

FINAL EXAM

Instructions

DO NOT GO BEYOND THIS PAGE UNTIL THE EXAM ACTUALLY BEGINS.

THIS IS A CLOSED BOOK EXAM!

While you are waiting for the exam to begin, be sure that you have written your EXAM NUMBER and "TORTS—SPRING '95—FINAL EXAM" on EACH bluebook, that you have read these instructions, and that you are otherwise ready to begin.

IMPORTANT: This exam will last THREE HOURS. You should plan on spending AT LEAST 20 minutes reading the questions carefully and outlining your answers on a separate sheet of paper. Before writing your answers, REREAD each question to be sure you haven't missed anything.

DOUBLE-SPACE your answers in the bluebook.

Use SEPARATE BLUEBOOKS for EACH QUESTION. Label each bluebook according to each question and, if necessary, book number, *e.g.*, "Question 1, Book 1"; "Question 1, Book 2"; "Question 2"; etc. When you are finished, turn to the back cover of the first bluebook, and place the second, third, fourth, etc. bluebook in order inside the end of the first bluebook, so the whole makes a single package, reading in sequence. Then put it in the box at the front.

You are welcome to use abbreviations, but indicate what they are, *e.g.*, 'Andropov ("A") would be sued by Brezhnev ("B"), alleging that A would be liable to B'

PLEASE IGNORE issues relating to legal causation; assume that any but-for cause of an injury is also a proximate cause of that injury.

Plan on spending at least 15 minutes at the end PROOFREADING your answers. You may not write ANOTHER WORD after time is called.

A STATUTORY APPENDIX is provided that gives the law of this jurisdiction, the State of Suspense, on some issues. If no law is specified on the point you are interested in, please comment on the possible alternatives.

Each question has been assigned a point total, and the exam as a whole has a point total of **135**. Spend the amount of time on each question reflecting its relative worth.

You may KEEP your copy of the exam questions if you wish.

REMEMBER THE HONOR CODE! Don't identify yourself.

DOUBLE SPACE!

DOUBLE SPACE!

DOUBLE SPACE!

GOOD LUCK!!!

QUESTION 1 (70 points)

In 1989, Josephine Wagner sought treatment from Dr. Craig Burkhart for her cystic acne. Dr. Burkhart prescribed various treatments including Minocin, an antibiotic manufactured and distributed by Smith Pharmaceuticals. Minocin is a tetracycline derivative. On November 8, 1992, Dr. Burkhart prescribed Accutane, which is manufactured by Roche Laboratories. On December 30, 1992, Mrs. Wagner told Dr. Burkhart she was having headaches, blurry vision, and intermittent transient loss of vision. Dr. Burkhart referred her to an ophthalmologist that same day. (It was not her first visit to an ophthalmologist. Mrs. Wagner had had intermittent transient loss of vision in her left eye since September and headaches since the summer of 1992. Furthermore, the ophthalmologist had diagnosed papilledema, swelling of the optic disk, in both eyes that appeared to be somewhat chronic.)

The ophthalmologist referred Mrs. Wagner to a neurologist for a diagnostic workup. Following this workup, the neurologist concluded that Mrs. Wagner had pseudotumor cerebri ("PTC"), also referred to as benign intracranial pressure and prescribed various treatments, including steroids, to reduce the intracranial pressure. Ultimately, Mrs. Wagner developed avascular necrosis as a result of the steroids and had to have surgical replacement of her left shoulder and both hips. Avascular necrosis is a condition most common to the ball end of the shoulder and hip joints in which the blood supply is impaired resulting in destruction of the bone.

You are a first-year associate in a law firm and have been assigned to develop a litigation strategy on behalf of Mrs. Wagner. You estimate the damages to be \$1,000,000 if liability could be established. A nurse who is employed by your office to provide medical background research tells you the following:

Accutane, a synthetic form or derivative of vitamin A, was synthesized in the late 1960's and was originally tested in Europe in 1980 with individuals with acne. Accutane inhibits sebaceous gland function. As a synthetic analog, it is considered to be much safer and much less toxic than Vitamin A. Accutane is different from Vitamin A because of a different molecular structure that alters its pharmacologic effects in the body. Vitamin A was used extensively as a therapeutic agent in the 1950's in the treatment of recalcitrant acne and keratinizing diseases that were untreatable by other drugs. Vitamin A is very safe when taken within certain dose limits. However, because it is a fat soluble vitamin, when Vitamin A is taken in very high doses for prolonged periods, it is stored in tissues with high fat content, such as the brain and the liver, and the levels become higher and higher until toxicity results. Medical literature, published between 1950 and 1960, documented vitamin A toxicity, referred to as hypervitaminosis A, which includes such problems as headache, dizziness, papilledema and PTC, an extremely rare problem.

In regard to Accutane, Roche began the required clinical testing of this drug in the United States in 1983 after receiving approval of the United States Food & Drug Administration ("FDA"). Between 1983 and 1991, approximately five hundred twenty-five patients in more than twenty different clinical studies received Accutane for varying periods of time, ranging from eight weeks

to two years. Roche provided the physician investigators conducting these clinical trials with an Investigational Drug Brochure which included a study protocol. The study protocol detailed the ophthalmological testing as well as the required neurological testing for the clinical investigators to conduct every two weeks on each patient, including visits after the course of drug treatment had been completed. The neurological testing required documentation on such symptoms as headache, dizziness, and PTC. The ophthalmological testing included examination for papilledema. During the clinical study of Accutane, no papilledema was observed in any patient. Headaches were observed in about one in twenty patients. Dizziness occurred in less than one percent of the total population tested. No clinical investigator reported any case of PTC during the clinical trials of Accutane.

In July 1992, Roche submitted its New Drug Application ("NDA") to the FDA. An NDA seeks FDA approval to market a drug; without FDA approval, a pharmaceutical company cannot market a drug in this country. The NDA contained the results of clinical as well as animal studies and medical articles published on the drug. The FDA is responsible for deciding whether or not premarket testing has adequately identified a drug's potential risks and benefits. Additionally, the FDA promulgates regulations controlling the content and format of the labelling of prescription drugs and dictates the information provided in certain sections of the drug package insert, including the "Contraindications," "Warnings," and "Adverse Reactions" sections. On May 7, 1992, Accutane received FDA approval for use in the treatment of severe, recalcitrant cystic acne. Accutane was first marketed in this country in September 1992.

With regard to PTC, the following information is available:

1. it is more common in women than men;
2. it is more common in women of child bearing age;
3. the predominant risk factor is obesity and a recent significant weight gain;
4. large doses of Vitamin A cause hypervitaminosis A, including symptoms such as hair loss, chapped lips, and PTC;
5. PTC is an inflammation of brain tissue which causes increased intracranial pressure; the principal symptoms of PTC are headaches and visual disturbances;
6. in 1992, tetracyclines including Minocin were known to cause PTC;
7. prior to December 1992, there were no reports, scientific studies, or medical literature associating Accutane with PTC;
8. medical articles published prior to 1992 stated that Accutane seemed to produce fewer central nervous system side effects than the naturally occurring retinoids such as Vitamin A;
9. prior to December 1992, there were no medical reports documenting any synergistic effect between Accutane and Minocin; and
10. at the time of filing the NDA on Accutane, there were no medical reports documenting any synergistic effect between any antibiotic and Vitamin A or any retinoid.

There were no cases of PTC associated with Accutane reported prior to 1992 when the drug was marketed and Mrs. Wagner took it. Furthermore, as of December 1992, there were no reports in the medical literature linking Accutane with PTC. Nor did any studies or reports contraindicate the concomitant use of Accutane and Minocin. Roche did warn about all potential side effects observed in the clinical trials of Accutane which were associated with hypervitaminosis A.

Please prepare a memorandum summarizing your analysis of the litigation alternatives and any recommendations you have.

QUESTION 2 (45 points)

Charles LeFevre recently won the lottery. However, prior to that lucky day he was involved in some legal difficulties that he has now brought to your office.

Eric Poling operates a towing company which does a certain amount of repossession work. Poling was contacted by Beverly Sokol, an employee of a company which does repossession work. Sokol informed Poling that she had an order from the Credit Acceptance Corporation to repossess a truck belonging to LeFevre. Sokol and her daughter met Poling, Angela Moles and Mike Shannon and drove to LeFevre's house to repossess the truck at approximately 1:00 a.m. on the morning of October 27, 1993. LeFevre's truck was parked in the driveway. Poling and Shannon began hooking up the car. LeFevre opened an upstairs bedroom window and yelled out asking the people what they were doing. According to Poling's testimony, he yelled back at LeFevre that they were repossessing his car.

LeFevre tells you that he received no response to his question. At that time, LeFevre yelled something about getting a gun and Poling, Moles and Shannon saw the barrel of a .12 gauge shotgun sticking out the bedroom window. Poling, Moles and Shannon got in the truck and began to try to maneuver the truck out of the driveway. They ducked down in the truck because they were afraid that LeFevre was going to fire the shotgun. They remained crouched down for approximately one minute and when they sat up and began to move the truck, LeFevre fired one shot which struck the driver's side window. The glass shattered and Poling was hit in the left shoulder and head with several pellets. One pellet remains in Poling's brain, one is imbedded in his skull and two more are in his face around his left eye. Moles was hit by a pellet in the leg.

LeFevre tells you that he had been late on a certain number of payments on his truck and that his September 1993 payment bounced. He received a default notice on October 6, 1993, and he wrote another check which included amounts for his September and October payments as well as a three dollar late charge. The check was dated October 12, 1993. According to LeFevre's testimony, he thought that everything was fine.

On October 26, 1993, LeFevre received several telephone calls from his daughter indicating that she wanted to come home. However, LeFevre did not know where his daughter was living and

he heard a male voice yelling at her to tell her father that he would come over to his house. LeFevre testified that he was very upset after these phone calls and he had trouble sleeping that night. At approximately 1:00 a.m., LeFevre looked out his bedroom window and saw people around his car. He asked them what they were doing and they did not answer. LeFevre says that he fired the shotgun at them in an attempt to hit the tires and to stop the car. LeFevre states that he thought the people were stealing his truck and that he did not fear for his own life or for the life of his mother, who was also inside the house.

You estimate the damages at trial for this case to be in the range of \$1,000,000. Please prepare a memo stating your analysis of whether or not liability will be imposed on Lefevre.

QUESTION 3 (20 points)

You are a legislative aide to United States Senator Washington, who is a member of the Senate Judiciary Committee. You have been assigned to evaluate a constituent's proposal that would reform defamation law. Please read the following and prepare a memo containing your recommendations to Senator Washington. Should she sponsor such legislation? Why or why not?

The Plaintiff's Option Libel Reform Act

§ 1. ACTION FOR DECLARATORY JUDGMENT THAT STATEMENT IS FALSE AND DEFAMATORY.

(a) CAUSE OF ACTION.

(1) Any person who is the subject of any defamation may bring an action in any court of competent jurisdiction for a declaratory judgment that such publication or broadcast was false and defamatory.

(2) Paragraph (1) shall not be construed to require proof of the state of mind of the defendant.

(3) No damages shall be awarded in such an action.

(b) BURDEN OF PROOF. The plaintiff seeking a declaratory judgment under subsection (a) shall bear the burden of proving by clear and convincing evidence each element of the cause of action described in subsection (a). In an action under subsection (a), a report of a statement made by an identified source not associated with the defendant shall not be deemed false if it is accurately reported.

(c) DEFENSES. Privileges that already exist at common law or by statute, including but not limited to the privilege of fair and accurate report, shall apply to actions brought under this Section.

(d) BAR TO CERTAIN CLAIMS. A plaintiff who brings an action for a declaratory judgment under subsection (a) shall be forever barred from asserting any other claim or cause of action arising out of a publication or broadcast which is the subject of such action.

§ 2. LIMITATION ON ACTION.

(a) Any action arising out of a publication or broadcast which is alleged to be false and defamatory must be commenced not later than one year after the first date of such publication or broadcast.

(b) It shall be a complete defense to an action brought under Section 1 that the defendant published or broadcast an appropriate retraction before the action was filed.

(c) No pretrial discovery of any sort shall be allowed in any action brought under Section 1.

(d) When setting trial dates, courts shall give actions brought under Section 1 priority over other civil actions.

§ 3. PROOF AND RECOVERY IN DAMAGE ACTIONS.

(a) In any action for damages for libel or slander or false-light invasion of privacy, the plaintiff may recover no damages unless the plaintiff proves both falsity and actual malice by clear and convincing evidence.

(b) Punitive damages may not be awarded in any action for libel or slander or false-light invasion of privacy.

(c) A plaintiff who brings an action for damages for libel or slander or false-light invasion of privacy shall be forever barred from asserting any other claim or cause of action arising out of a publication or broadcast which is the subject of such action.

§ 4. ATTORNEYS' FEES.

(a) GENERAL RULE. Except as provided in subsection (b), in any action arising out of a publication or broadcast which is alleged to be false and defamatory, the court shall award the prevailing party reasonable attorneys' fees.

(b) EXCEPTIONS.

(1) In an action for damages, a prevailing defendant shall not be awarded attorneys' fees if the plaintiff sustained special damages and the action is found to have been brought and maintained with a reasonable chance of success.

(2) In an action brought under Section 1, a prevailing defendant shall not be awarded attorneys' fees if the plaintiff has brought and maintained the action with a reasonable chance of success and presented, or formally tried to present, to the defendant evidence that the statement was false and defamatory before the action was filed.

(3) In an action brought under Section 1, a prevailing plaintiff shall not be awarded attorneys' fees if the plaintiff has prevailed on the basis of evidence that the plaintiff did not present, or formally try to present, to the defendant before the action was filed.

(4) In any action brought under Section 1 in which the defendant has made an appropriate retraction after the filing of suit, the plaintiff shall be treated as the prevailing party up to that point and the defendant shall be treated as the prevailing party after that point.

§ 5. EFFECTIVE DATE.

This Act shall apply to any cause of action that arises on or after the date of the enactment of this Act.

SUSPENSE REVISED CODE ANNOTATED
CHAPTER 735. CIVIL PROCEDURE
ACT 5. CODE OF CIVIL PROCEDURE
ARTICLE II. CIVIL PRACTICE
PART 11. TRIAL

§ 2-1116. Limitation on recovery in tort actions

In all actions on account of bodily injury or death or physical damage to property, based on negligence, or product liability based on strict tort liability, the plaintiff shall be barred from recovering damages if the trier of fact finds that the contributory fault on the part of the plaintiff is more than 50% of the proximate cause of the injury or damage for which recovery is sought. The plaintiff shall not be barred from recovering damages if the trier of fact finds that the contributory fault on the part of the plaintiff is not more than 50% of the proximate cause of the injury or damage for which recovery is sought, but any damages allowed shall be diminished in the proportion to the amount of fault attributable to the plaintiff.

CHAPTER 740. CIVIL LIABILITIES
ACT 100. JOINT TORTFEASOR CONTRIBUTION ACT

§1. Application of act

This Act applies to causes of action arising on or after March 1, 1978.

§2. Right of contribution

(a) Except as otherwise provided in this Act, where 2 or more persons are subject to liability in tort arising out of the same injury to person or property, or the same wrongful death, there is a right of contribution among them, even though judgment has not been entered against any or all of them.

(b) The right of contribution exists only in favor of a tortfeasor who has paid more than his pro rata share of the common liability, and his total recovery is limited to the amount paid by him in excess of his pro rata share. No tortfeasor is liable to make contribution beyond his own pro rata share of the common liability.

(c) When a release or covenant not to sue or not to enforce judgment is given in good faith to one or more persons liable in tort arising out of the same injury or the same wrongful death, it does not discharge any of the other tortfeasors from liability for the injury or wrongful death unless its terms so provide but it reduces the recovery on any claim against the others to the extent of any amount stated in the release or the covenant, or in the amount of the consideration actually paid for it, whichever is greater.

(d) The tortfeasor who settles with a claimant pursuant to paragraph (c) is discharged from all liability for any contribution to any other tortfeasor.

(e) A tortfeasor who settles with a claimant pursuant to paragraph (c) is not entitled to recover contribution from another tortfeasor whose liability is not extinguished by the settlement.

(f) Anyone who, by payment, has discharged in full or in part the liability of a tortfeasor and has thereby discharged in full his obligation to the tortfeasor, is subrogated to the tortfeasor's right of contribution. This provision does not affect any right of contribution nor any right of subrogation arising from any other relationship.

§ 3. Amount of Contribution

The pro rata share of each tortfeasor shall be determined in accordance with his relative culpability. However, no person shall be required to contribute to one seeking contribution an amount greater than his pro rata share unless the obligation of one or more of the joint tortfeasors is uncollectable. In that event, the remaining tortfeasors shall share the unpaid portions of the uncollectable obligation in accordance with their pro rata liability.

If equity requires, the collective liability of some as a group shall constitute a single share.

§ 4. Rights of Plaintiff Unaffected

A plaintiff's right to recover the full amount of his judgment from any one or more defendants subject to liability in tort for the same injury to person or property, or for wrongful death, is not affected by the provisions of this Act.

§ 5. Enforcement

A cause of action for contribution among joint tortfeasors may be asserted by a separate action before or after payment, by counterclaim or by third-party complaint in a pending action.

CHAPTER 745. CIVIL IMMUNITIES
ACT 10. LOCAL GOVERNMENTAL AND GOVERNMENTAL
EMPLOYEES TORT IMMUNITY ACT
ARTICLE I--GENERAL PROVISIONS
PART 1. SHORT TITLE, CONSTRUCTION AND APPLICATION OF THE ACT

§ 1-101. Short title

This Act shall be known and may be cited as the "Local Governmental and Governmental Employees Tort Immunity Act".

§ 1-101.1 Purpose--Immunities and defenses

(a) The purpose of this Act is to protect local public entities and public employees from liability arising from the operation of government. It grants only immunities and defenses.

(b) Any defense or immunity, common law or statutory, available to any private person shall likewise be available to local public entities and public employees.

§ 1-102. Severability clause

If any provision or clause of this Act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

§ 1-204. Injury

"Injury" means death, injury to a person, or damage to or loss of property. It includes any other injury that a person may suffer to his person, reputation, character or estate which does not result from circumstances in which a privilege is otherwise conferred by law and which is of such a nature that it would be actionable if inflicted by a private person. "Injury" includes any injury alleged in a civil action, whether based upon the Constitution of the United States or the Constitution of the State of Suspense, and the statutes or common law of Suspense or of the United States.

§ 2-102. Punitive or exemplary damages

Notwithstanding any other provision of law, a local public entity is not liable to pay punitive or exemplary damages in any action brought directly or indirectly against it by the injured party or a third party. In addition, no public official is liable to pay punitive or exemplary damages in any action arising out of an act or omission made by the public official while serving in an official executive, legislative, quasi-legislative or quasi-judicial capacity, brought directly or indirectly against him by the injured party or a third party.

§ 2-103. Adoption or failure to adopt enactment--Failure to enforce law

A local public entity is not liable for an injury caused by adopting or failing to adopt an enactment or by failing to enforce any law.

§ 2-104. Issuance, denial, suspension or revocation of permit, etc.

A local public entity is not liable for an injury caused by the issuance, denial, suspension or revocation of, or by the failure or refusal to issue, deny, suspend or revoke, any permit, license, certificate, approval, order or similar authorization where the entity or its employee is authorized by enactment to determine whether or not such authorization should be issued, denied, suspended or revoked.

§ 2-105. Inspection of property--Failure to make or negligent inspection

A local public entity is not liable for injury caused by its failure to make an inspection, or by reason of making an inadequate or negligent inspection, of any property, other than its own, to determine whether the property complies with or violates any enactment or contains or constitutes a hazard to health or safety.

§ 2-111. Existing defenses

Nothing contained herein shall operate to deprive any public entity of any defense heretofore existing and not described herein.

§ 2-201. Determination of policy or exercise of discretion

Except as otherwise provided by Statute, a public employee serving in a position involving the determination of policy or the exercise of discretion is not liable for an injury resulting from his act or omission in determining policy when acting in the exercise of such discretion even though abused.

§ 2-202. Execution or enforcement of law

A public employee is not liable for his act or omission in the execution or enforcement of any law unless such act or omission constitutes willful and wanton conduct.

RESTATEMENT (2D) OF TORTS

§8A. Intent

The word "intent" is used throughout the Restatement of this Subject to denote that the actor desires to cause consequences of his act, or that he believes that the consequences are substantially certain to result from it.

§13. Battery: Harmful Contact

An actor is subject to liability to another for battery if

- (a) he acts intending to cause a harmful or offensive contact with the person of the other or a third person, or an imminent apprehension of such a contact, and
- (b) a harmful contact with the person of the other directly or indirectly results

§15. What Constitutes Bodily Harm

Bodily harm is any physical impairment of the condition of another's body, or physical pain or illness.

§18. Battery: Offensive Contact

(1) An actor is subject to liability to another for battery if

- (a) he acts intending to cause a harmful or offensive contact with the person of the other or a third person, or an imminent apprehension of such a contact, and
- (b) an offensive contact with the person of the other directly or indirectly results.

(2) An act which is not done with the intention stated in Subsection (1,a) does not make the actor liable to the other for a mere offensive contact with the other's person although the act involves an unreasonable risk of inflicting it and, therefore, would be negligent or reckless if the risk threatened bodily harm.

§21. Assault

- (1) An actor is subject to liability to another for assault if
- (a) he acts intending to cause a harmful or offensive contact with the person of the other or a third person, or an imminent apprehension of such a contact, and
 - (b) the other is thereby put in such imminent apprehension.
- (2) An act which is not done with the intention stated in Subsection (1, a) does not make the actor liable to the other for an apprehension caused thereby although the act involves an unreasonable risk of causing it and, therefore, would be negligent or reckless if the risk threatened bodily harm.

§35. False Imprisonment

- (1) An actor is subject to liability to another for false imprisonment if
- (a) he acts intending to confine the other or a third person within boundaries fixed by the actor, and
 - (b) his act directly or indirectly results in such a confinement of the other, and
 - (c) the other is conscious of the confinement or is harmed by it.
- (2) An act which is not done with the intention stated in Subsection (1, a) does not make the actor liable to the other for a merely transitory or otherwise harmless confinement, although the act involves an unreasonable risk of imposing it and therefore would be negligent or reckless if the risk threatened bodily harm.

§36. What Constitutes Confinement

- (1) To make the actor liable for false imprisonment, the other's confinement within the boundaries fixed by the actor must be complete.
- (2) The confinement is complete although there is a reasonable means of escape, unless the other knows of it.
- (3) The actor does not become liable for false imprisonment by intentionally preventing another from going in a particular direction in which he has a right or privilege to go.

§ 46. Outrageous Conduct Causing Severe Emotional Distress

- (1) One who by extreme and outrageous conduct intentionally or recklessly causes severe emotional distress to another is subject to liability for such emotional distress, and if bodily harm to the other results from it, for such bodily harm.
- (2) Where such conduct is directed at a third person, the actor is subject to liability if he intentionally or recklessly causes severe emotional distress
- (a) to a member of such person's immediate family who is present at the time, whether or not such distress results in bodily harm, or
 - (b) to any other person who is present at the time, if such distress results in bodily harm.

§63. Self-Defense by Force Not Threatening Death or Serious Bodily Harm

- (1) An actor is privileged to use reasonable force, not intended or likely to cause death or serious bodily harm, to defend himself against unprivileged harmful or offensive contact or other bodily harm which he reasonably believes that another is about to inflict intentionally upon him.
- (2) Self-defense is privileged under the conditions stated in Subsection (1), although the actor correctly or reasonably believes that he can avoid the necessity of so defending himself,
- (a) by retreating or otherwise giving up a right or privilege, or
 - (b) by complying with a command with which the actor is under no duty to comply or which the other is not privileged to enforce by the means threatened.

§65. Self-Defense by Force Threatening Death or Serious Bodily Harm

- (1) Subject to the statement in Subsection (3), an actor is privileged to defend himself against another by force intended or likely to cause death or serious bodily harm, when he reasonably believes that
- (a) the other is about to inflict upon him an intentional contact or other bodily harm, and that

- (b) he is thereby put in peril of death or serious bodily harm or ravishment, which can safely be prevented only by the immediate use of such force.
- (2) The privilege stated in Subsection (1) exists although the actor correctly or reasonably believes that he can safely avoid the necessity of so defending himself by
- (a) retreating if he is attacked within his dwelling place, which is not also the dwelling place of the other, or
 - (b) permitting the other to intrude upon or dispossess him of his dwelling place, or
 - (c) abandoning an attempt to effect a lawful arrest.
- (3) The privilege stated in Subsection (1) does not exist if the actor correctly or reasonably believes that he can with complete safety avoid the necessity of so defending himself by
- (a) retreating if attacked in any place other than his dwelling place, or in a place which is also the dwelling of the other, or
 - (b) relinquishing the exercise of any right or privilege other than his privilege to prevent intrusion upon or dispossession of his dwelling place or to effect a lawful arrest.