

The title is: Normative Beliefs About Contract Enforcement in Germany and in the USA

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Which remedy for breach of contract do people prefer and believe is the most appropriate one? Do people's preferences coincide with the ones favored by Law & Economics or legal scholars? This article presents empirical estimates of how high damages for breach should be, and whether the law should adopt specific performance or monetary damages, according to laypeople, in different types of contingencies and contracts. Results reveal that in case of breaches to profit, most people believe that specific performance is the most appropriate remedy, and this preference is consistently observed for foreseen or unforeseen contingencies, and for intentional and inadvertent breach. In case of breaches to avoid losses, most people prefer expectation damages when the contingency was foreseen but prefer undercompensatory damages when the contingency was unforeseen. Contract law hence diverges from observed interpersonal morality in not considering whether the promisor is profiting from the breach or avoiding losses when specifying the remedy and in not routinely adopting specific performance in the first type of contingency. On the other hand, contract law converges with interpersonal morality in rejecting overcompensatory damages, in not making the remedy contingent on the foreseeability of the contingency, and in rarely allowing for specific performance in case of breaches to avoid losses. The article concludes with a discussion on the economic consequences of legal reform seeking convergence between remedies for breach and observed interpersonal morality.