

## DE ONRECHTMATIGE DAAD

- \* in strijd met de maatschappelijke zorgvuldigheid

- Gevaltypen:

- \* 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

→ Relativiteitstoets (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 men de daad wegdenkt?

= conditio sine qua non verband

6) CONCLUSIE

# Onrechtmatige Daad Dl16 Pratijsreeks

**Kathleen Armour**



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