

Emotion, Motivation, and the Limits of Contractual Liability: The Case of Regret

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This article poses and answers two main questions: Do the emotions of the parties to a contract shape the limits of their legal liability? And if so how? In the last three decades, the study of emotions has drawn growing attention from psychologists. This flourishing has led to two significant insights about the role and function of emotions in human life: first, emotions are the primary source of motivation for goal-oriented behavior; and second, each emotion produces motivation to undertake a unique set of behaviors. These insights, I argue, are of crucial importance to our understanding of the limits of contractual liability as currently set by contract law, as well as how these limits should be set.

The realization that emotions are a primary source of motivation is of dual legal significance. First, emotional motivation often limits the type of behavior reasonable parties can be expected to undertake. Second, because legal rules affect the parties' emotional response, these rules should be designed with this effect in mind.

In this article I demonstrate the link between emotions and the limits of contractual liability through the emotion of regret – the motivation and behavior it generates. I show how the motivation stemming from regret and its interaction with legal rules explain the existing doctrines relating to mutual mistake and preliminary agreements, as well as justify reforms in other rules that set the limits of contractual liability.