was not obvious so this does not excuse M.) The duty is that of a reasonable person. Breach is satisfied because the burden of putting a sign on the chair or telling T as soon as he got

into the apartment was extremely low in light of the potential harm described above. Cause in fact and proximate cause analysis are the same as above, as are damages.

G v. M Assault

G will likely be able to prove assault for M swinging at him. M intended to cause contact with G by punching him. (It is immaterial that he was unable to do so because of his own intoxication.) G actually (G realized what was going on) and reasonably (a reasonable person would probably think that M was trying to punch them, even though he was two feet away. Drunk people have an amazing way of moving more quickly than their intoxication would suggest possible. G's training made it so that he did not need to move but a reasonable person without such training probably would have jumped.) apprehended specific and imminent (the punch from M) harmful or offensive conduct. (In this case the conduct was harmful because M was trying to punch him in the face.) The fact that Gomez was not afraid does not bar his claim. M's only defense here is that no reasonable person would have thought that he could actually landed the blow. However, this is not likely to be successful. G's damages are probably extremely small since he was not afraid and not actually contacted. He would likely only recover nominal damages.

G v. M Battery

G will likely be able to prove battery against M for vomiting on him. M intended to cause harmful or offensive touching when he went to hit G. This intent will transfer to the vomiting on G, even though this was not the exact tort he intended because the doctrine of intent applies to the tort of battery. In a dual intent jurisdiction intent is also satisfied because M intended the punch to be harmful or offensive. M directly caused his vomit to contact G. G could claim that the vomit was offensive or that it ruined his clothes. If he claims it was offensive, even if it was not, M will likely have a hard time proving him wrong. Therefore, G is most likely to win on this claim. Here, because the primary harm is disgust, he will likely only be able to recover nominal damages, though there may be some compensatory damages if some of his clothing is ruined.

G v. T vicarious liability of coconspirators

G may also have a claim against T through strict liability because there is a vicarious liability between coconsipirtors acting in concert. In this case, T told M that G was there. T and M also discussed earlier that day how they would like to "seek revenge" against G after the final. Lastly, they are likely going to be considered coconspiritors because they had been spending the whole evening together. G should be able to recover any damages he was not able to obtain from M because M was judgment proof.

G v. Vault Martini and Betty Ford Negligently providing alcohol to M

G may also have a claim against the bars (VB) for negligently providing alcohol to M who was already intoxicated. In Negligence, there is always a duty unless a no-duty rule applies. In this case, VB will argue no duty to protect from 3rd persons but because they are a commercial

provider of alcohol the duty kicks back in. The link will be stronger with Betty Ford because M was visibly intoxicated at that point. The standard will be reasonable person. They should have cut M off once he was visibly intoxicated. The burden of recognizing a visibly intoxicated person to a provider of alcohol is low (especially since M was trying his luck with the ladies, a classic sign of intoxication) in relation to the potential damage caused by further intoxication of a visibly intoxicated person and the likelihood that something would happen is high. In this case, the but-for cause is weak, especially for Vault because M was drinking on his own as well and might have been belligerent simply by his own consumption. However, for Betty Ford, the cause-in-fact is much higher considering that they had ample opportunity to recognize his drunkeness and cut him off. The but-for test will likely not succeed because M had had a lot to drink beforehand. But the substantial factor test will because they were an independently sufficient cause of his inebriation. (If he was feeling tipsy after just one drink, then his several rum & cokes provided by Betty were enough to make him belligerent on their own.) The proximate cause is also satisfied for Betty because the harm was exactly the type of risk to be expected from the negligent behavior of Betty. (That M would become belligerent and attack another patron.) Again, for Vault it is tenuous because it is not particularly foreseeable that M would attack a patron at another bar because of the one drink he had there. G will likely only be able to recover damages he was not able to recover against T or M. He could also recover nominal damages.

Brunet (B) v. T negligent infliction of emotional distress

See negligence per se analysis in "M v. T for negligent driving resulting in causing his death" below. In this case, the harm is emotional distress. It varies by jurisdiction whether this will be legally cognizable. Some jurisdictions require physical manifestations of the harm, which B did not have. Others require some kind of medically diagnosable condition. If the nightmares are enough to fulfill a requirement of a condition in the DSM or to require physcho therapy, they might pass. In other jurisdictions, emotional distress on its own will be sufficient. Here B would definitely be able to recover. But-for T not wearing his glasses, he would not have almost hit B and B would not have suffered the distress. Almost hitting a pedestrian is a foreseeable risk of driving without glasses when they are typically required to be driving reasonably. B will likely not be found to be contributorily negligent because, even though he was crossing in the middle of a block at night, this would be a reasonable thing for a child of his age to be expected to do. Crossing the street is not considered an abnormally dangerous activity or an adult activity so he will be held to the standard of a child his age with the same mental capacity, intelligence, maturity, training and expertise. Thus he will likely not be found to have breached his duty to himself because he acted reasonably for his age. Therefore, B's claim will not be barred. B should be able to recover nonpecuniary damages against T. He may also recover any pecuniary damages such as being unable to earn a paycheck because he is too tired to sleep or the cost of therapy visits.

B v. T assault

T will likely be able to defeat a claim of assault by B. B would claim that T had knowledge with substantial certainty that T would hit something as a result of not wearing his glasses. However, this is not sufficiently certain. T needed to be certain that he would assault or batter B specifically. Even though the result of B actually and reasonably apprehending the specific and imminent harmful or offensive contact occurred (B saw T coming, actually feared it as a reasonable person would and knew with specificity the imminent harmful contact of being hit by a car was upon him.) If he were unable to defeat the claim, B's damages would likely be the same as those for NIED.

M v. T assault

M may have a claim against T for assault when he intentionally swerved the car. T had a desire to cause imminent apprehension of a harmful or offensive contact (a car crash). M actually believed there was an imminent car crash (he was frightened) and a reasonable person, knowing that T could not see properly would likely also have the same apprehension in the same or similar circumstances. M did apprehend the specific and imminent harmful or offensive contact. (he was frightened that he was about to get in a car crash which would likely result in physical harm.) Likely M's recovery would be limited to nominal damages.

M v. T for negligent driving resulting in causing his death

M will be able to successfully bring a negligence suit against T for his death. There is a duty unless a no duty rule applies. In this case, M will most likely argue that T's efforts were misfeasance since he undertook to get M home after their night out and his negligent efforts resulted in his death. Additionally, T owed a duty to M because they were in a common undertaking so T cannot argue that the nonfeasance exception allowed him to simply abandon him when he got belligerent. A reasonable coventurer would have ensure that M got home safely. The standard of care is probably defined by the statute because of the negligence per se doctrine. In this case, the statute does not provide for a private civil cause of action. The statute sets a specific standard of care: that the driver is required to wear corrective lenses when they have been prescribed. The injured person (M) is within the class of persons the statute is designed to protect: the statute is likely designed to protect anyone who is using the roadway or sidewalks from drivers who are unable to see properly. And the statute is designed to protect from the harm that was caused. In this case, M was hurt because T could not see well enough and was forced to step on the breaks quickly, causing M to slam his head into the dashboard. In this case T does not have any excuses since the statute is clearly written, is likely common knowledge and there was no attenuating circumstances that would have made it more dangerous for him to comply. If M is able to get the negligence per se instruction, he will still have to prove proximate cause, and cause in fact. If M is unable to get the negligence per se instruction the

standard of care owed was probably reasonable person, although T might be able to argue that he only had a duty not to be reckless because in some jurisdictions a driver only owes that duty to their passengers. The B<PL analysis suggests that T should have gone home to get his backup glasses because they were only a couple blocks away from his apartment, making the burden low, and the chances that he would hit something or someone would be high, also resulting in significant harm. M's legally cognizable harm was the blow to the head that resulted in the hemorrhage. T's actions satisfy the but-for test because but-for him not wearing his glasses he would not have slammed on the breaks and M would not have been injured. The proximate cause is also satisfied because knocking our head on the dashboard is a foreseeable harm given the risk of driving without glasses and risking the possibility of having to slam on the breaks. In this case, M's rare disease does not release T from liability. T does not have to be able to foresee the extent of the harm, only that the harm might happen. T might argue that York (Y) was a superseding cause but he likely will not have much luck here because another person lack of success in helping a belligerent person is within the scope of the risk that he caused, particularly if M's belligerence is coming from the head wound and not from the alcohol. T might also argue that M was contributory negligent because he declared that he did not need to go to the hospital. This may or may not succeed. Plaintiffs always have a duty to themselves. M was not wearing a seatbelt. If wearing a seatbelt would have prevented M from hitting his face on the dash, M is likely contributorily negligent. Especially if there is a seatbelt law, since the law would be designed to protect this type of harm to this type of plaintiff. The negligence per se instruction would take care of duty, standard of care, and breach. The proximate cause and cause in fact are also satisfied because if the seatbelt would have prevented the injury, then but-for not wearing the seatbelt, M would be fine and M's harm is within the foreseeable risk. If the seatbelt would not have prevented the knock then cause in fact is not satisfied and M may not be contributory negligent on that count. T might also argue that M was contributorily negligent for refusing to go to the hospital. If M's belligerence was as a result of his intoxication, T will likely win because intoxicated people are held to the reasonable person standard and M's declarations were unreasonable. However, if M's statements were a result of his head wound, T would be unreasonable to rely on M's statements and M is only held to the standard of a person with the same physical disability or physical impairment. A reasonable person would have taken M to the hospital anyway. If T is found negligent, M will likely be able to recover for his death. Lastly, T might argue that M was contributorily negligent because of his consumption of alcohol accelerated the process that killed him. A reasonable person has the duty to discover his own delicate condition and with that condition probably would not drink alcohol. If T wins on any of these, M's claim will be barred because they are in a traditional contributory negligence jurisdiction where any negligence on the aprt of the plaintiff bars his claim. (Lastly, T might argue that there was no proximate cause because once Y took M into his care, M had reached a position of safety and the risk posed by T's negligence was terminated. This is unlikely to succeed though, since the injury was invisible and ongoing to M.

M v. Y conversion of his wallet
Y's initial act of taking M's wallet out of his pocket was only a trespass to chattle because she had an intent to use the wallet (to discover M's address) and desire to damage is not required and she did actually deprive the owner of the wallet for a substantial period of time (the time between her taking the wallet and the time when she threw the wallet away.) However, the trespass to chattels became a conversion when she threw the wallet away because she intentionally exercised dominion or control of the wallet (she knew what she was doing when she threw away the wallet) which so seriously intereferes with another's right to control it (after she threw it away it was extremely unlikely that M would ever be able to recover it) that the actor may be justly required to pay full value of the chattel. (even if it were recovered, it would probably be ruined. Therefore it is just to require that Y would pay the full replacement value of the chattle.) Because Y exercised dominion to a great extent (completely) and for an indefinite and probably permanent period of time (since the wallet is unrecoverable), since the wallet is destroyed and replacing a wallet is a great inconvenience and because she had a bad frame of mind, it is even more likely to be found to be a conversion. Y would be liable to M for the damages resulting from the loss of his wallet, including replacement of the wallet and cards in it.

M v. Y battery
In a single intent jurisdiction, M might have a claim of battery against Y for offensive touching when she got his wallet out of his pocket. She intended to contact him. There was a contact and most people would find a stranger rifling through their pockets to be offensive.

In the two above claims, M's recovery will not be diminished or barred by any contributory negligence on his part because Y's frame of mind is worse and therefore overcomes those claims.

Y v. M false imprisonment
Y might like to claim false imprisonment against M for making her "feel trapped" because she didn't have his address and he was unconscious but she does not have a colerable claim. In this case, she had a reasonable means of escaping the situation (dropping off M at the hospital) and M did not have the requisite intent to confine or knowledge with substantial certainty that confinement would occur.

M v. Y Negligently attempting to rescue him
Y had no duty to give M a ride home or help him. However, once she did agree to do so, she had a duty to ensure that he would make it. In this case, M will most likely argue that Y's efforts were misfeasance since she undertook to get M home and her negligent efforts resulted in his death. Additionally, Y owed a duty to M because they were in a common undertaking so Y cannot argue that the nonfeasance exception allowed him to simply abandon him when he got belligerent. A reasonable coventurer would have ensure that M got home safely. Y's standard of

care was reasonable person. The fact that she is an architect (and therefore a professional at architecture) does not raise the standard of care or require her to call upon special knowledge that she likely doesn't have. A reasonable person would have taken M to the hospital after he passed out instead of leaving him out in the cold. The burden of dropping him off at the hospital or calling 911 and waiting for an ambulance are relatively small since they only require a little bit of time and annoyance. The fact that the burden for finding his correct address was high because he was passed out and did not have an address on him, is immaterial since the reasonable person would have taken him to the hospital or called 911 once he was unconscious. The potential harm is great since it was a cold night and, even if M hadn't had the strange condition, he still could have died in the cold and the probability that something like that would happen was high considering it was night and not entirely likely that security would have found him in a timely fashion. The legally cognizable harm in this case was M's death. Y's actions to not pass the but-for cause since M would have likely suffered the harm he did without her negligence. However, they do pass the substantial factor test since her leaving him out in the cold was sufficient to accelerate the injury. The proximate cause is also satisfied since it is reasonably foreseeable that leaving a person who is passed out in the cold could result in exactly the type harm that was caused here. Y may try to argue that M was contributorily negligent because he placed himself in the dangerous situation before she arrived. However, this assertion will be defeated by the last-clear chance doctrine because while M put himself in peril (by drinking and then refusing to go the hospital) and M didn't have a reasonable means of escape (since he was stranded at the café) Δ was or should have been aware of M's peril (by his asking her for a ride) and Δ's negligence followed π's (Y negligently attempted to get him home after M got himself into the bad situation) and Δ could have reasonably avoided the harm (by simply refusing to help him and letting someone else deal with it or by calling an ambulance or taking him to the hospital. Additionally, Y's assertion of the contributory negligence defense will be further frustrated by the fact that she may have acted recklessly and therefore had a worse state of mind (proven by her frustration at the situation that M had helped to create). Y might also try to frame the harm differently as being the initial knock to the head. If she were successful, this would relieve her of liability because she did not cause the harm and her efforts to help him might simply be considered foreseeable intervening instead of superseding causes.

More on damages against T and Y for M's negligently caused death

M should be able to recover from Y and T jointly and severally because they both created the risk and through the doctrine of alternate causes and the doctrine of res ipsa, the burden can be shifted to Y and T to determine who was more at fault for the injury. M's recovery against Y and T for their negligence in contributing to his death should not exceed the amount that would be recovered if only one of them had committed a tort against him. However, the recovery against T should probably not be reduced by the amount he would have had to pay in doctor bills because this expense would have been saved had T not driven negligently. Accordingly, if M attempts

only to recover from Y because she is an architect and likely more able to pay for the damages, the amount she owe should probably be reduced by the doctor bills since she did not cause that harm.

The survivor statute will allow the estate of M to continue to bring all claims against those tortfeasors which M would have a claim were he alive. It will also allow πs who have claims against M to bring them against his estate. Any damages recovered in those actions will flow through the estate before they reach M's family.

M's family will not be able to recover specifically for the $6,000 spent in funeral expenses because there is no survivor statute. They will also not have a cause of action against anyone for the loss of economic contribution they would have otherwise received from M. However, if the estate paid for M's funeral, those expenses would be considered a pecuniary damage flowing from the damage done to M in the torts against him in negligence by Y and T and may be recoverable.

Exam Number: Class: Torts I Professor: Gomez

1)
Brunet v. Tevez: Negligent Infliction of Emotional Distress (NIED)

Duty/Breach: Tevez owed a duty to Brunet because no no-duty rules apply. The standard of care would be to act as a reasonable and prudent person would under the same or similar circumstances to avoid or minimize risk of harm. Tevez breached his duty of care and created an unreasonable risk of harm by driving without his glasses because if he had not done this he would have realized that the shadow in the road was actually a person. This can be shown by using common knowledge. Also by a B<PL analysis the burden of wearing glasses is fairly low and the probability that harm will occur and the gravity of the harm could be fairly high. It is highly possible that Tevez could have hit Brunet instead of just scaring him. Tevez did not act a reasonable person by driving late at night with no glasses considering the severity of his vision problem.

While Tevez would likely have breached the duty owed Brunet in any case, this qualifies as a case of negligence per se. The standard of care is prescribed by an Oreglorida statute against driving without corrective lenses if the driver needs corrective lenses. This statute does not provide a civil cause of action and is specific enough to qualify for negligence per se. Brunet was the victim within the class of persons the statute was designed to protect as he was a pedestrian and the statute is aimed at pedestrians and drivers. It could be arguable whether Brunet's severe distress was the type of harm which the statute was trying to protect against. It mentions promoting safety and is presumably mostly aimed at preventing physical injuries. Despite this, safety could argue include mental health and it could be expected that a driver without his glasses could severly scare many people. There are no legally cognizable excuses for this violation as Tevez was not a child or incapacitated, was not attempting to comply with the statute, the statute was not presented in a confusing way and involved no greater risk of harm to Tevez for not complying. There is some doubt about whether the actor knew when the statue was applicable or whether he knew about the statute at all but the statute conforms with common sense so therefore I don't believe this would be an appropriate excuse. Even if judge decides that this was not the type of accident that the statute was aimed to protect against then it would revert to the ordinary standard of care which was most likely violated anyways.

Legally Cognizable Harm:

NIED has slightly more stringent rules for proving legally cognizable harm than some other torts, particularly in some jurisdictions. In most cases, there must have been a risk of physical injury to the plaintiff, though some courts are weakening this requirement in cases involving acts such as "dead body" cases or misinformation cases. In any event, this is clearly a case where there was a real risk of physical injury to Brunet as he and his dog could easily have been hit by a car. Also, Brunet did indeed suffer emotional distress as shown by his constant nightmares, this is a condition with which a reasonable person should not be expected to cope. By the old impact rule, not used in many jurisdictions if any today, Brunet would have had to show physical injury and would therefore would not have recovered as he was not actually physically injured by Tevez's negligence. Some jurisdictions require physical manifestation or a symptom and most courts are moving toward the more modern rule of allowing recovery for emotional distress alone. There is some debate about whether a nightmare could be considered a physical manifestation since it is still mostly in the plaintiff's head and not as clear cut as a rash or other physical symptom. But considering the trend toward recognizing emotional distress Brunet should be able to show a legally cognizable harm. This would be strengthened by medical or expert proof regarding his condition.

Cause in Fact:

Tevez's negligence was the cause in fact of Brunet's distress was but for Tevez's conduct Brunet would have avoided harm. Tevez is likely the sole cause of this harm though there could be an argument that Brunet contributed to the harm by crossing the street in the middle and not at a crosswalk or intersection. If this argument was considered valid, even if it was determined that TEvez was 95% at

fault and Brunet was only 5%, Brunet would be unable to recover in a contributory negligence jurisdiction such as Oreglorida. It could be argued though that Tevez was being reckless by consciously disregarding a known risk. Reckless behavior by the defendant is an exception to the contributory negligence doctrine. Tevez knew the risk of driving without his glasses and consciously decided to drive thus behaving in a reckless manner. Therefore whether Brunet is found to be at no fault at all or some fault he should not be barred from recovering even in this contributory negligence jurisdiction due to Tevez's reckless behavior.

Proximate Cause:

The type of harm, severe distress, does fall within the scope of the risk that Tevez created by driving without his glasses. It could also be argued that his negligence was swerving in the car and if that was the case severe distress would also fall within this action. (Incidentally, if this was how his negligence was defined it would probably satisfy the other negligence elements as well but I think it would be better to define his negligence as driving without glasses). Also Brunet fell within the class of people, mainly pedestrians and other drivers, that could be harmed by Tevez's actions. Therefore, it was foreseeable that driving without glasses would cause someone to be scared (or worse harmed).

Overall, Brunet should be able to have a successful NEID case against Tevez and Brunet would be able to recover compensatory damages for pecuniary costs if medical expenses arise if he seeks treatment and non-pecuniary compensation from emotional distress.

Messi's Estate v. Tevez:

A) Assault

Tevez assaulted Messi when he swerved the car intending to frighten Messi. In this case, the facts say that the act was intentional so that takes care of intent. He meant to put Messi in imminent apprehension of harmful contact as he yelled that he couldn't see and was going to crash. This was an imminent situation since the crash was presumably happening without significant delay or so Tevez made Messi think by swerving. Messi reasonably apprehended that the contact was coming, not only was he merely aware of the potential crash but was actually frightened. Therefore it is a fairly straightforward case of assault if the estate wishes to bring this claim against Tevez. Because this is a jurisdiction where survival statutes are in effect, the estate can sue for torts committed against Messi even after his death. The compensation in this case would probably be fairly small to compensate for any non pecuniary suffering that Messi temporarily experienced during the scare.

B) Negligence: driving without glasses, swerving and sudden stop

The potential negligent act of suddenly stopping the car due to not wearing glasses arguably led to two injuries: 1) Messi's broken/bleeding nose and 2) Messi's death.

Duty: Tevez owed a duty to act with the ordinary standard of care toward Messi.
Breach: Tevez most likely breached this duty by not wearing glasses, then further swerving as a joke and then having to suddenly stop the car due to his joke and not being able to see from not wearing his glasses.. This created an unreasonable risk of harm to Messi. It would have been no burden to not play a joke and continue driving normally. The potential harm of the joke was probably going to be fairly low as it was unlikely that anything would go wrong but if something did the harm could be potentially high. It is possible that Tevez could have actually harmed Messi if he had lost control of the car or caused him severe distress for example. In this case, Messi was harmed with ultimately devastating results. Also as discussed before it would not have been a huge burden on TEvez to wear glasses as he should have been doing anyways. Therefore, I would say that Tevez breached the expected standard of care. (this would not fall under the negligence per se doctrine as that is designed to protect pedestrians and drivers of motor

vehicles while Messi is a passenger. Though this does seem a little bit silly so perhaps the court would stretch this class to include passengers.)

I will now continue the negligence case dividing the next sections by the two legally cognizable harms:
1) bloody/broken nose: This is clearly a legally cognizable harm as it is an actual injury.
Cause in Fact: Tevez's negligence in stopping suddenly would be the but-for cause in fact of Messi's injured nose. If Tevez had not done this then Messi's nose would have been injured.

Proximate Cause: A reasonable person could have foresee that Messi would experience this type of harm. It is reasonable that swerving and suddenly stopping would cause someone to bash there head (particularly if they aren't wearing a seat belt). Furthermore, it is reasonable that Messi would be the person harmed as he was the passenger in the swerving or stopping car.

Defenses: Tevez could argue that Messi contributed to his injury by not wearing his seatbelt and thus created an unreasonable risk to his self. This is a tough call in seat belt cases because not wearing a seat belt is not really a contributing cause of the negligence but did contribute to the harm therefore it is hard to determine whether it is considered a superseding cause that breaks the causal chain between Tevez's negligence and Messi's injury. It is not a clear case because both acts happened at the same time and Messi's did not occur after Tevez's negligence as is normally the case with superseding causes. Courts could really go either way with this situation but if Messi was found to be contributorily negligent he would not be able to recover unless Tevez's actions were found to be reckless. It is possible to characterize Tevez's actions as reckless as he swerved to play a joke and knew that he was not wearing glasses and thus could not see well. If this was determined to be the case then Messi would still be able to recover for his bloody nose despite not wearing a seat belt.

Overall, Messi's estate has a fairly successful case against Tevez for the negligence that led to his bloody nose and the estate should be compensated for any pain associated with that injury.

2) Death: This is also a fairly clear legally cognizable harm since it is the ultimate physical injury.
Cause in Fact: This is a more difficult case of cause in fact than the initial bloody nose. His death was due to his rare genetic disorder but this should not initially matter considering the thin skull rule that means the defendant is responsible for any injuries that flow directly from the initial negligence. It does seem fairly clear that but for the negligence that led to the bloody nose, Messi would not have died.

Proximate Cause: This case is likely to fall apart on proximate cause since as there were several intervening causes including York's later behavior which may break the causal chain and become a superseding cause. York's behavior in leaving Messi outside was an independent action and was not set in motion by Tevez's initial negligence. Though the thin skull rule means that Tevez did not need to forsee the extent of the damage that resulted from his negligence to be responsible it is unlikely that Tevez will be monetarily responsible for Messi's death due to York's superseding actions and Messi's own contributory negligence.

Overall, this would be a fairly weak case of negligence but could work considering the thin skull rule. If this was the case, then Tevez would have to pay the $6000 in funeral expenses.

Defenses: Contributory Negligence

There is a stronger case for contributory negligence for the harm of death than for the bloody nose. Messi was a substantial factor in his own death as he was inebriated, a factor that would have accelerated his death independent of the later fact that he was left in the cold. Though Tevez would have been responsible for the death if it had occurred in a normal time frame (24 hours) he cannot necessarily be responsible for the accelerated death as other factors contributed to that. Messi also refused Tevez's

attempts to get Messi medical attention therefore further exacerbating his own condition. Therefore in this case Messi's own inebriation and protestations will likely bar his claim against Tevez in this strict contributory negligence regime. (It is possible that as Messi got drunk prior to the accident it won't be considered a superseding cause but considering how long drunkenness lasts I think this is unlikely).

Messi v. Law School: negligence

There could be a claim that the Law School negligently failed to have enough campus security on their buildings and thus failed to monitor Messi's condition.

Duty: The Law school owes the ordinary person standard of care to Messi. Even though the act of not rescuing could be considered non-feasance where there is no duty to act or rescue there could be an exception to this by the special relationship between the school and student. This relationship created a duty of care even in cases of nonfeasance.

It is possible though that Messi could be defined as a trespasser in which case the school would have owed a reduced standard of care to not behave in a wanton or reckless manner toward Messi as he was an undiscovered trespasser. If he was considered a licensee with limited permission to be on the land then he would still be subject to the reduced standard of care as he was a undiscovered licensee potentially harmed by the conditions at the school, not the actually activities occurring. It is not likely that he would be considered an invitee even though he was technically paying to be in law school for the benefit of the law school. He was most likely not supposed to be in the LRC at that late hour or time as it was probably winter break and the campus is closed. I'm not sure if the campus actually does close all the way but hoping for the sanity of law students I'm going to assume it does.

Breach: It is difficult to say that the Law School breached their duty of care. They probably did not create any unreasonable risk of harm to Messi. The "should have done" would have been having more security guards or perhaps security cameras to monitor their buildings. This seems a fairly expensive procedure though it is perhaps warranted due to the responsibility they owe their students. Overall while the probability of something bad happening on campus seems fairly low (this is Portland after all) the gravity of harm could be high as in this case it resulted in actual death. Therefore this would be a tough call for the jury to determine whether there was a breach of duty.

If Messi was considered a trespasser or licensee subject to the reduced standard of care it is doubtful the school breached as they did not act wantonly or recklessly toward messi.

Leg. Cog. Harm: death is a legally cognizable harm.

Cause in fact: While the law school not finding Messi soon enough may be considered a but-for cause of the negligence this is again unlikely.

Proximate Cause: Death is not necessarily a foreseeable cause of not having enough security guards though perhaps in this cruel world it is. I would consider theft or vandalism a more likely reason for having security forces on college campuses particularly in this neighborhood.

Overall, I believe this would be a failure of a negligence case against the school as there are problems of cause in fact and proximate cause. If Messi was determined to be a trespasser or licensee the case would fail altogether.

Messi v. York: conversion of chattels

Messi has a clear case against York for conversion of chattels as she stole his wallet. Initially, she intend to steal his wallet and only took it accidentally. But she formed the intent to exercise dominion or control over his wallet when she discovered it later and tossed the wallet out of the window and kept the money. Tossing the wallet seriously interfered with Messis' ability to control his wallet and justifies

York's paying the actual market price of the chattel to the estate. The money will also have to be repaid because it was taken from Messi in a way that he lost all control over the wallet. Further, York was not acting in good faith but was acting out of her anger at Messi for ruining her night. Damages will be $50 plus the actual market value of the wallet.

Messi v. York: negligence

Messi could claim that York's negligence in leaving Messi passed out in the cold was a substantial factor in his death.

Duty: York owed a duty to act as a reasonable person toward Messi. She could claim nonfeasance as he passed out and she ordinarily would have no duty to rescue him. In this case, the court will most likely find the voluntary undertakings exception. York did not have to give Messi a ride from the café but as soon as she did that she engaged in helping Messi. Furthermore, she several times shook him in an attempt to wake him up. She also looked for information to help him. Also while she could have initially claimed nonfeasance in the café she actively deposited him on the law school steps while he was drunk thus committing misfeasance. It is likely that she will be held to the ordinary standard of care.

Breach: York most likely breached the ordinary standard of care by leaving a passed out man outside in 40 degree weather at night. She could have easily called an ambulance or the police to help deal with the passed out drunk man and no real expense to herself. She could have also called campus security. The probability of harm coming to a passed out person alone at night in the cold is fairly high even without a brain condition. It is a bad idea to leave a passed out person anywhere alone at night and a reasonable person would have realized that.

LCH: death

Cause in fact/Proximate Cause: This section relates back to whether Tevez's negligence was the cause in fact of Messi's death. While his negligence caused the initial harm, York's negligence acted as a substantial factor accelerating his death. Leaving him out in the cold would have been sufficient to accelerate his death. Messi's inebriation would also have been sufficient to accelerate his death but under the substantial factor rule if there are two multi, independently sufficient causes then each can be held responsible.

Cause in fact is extremely trick in the case of Messi's death and I keep changing my mind about it probably because a reasonable jury would also have a hard time deciding who was ultimately responsible for the death. Because this is a contributory negligence jurisdiction it seems harsh to make Messi solely responsible when Tevez's initial actions caused the injury in the first place and York's action accelerated his death. I guess it depends whether the harm is defined as death or accelerated death. If it is defined as death then Tevez is probably responsible for the $6000 dollars where as if it is defined as accelerated death then York may be responsible for the funeral expenses except that Messi's behavior was also a substantial, independent factor that caused accelerated death. Therefore in the case of accelerated death I believe the contributory negligence doctrine would prevent Messi from having a claim against York.

By proximate cause Messi was clearly the person at risk from york's negligence. it is unclear whether the type of harm suffered by Messi (death) falls within the scope of the risk created. Death may have been forseeable even if not in this precise manner but that would be an issue for the jury to decide. I find it unlikely that these facts will satisfy the proximate cause element of negligence.

This negligence case will likely fail considering Messi's contributory negligence and Tevez's initial negligence.

York v. Messi: false imprisonment

This case would most likely fail on the element of intent despite York feeling trapped in her car. Messi did not intend to confine York but was simply wanted a ride home. If intent was present, York

would still have had ample chances to escape though there could be an argument of duress of goods by the passed out person sitting in her car.

Gomez v. Messi: assault

Messi did intend to put Gomez in imminent apprehension of harmful contact by running up to him intending to punch him. Intent can further be seen in the earlier conversation with Tevez where they agreed to seek revenge on Gomez. It does not matter that Gomez was not afraid of the blow. It may matter that Gomez was confident that there was no way Messi would ever land the blow since this would indicate that he was never actually in apprehension of contact. Therefore it is likely to be a weak case of assault.

It is possible that Tevez would also be vicariously liable for this assault because he was in an actionable relationship with Messi based on their earlier conspiracy. This is unlikely to hold up though as their earlier conspiracy to seek revenge was jokingly made.

It does not matter that Messi was inebriated since this is not held to significantly alter intent or even the reasonable person standard in a negligence case.

Gomez v. Messi: battery

Gomez is more likely to have a case against Messi for battery. Messi did intend to cause a harmful contact with Gomez. While Messi did not exactly contact Gomez in the way planned (vomit not a punch) he did still contact Gomez directly. While Gomez may not have been offended by this action, it is possible a jury will find that being vomited on would offend a reasonable sense of personal dignity.

Tevez could also be held vicariously liable for this though that is unlikely given the reasons under assault and also because vomit was probably not within the scope of what was expected. There is some more evidence for vicarious liability in that Tevez informed Messi of Gomez's presence knowing that Messi was highly intoxicated. That was probably not a smart idea but does not really seem strong enough for conspiracy.

Messi v. Tevez: trespass to chattels by breaking the chair

This may also be the Law School versus Tevez considering that Messi rented a pre-furnished apartment so presumably the chair actually belonged to the Law School. In this case, Tevez broke the school's or Messi's chair by sitting in it. The problem is that Tevez did not intentionally intend to break any chair so likely this case would fail despite the fact that the chattel was significantly impaired.

Tevez v. Law School: negligence in broken chair

Duty: the law school owed the duty as a lessor of Messi's apartment to act with reasonable care based on the more modern rule. Some jurisdiction still hold that lessors owe no duty to their tenants and guests but even if this jurisdiction was the case there would be an exception. In this case the landlord, the school, had contracted to make the general repairs to the property and knew about the defect. The law school knew about the chair as Messi had called to inform them of its damage.

Breach: The law school should have gone and fixed the chair or at least removed or replaced it. It had two days to do this which may not be considered too long considering how responsive the juries believe landlords should be. In this case the burden was probably low since this would be in the expected realm of how the law school should act. The probability of some harm occurring is fairly high since a guest could be expected to sit in a chair but the risk of harm was low. Thus it is a little debateable whether there was a clear breach but I would go with yes.

Legally Cognizable harm: Tevez broke his glasses which is a legally cognizable harm.

Cause in fact: But for the law school not repairing the chair as was their reasonable duty, Tevez would not have fallen and injured his glasses. While Messi should have perhaps warned his friend earlier or somehow shown that the chair was injured by a sign or something it is clear that the law school is at the very least a substantial factor in Tevez's glasses breaking.

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Proximate Cause: While the glasses breaking may be hard to forsee it would be easy to foresee that some damage would fall to the class of persons that included Tevez or people sitting in the chair. Furthermore, something breaking would not be entirely unforeseeable so this would be a reasonably foreseeable occurrence.

This case will most likely be successful with the school having to pay for the damage done to Tevez's glasses or for replacement glasses.

Tevez v. Messi: negligence failure to warn
Duty: Yes with the ordinary standard of care
Breach: yes probably as it would cost almost nothing to warn and could prevent someone from harming themselves by sitting on the chair.
LCH: yes broken glasses
Cause in Fact: With the school Messi was a substantial factor in the breaking of Tevez's glasses though it is more likely that the school as the lessor of the property will be held responsible.
Proximate Cause: Yup. Same reasons as above.
This is less likely to succeed than the case against the law school for the broken chair as Messi had already taken reasonable precautions by informing the school of the broken chair. Therefore they are more likely to be held responsible in this case.

Massi's estate v. Betty Ford: negligently selling alcohol to intoxicated individual
-This wouldn't exactly work it would rather have to be someone that Messi had been negligent against could sue Betty Ford but I don't have time to work that all out. Many states have dram lawas that almost impose a strict form of liability on dispensers of alcohol who serve to one intoxicated. Other courts on the extreme provide immunity to alcohol providers.

2)

a) Loss of chance for a better outcome is when because of negligence the current condition is worse than it would have been. In traditional jurisdictions the probability of a better outcome had to be greater than 50%. This caused a problem because some plaintiff's would have less than a 50% chance fo a better outcome even with better care. This led to situations where with a good doctor there would have been a 40% chance of a better outcome but with a negligent doctor that chance was reduced to 10% and no recovery could be had against the negligent doctor. This has led to a more relaxed causation standard today where the plaintiff must prove that the defendant's negligent more likely than not decreased the chance for a better outcome. If the negligence was found to decrease the chance for a better outcome then the plaintiff can recover for the los opportunity or in some jurisdictions they can still get recovery for full damages of the whole injury.

b) Increased risk of future harm is another area where the legally cognizable harm has been reconceptualized to allow recovery where the cause-in-fact element is weak in a negligence case. In these circumstances, such as when a chemical may immediately burn but could also later cause cancer, the damages can be highly speculative. The traditional view was that there was no recovery unless the plaintiff could show that more probable than not that harm will occur. The currently emerging view is that the plaintiff is allowed recovery when plaintiff can show that the harm is real even if it less than 50% likely to occur. Both views allow recovery for medical monitoring and frequently for emotional distress. It varies whether jurisdictions allow recovery for the whole injury or whether damages are decreased by the likelihood of the second harm occurring which is the predominant method in the emerging more modern view. Courts also have a variety of ways of dealing with these problems from allowing a second trial when the future harm materializes, to only allowing recovery for the current harm, to allowing for recovery for the current harm and the speculative future harm.

These relaxed standards are a logical way for plaintiff's to recovery from real harms where the preponderance of the evidence for causation may not be 50%. Thus they fulfill one some of the major goals of tort law including moral or corrective justice. Under this theory a harmed or injured party should be able to recover for their injuries. Corrective justice would work to allow recovery in the situations described above. For loss of a better outcome it does not agree with corrective justice principles to allow no recovery if a person has below a 50% chance of recovering, even if negligence decreased that chance from 40% to 10%. Though it may not be able to pass the causation but-for test because there was still a below 50% chance of surviving there should be a way to recover for this harm. Also corrective justice helps explain the increased risk of future harm. Just because the harm may be speculative does not mean that it does not exist. It would be very unfair to require someone to sue within a specific statute of limitations but not allow recovery for all potential harms that result from the defendant's negligent act. Corrective justice principles suggest that recovery should be available for any harm, even if it may be speculative or not specifically conform to the but-for test.

The tort concept of deterrence could also come into play in these situations. If there was no recovery for negligent care for people who had a less than 50% chance of living this could lead to extremely lax standards of care regarding some of our sickest individuals. Therefore, the knowledge that these suits are allowed reinforces that the best care should be given by all doctors to all patients no matter what their chance of recovery may be before care is commenced. This would also fit strong public policy goals. Deterrence also applies for increased risk of future harm, particularly in cases involving pollution. Not allowing recovery for future harms, even if they are speculative would potentially allow polluters to dump toxics into our environment that cause no immediate harm to people but cause long term cancer and other harms. It may be a deterrent to these companies bad practices (and similar situations) to hold defendant's accountable for these harms as well.

I do not think the traditional rule in the loss of a better outcome scenarios of allowing full recovery for the whole injury is a logical or satisfying rule. The more modern approach of allowing recovery for the loss of opportunity is more logical and allows the defendant to correct for his specific negligence rather than for disease or injury that is in no way his fault.

In the increased risk of future harm scenarios, I believe it is a good idea to insist on medical monitoring and perhaps allow a second trial if symptoms occur. I'm not sure how exactly this would work with our preclusion rules since I have not studied those yet. But if it could be done it would allow plaintiff's to prove actual harms rather than the court's giving highly speculative damage awards to defendant's simply on the basis of potential future harm.

These damage awards would help insure that the speculative nature of both awards was confined a bit to prevent outlandishly speculative awards. This would seem to be the strongest argument against awarding in these types of situations and though it is valid, there are ways to avoid the highly speculative nature and find more agreeable, reasonable awards.

There are several practical arguments against these cases, particularly loss of chance cases, including the elevated price of medical malpractice insurance and health care costs in general. Also, there is a feeling that doctors may practice "defensive medicine" in order to avoid loss of chance verdicts. The health care system is certainly expensive and confusing but this should not allow doctors to be able to engage in negligent behavior that decreases the chance of a better outcome. Also, consent forms could perhaps get rid of some of the worry about defensive medicine. If a patient was willing to try a more risky behavior they could agree to not sue. Hopefully, doctors would be more inspired by this doctrine to use the best possible procedures rather than revert to safe practices that are not best practice.

Once the harm is redefined in both these cases as a loss of a chance or increased risk of future harm, it can against allow cause in fact to operate under the preponderance of the evidence rule so it does not disrupt the negligent concepts of causation or evidence overly much. The loss of a chance or the future harm still have to be established by a preponderance of the evidence. While this can be confusing in some instances it certainly doesn't undermine the standards of proof that "undergird the tort system" according to some critics of the practice. These relaxed rules in terms of defining the harm help insure

that plaintiffs receive true justice and can recover against the defendant for the harm done. This is the ultimate goal of tort law