

Onrechtmatige daad stappenplan

1. Vaststellen onrechtmatige gedraging (art. 6:162 lid 2 BW)
 - Is er sprake van een handeling of nalaten? Ja/nee
 - Is er sprake van een inbreuk op een recht? Ja/nee

Of

- Leverde zij strijd op met een wettelijke plicht? Ja/nee

Of

- Was zij in strijd met hetgeen volgens ongeschreven recht in het maatschappelijk verkeer betaamt? Ja/nee
- Is er een rechtvaardigingsgrond? Ja/nee

Ga door naar stap 2

2. Vaststellen toerekenbaarheid (art. 6:162 lid 1 en 3 BW)
 - Is er een verband tussen de daad en de dader? Ja/nee
 - Is het de schuld van de dader (kun je het hem verwijten)? Ja/nee
 - Geen schuld door lichamelijke of geestelijke stoornis (art. 6:165 BW)? Ja/nee

Of

- Wordt het maatschappelijk zo aanvaard dat de dader aansprakelijk is (ook al is het niet echt zijn schuld)? Ja/nee

Ga door naar stap 3

3. Vaststellen schade (art. 6:162 lid 1 BW)
 - Is er schade? Ja/nee

Ga door naar stap 4

4. Vaststellen causaal verband (art. 6:162 lid 1 BW)
 - Is de schade het gevolg van de handeling, csqn? Ja/nee

Oorzaak en gevolg (causaal verband)

Wat is het verschil tussen oorzaak en gevolg?

Conditio sine qua non

De voorwaarde zonder welke het gevolg niet ingetreden zou zijn. In hoeverre is de schade toe te rekenen aan de veroorzaker? Daar moet een causaal verband tussen zijn.

Een causaal verband is de relatie aan tussen oorzaak en gevolg. Om dit goed te begrijpen moeten we eerst kijken naar wat een oorzaak is en wat een gevolg.

Ga door naar stap 5

5. Vaststellen relativiteit (art. 6:163 BW)
 - Wat is het doel van de geschonden norm?
 - Beschermst de geschonden norm het geschonden belang/ (degene die) de schade (heeft geleden)? Ja/nee

Gefeliciteerd! Voldaan aan alle 5 de voorwaarden → het is een onrechtmatige daad. Je kunt nu schadevergoedingen gaan vorderen!

Onrechtmatige Daad Dl16 Pratijsreeks

Padhraic Smyth



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