

COMPLEX: Nationwide - State Factors for Multi-Factor Balancing Test

(1) the injury is too remote from the negligence; or (2) the injury is too wholly out of proportion to the culpability of the negligent tortfeasor; or (3) in retrospect it appears too highly extraordinary that the negligence should have **brought about the harm**; or (4) because allowance of recovery would place too **UNREASONABLE A BURDEN** on the negligent tortfeasor; or (5) because allowance of recovery would be too likely to open the way for fraudulent claims; or (6) allowance for recovery would enter a field that has no sensible or just stopping point.”) on the defendant of taking **precautions** against the **risk**, (9) the defendant’s ability to exercise **due care**, (10) the consequences on society of **IMPOSING THE BURDEN** on the defendant, (11) public policy, (12) the normal **expectations** of participants in the defendant’s activity, (13) the expectations of the parties and of society, (14) the goal of preventing future injuries by deterring conduct in which the defendant engaged, (15) the desire to avoid an **increase in litigation**, (16) the decisions of other jurisdictions, (17) the **balance of the foreseeable risk** of injury versus the **BURDEN OF PREVENTING IT (I.E., THE LEARNED HAND FORMULA)**, (18) fairness, (19) logic and science, (20) the desire to **limit the consequences of wrongs** (expressed in New York as the desire to curb the likelihood of unlimited or insurer-like liability), (21) the hand of history, (22) ideals of morality and justice, (23) the convenience of administration of the resulting rule, (24) social ideas about where the plaintiff’s loss should fall, (25) whether there is social consensus that the plaintiff’s asserted interest is worthy of **protection**, (26) community mores, (27) whether the **injury** is too remote from the defendant’s conduct, (28) whether the **INJURY IS OUT OF PROPORTION** to the defendant’s wrong, (29) whether the **imposition of a duty** would open the way to fraudulent claims, (30) whether the recognition of a **duty** would enter a field with no sensible stopping point, (31) the cost and ability to spread the **risk of loss**, (32) the court’s experience, (33) the desire for a reliable, predictable, and consistent body of law, (34) public policies regarding the expansion or limitation of new channels of **liability**, (35) the potential for **disproportionate risk** and reparation allocation, (36) whether one party had superior **knowledge** of the **relevant risks**, (37) whether either party had the right to **control** or had actual control over the instrumentality of **harm**, (38) the degree of certainty that the plaintiff suffered **injury**, (39) the moral blame attached to the defendant’s conduct, (40) the **foreseeability** of the plaintiff, (41) economic factors, and (42) a consideration of which party could better **BEAR THE LOSS**.

What Judges Will Ask You After Your Breach

Will you be able to answer them?

1. Was the threat foreseeable?
2. Did you consider the harm it could have caused?
3. Did the breach victims benefit from your use of their data?
4. What benefit did you gain from your use of the data?
5. What alternative safeguards would have mitigated the risk?
6. Would those alternative safeguards have imposed an undue burden on you?
7. How well would these alternative safeguards have reduced the risk of harm?
8. Would the proposed safeguards have created other undesirable risks?

WHAT IS YOUR DEFINITION OF ACCEPTABLE RISK?

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