

Burgerlijk Procesrecht

HFDS 1

Materieel & formeel burgerlijk recht

Materieel= omvat inhoudelijke rechten en plichten: rechtsregels om situaties, rechtsverhoudingen en handelingen juridisch te definiëren.

Formeel= geeft antwoord op de vraag volgens welke procedureregels deze rechten en plichten kunnen worden gerealiseerd -> hoe kunnen de materiele rechtsregels worden afgedwongen bij de rechter?

Functies Burgerlijk recht

- 1 Handhaven en beïnvloeden van materiele burgerlijke rechten en plichten.
- 2 voorkomen gerechtelijke procedure = de middelen die het recht biedt kunnen een preventieve werking hebben, zoals de dagvaarding. Onder dreiging van een procedure zijn burgers vaak bereid om vrijwillig plichten na te komen.
- 3 voorkomen van eigenrichting = voorkomen dat persoon zelf en met eigen middelen recht gaat halen.

HFDS 2

Procespartijen

Natuurlijke & rechtspersonen

Aan civiele procedure kunnen zij deelnemen. Gemeente en provincie zijn publiekrechtelijke rechtspersonen. Naamloze of besloten vennootschappen zijn privaatrechtelijke rechtspersonen. De ondernemingsraad, VOF, Comm. Vennootschap en de maatschap kunnen niet worden gezien als zulke personen. Wel procesbevoegdheid -> Art. 51 RV.

Vertegenwoordiging van de natuurlijk persoon

wanneer natuurlijk persoon niet handelingsbekwaam is -> art. 3:32 BW, wordt hij vertegenwoordigd door handelingsbekwame persoon. Vertegenwoordiger is de formele procespartij.

Vertegenwoordiging van de rechtspersoon

Rechtspersoon moet zichzelf laten vertegenwoordigen door natuurlijk persoon

Rechtshulpverleners

Advocaat

- krachtens advocatenwet beëdigd
- sector kanton mag zonder advocaat -> art. 79 lid 1 RV en kortgedingprocedure -> Art. 255 lid 1 RV
- andere gerechtelijke procedures is advocaat verplicht -> art. 79 RV

Andere rechtshulpverleners

- gemachtigden -> art. 80 lid 1 en 2 RV

Noorduijn Rechtsbronnen Burgerlijk Procesrecht Nrs 186

Judd E. Hollander



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