

DE ONRECHTMATIGE DAAD

- * **In strijd met de maatschappelijke zorgvuldigheid**
Gevalltypen:
 - * sport en spel
→ Arrest "Tennisbal"
 - * gevaarzetting
Criteria (arrest kelderluik/gezichtspunten)
 - 1. hoe groot is de kans dat een ander onoplettend kan zijn?
 - 2. hoe groot is de kans dat daardoor ongevallen ontstaan?
 - 3. hoe ernstig kunnen de gevolgen van zo'n ongeval zijn?
 - 4. is het bezwaarlijk om veiligheidsmaatregelen te nemen ter voorkoming van een mogelijk ongeval?
 - * ongelukkige samenloop van omstandigheden
→ Arrest "Jansen/Jansen"

ONRECHTMATIGE DAAD

1) EEN DAAD/GEDRAGING → doen of nalaten

2) ONRECHTMATIG

* inbreuk op een recht

- 1. vermogensrechten
(Auteursrecht, eigendomsrecht)
 - Persoonlijkheidsrecht
(Lichamelijke Integriteit)
- 2. extra toets aan de hand van de maatschappelijke zorgvuldigheid

* in strijd met een wettelijke plicht

→ **Relativiteitsstoets (art 6:163 BW)**

Stel de strekking van de overstreden norm vast
A. beschermd de wettelijke norm de benadeelde?
B. tegen de schade waarvan hij vergoeding eist?

* in strijd met de maatschappelijke zorgvuldigheid

Kernvraag: handelde de aangesprokene anders dan hij met het oog op de belangen van de benadeelde had behoren te doen?
→ Rechtvaardigingsgrond?

3) TOEREKENBAAR

> Schuld in de zin van verwijtbaarheid

> Wet:

- * Art 6:164 BW
- * Art 6:165 BW

> verkeersopvattingen

4) SCHADE → art 6:95 BW

- 1. vermogensschade → art 6:96 BW
- 2. Ander nadeel → art 6:106 BW

5) CAUSAAL VERBAND TUSSEN SCHADE EN DAAD

Kernvraag: zou de schade ook zijn ingetreden wanneer de daad wegdenkt?

= **conditio sine qua non verband**

6) CONCLUSIE

Onrechtmatige Daad Dl16 Pratijkreeks

Kathleen Armour

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