

Tel Aviv University Student Disciplinary Tribunal

In the matter between: **Tel Aviv University**
By Ms. Sharon Feldman - Academic Secretary
Represented by Adv. Yinon Sartel
Sartel, Saharay, Lazar Law Office
1 David HaMelech Blvd., Tel Aviv
Tel: 03-6932044
The Applicant

- Versus-

The Respondent

Before: Prof. Issachar Rosen-Zvi (Chair)
Dr. Shay N. Lavie
Dr. Natalie R. Davidson
The Panel

Decision

Issued September 1, 2022

1. In January 2022, a Statement of Claim was filed by the Applicant against the Respondent for (i) sexual harassment in violation of Article 29.11 of the Tel Aviv University Disciplinary Regulations - Students (5768) (hereinafter: the "Disciplinary Regulations"); (ii) behavior not appropriate for a student in violation of Article 29.8 of the Disciplinary Regulations; and (iii) behavior not befitting the dignity of the University in violation of Article 29.10 of the Disciplinary Regulations.
2. The charges in the Statement of Claim relate to the period between October 2018 and July 2021, during which time the Respondent was a student in the Sackler Faculty of Medicine at Tel Aviv University. They are based primarily on complaints brought by four women who were also students at the Sackler Faculty during this period. The alleged facts as set out in the Statement of Claim are copied below. The paragraph numbers correspond to those in the Statement of Claim:

“4. At a time that is not known precisely to the Applicant, during a surgery round at Ichilov Hospital, between 20.12.2020 and 17.02.2021 (hereinafter: the "Surgery Round"), the Respondent turned to Complainant 1, saying: "I have difficulty getting an erection. Can you stand in front of me and try and help me?" In addition, during the Surgery Round, he joked about the breasts examinations and *tits* of patients, referring to the young age of the patient and about the opportunity he was given to touch her breasts. Subsequently, the Respondent accessed a website containing pictures of breasts, he took a close-up shot and projected it on a large screen and joked about them, thus creating a sexual learning environment.

5. At a time that is unknown to the Applicant, during the Surgery Round, Complainant 1 approached the Respondent with a request to cease his demeaning behavior. In response, the Respondent latched onto her request and told her, in English: *"go ahead tell the office see what happens. It'll be my strike three anyway"*.

6. At times that are not known precisely to the Applicant, during a psychiatric round at the Sheba Hospital (hereinafter: the "**Psychiatric Round**"), the Respondent stared at Complainant 2, leaned towards her, trying to get her attention, while making facial expressions. When their eyes crossed, the Respondent ran his tongue over his lips as he unbuttoned his shirt. On several occasions, the Respondent came close to Complainant 2, and whispered suggestions in her ear of a sexual nature, such as: *"if you hate me so much, we should just make out to cut the tension"*, despite Complainant 2's requests to stop.

7. At a time that is not known precisely to the Applicant, the Respondent demanded of Complainant 2 that she should make him tea. When she did not accede to his demand, the Respondent retorted that it was the woman's job. When Complainant 2 did not respond to his remarks, the Respondent turned to her and said: *"The pastry that you are eating will go straight to your thighs"*.

8. As part of a patient-physician drill, which dealt with a patient's complaint of backache, the Respondent stated that he was suffering from a burning sensation in his urine and afterwards said that he had warts on his penis and suggested that Complainant 2 examine this while he began taking off his pants. At this point, Complainant 2 began moving away from the Respondent.

9. At a time that is not precisely known to the Applicant, during a lesson, Complainant 2 asked whether it was possible to lower the strength of the air-conditioner. In response, the Respondent approached her while unbuttoning his shirt when he was not wearing another shirt underneath, with the intention of giving his shirt to Complainant 2, even after she asked him to stop.

10. During a lecture on psychiatry, which was held by video-conference, the Respondent sent a private text message, to one of the female students who was present at the lecture, stating that he was not wearing pants and asked her, in English: *"who are you texting? Or shall I say... sexting?"*.

11. On 23.10.19, as part of patient-physician questioning, during lesson, the Respondent played the role of the patient while Complainant 3 played the role of a physician. During the drill, the Respondent directed the conversation to sexual contexts, thus mentioning, among other things, details of his sexual history, sexually transmitted diseases that he has passed on and statements to the effect that he was addicted to sex and he continued to make these remarks despite Complainant 3's requests to stop, all of which was without any connection to the drill that they had been asked to perform.

12. On 4.3.20, during class dealing with the collection of a patient's sexual history, the Respondent volunteered to act as the patient who was being interviewed by his fellow students. During the interview, the Respondent added detailed descriptions of made up venereal diseases he had in the past, until the lecturer was forced to stop the drill and redirect it.

13. At a time not known to the Applicant, during a party that was held outside the University, the Respondent told Complainant 2 that he was interested in doing an internship in pediatric gynecology / pathology, in order to see the genitals of dead girls.

14. At a time not known to the Applicant, during the first year, Complainant 4 told the Respondent that she was interested in specializing in gynecology. In response, the Respondent replied that female doctors should not be gynecologists but only male doctors, because male doctors are better than female doctors.

15. At a time not known precisely to the Applicant, during a round at Assaf Harofeh Hospital, the Respondent wrote the names of the male and female students on the board, while alongside each male student's name the Respondent

wrote "Winner" and next to the name of each female student he wrote "Nurse".”

3. It should be noted that the Panel understands paragraph 5 of the Statement of Claim not to allege a separate disciplinary offense but to allege the Respondent’s knowledge of at least some of the complaints against him.
4. Following preliminary hearings, the Panel held hearings on the above charges on March 23, 2022; April 26, 2022; May 4, 2022; and June 26, 2022. During these hearings the Panel heard the testimony of the four complainants, the Respondent, members of the Sackler Faculty staff and other former students of the Sackler Faculty. Each side was able to cross-examine the other side’s witnesses, and Panel members were able to question each witness. In addition, email correspondence and recordings of zoom meetings among the various parties was introduced during these hearings. Thereafter, each side submitted a written brief presenting its case, based on the evidence and testimonies submitted during the hearings and an interpretation of the law.
5. During the hearings, the Panel removed the charges in par. 10 of the Statement of Claim from the case, on the grounds that those charges related to a private communication and that the student who participated in that communication did not file a complaint with the Applicant in connection therewith.
6. The Panel has unanimously reached its decision on the Charges. We decided to convict the Respondent of the charges of inappropriate behavior and behavior not befitting the dignity of the University (Articles 29.8 and 29.10 of the Disciplinary Regulations); and acquit the Respondent from the sexual harassment charge (Article 29.11 of the Disciplinary Regulations). In what follows we first begin with preliminary and general comments about this case. Second, we set out which of the alleged facts we consider established. Third and finally, for those facts that are established, we discuss their legal characterization.

Preliminary and General Comments

7. According to article 57.4 of the Disciplinary Regulations, a conviction of Sexual Harassment (as that term is defined in the Disciplinary Regulations) requires proof beyond a reasonable doubt. The Panel adopted this standard when assessing the facts that could amount to Sexual

Harassment.

8. Article 29.11 of the Disciplinary Regulations defines Sexual Harassment by reference to Tel Aviv University's Sexual Harassment Regulations (no. 01-015). Accordingly, for the purpose of these proceedings, the panel considered Sexual Harassment to consist of the following:

“As defined in Article 3(A) of the Prevention of Sexual Harassment Law and as defined in Article 7 of the Equal Opportunities Law, on the part of an academic staff member, administrative staff member or student (as defined below), as Part of the Workplace or Studies (as defined below). Without derogating from the generality of that stated in the Law, Sexual Harassment is one of the following:

- (1) extortion of a person to perform an act of a sexual nature.
- (2) an indecent act.
- (3) repeated propositions of a sexual nature addressed to a person who has demonstrated that he is not interested in the said propositions. There is no need to show a lack of consent in the following cases: A. exploitation of authority in an employment relationship, in a service or in Studies. B. exploitation of a relationship of authority, dependence, education or treatment of a minor or helpless person. C. exploitation of a patient's dependence on the person treating him.
- (4) repeated references addressed to a person and focused on his sexuality, when that person has demonstrated that he is not interested in the said references. However, there is no need to show a lack of consent in the cases enumerated in paragraph (3) above.
- (5) an insulting or debasing reference to a person in connection with his gender, sexuality, or sexual preference, whether he indicated that it troubles him or not.
- (6) publication of a photograph, film or recording of a person focusing on his sexuality, under circumstances in which the publication is liable to debase or insult that person, and he did not consent to the publication. With respect to this section, a lack of consent can be by words or conduct.

“Reference”– means written, spoken, by means of visual or sound presentation,

including by means of computer or computer material, or by conduct.”

9. For further discussion of the Panel’s interpretation of Sexual Harassment, see paragraph 19 below.
10. During cross-examination of witnesses and in his brief, counsel for the Respondent emphasized repeatedly that there are no witnesses to some of the behavior complained of, that the complainants do not have documents written at the time of the alleged incidents recording them, that there was a significant delay between the alleged events and the complaint, that the procedure to raise matters set in the Sackler Faculty’s Honor Code was not followed, and that there were long periods of time during which the complainant had no contact with the defendant after the alleged facts. In the Panel’s view, none of these facts, even if true, have any bearing on the reliability of the complainants’ testimonies. It is in the nature of Sexual Harassment that it often happens when there are no witnesses, that complainants do not immediately complain, and that when they do they choose the channel that they see fit.
11. In addition, during the hearings and in the brief, the Respondent and his counsel insisted that he is “a respected individual” (p. 53 Respondent Brief), who is popular among his peers, devoted to the medical profession, and has the support of other students. In the Panel’s view, the Respondent’s social popularity and academic or professional successes and motivations are not relevant to assessing the charges. In fact, sexual harassment and other forms of problematic behavior are often the province of successful men, as can be seen with recent scandals in the media industry. Thus, there is nothing in the Respondent’s popularity or successes that proves or disproves any of the charges.
12. Finally, the Respondent repeatedly maintained that the charges were the result of a conspiracy against him by a group of female students for unconnected, e.g., political reasons. We are unconvinced by these claims. To the contrary, in the hearings it became clear that the complainants had waited before filing complaints and had tried to convince the Respondent to change his ways through contacts with his former girlfriend and brother.

Facts Established

13. Having carefully listened to the testimonies, reviewed the evidence and read the briefs, the Panel considers the following alleged facts about the Respondent established:

- a) Telling a female student “*if you hate me so much, we should just make out to cut the tension*”. (par. 6 of the Statement of Claim).
- b) Demanding a female student make him tea and tell her the pastry will go straight to her thighs (par. 7 of the Statement of Claim).
- c) During a patient-physician drills, going off-topic to talk about his penis, sexual history and sexually transmitted diseases, and beginning to unbuckle his pants (par. 8 and 11-12 of the Statement of Claim). The Panel was convinced by the testimony at the hearings that in particular with respect to the charges in par. 11 and 12 of the Statement of Claim, the Respondent’s response were off-topic given that he was given a prompt directing him to provide other answers.
- d) Beginning to unbutton his shirt (par. 9 of the Statement of Claim).
- e) Writing the names of male and female students on the board and alongside each male name writing “winner” and along each female name “nurse” (par. 15 of the Statement of Claim).

14. The other alleged facts in the Statement of Complaint are not sufficiently established by the evidence and testimonies in the Panel’s view.

Legal Characterization of the Established Facts

15. The Panel finds that the following behavior constitutes both behavior not appropriate for a student in violation of Article 29.8 of the Disciplinary Regulations; and behavior not befitting the dignity of the University in violation of Article 29.10 of the Disciplinary Regulations:

- a) Telling a female student “*if you hate me so much, we should just make out to cut the tension*” (par. 6 of the Statement of Claim); and
- b) During a patient-physician drills, going off-topic to talk about his penis, sexual history and sexually transmitted diseases, and beginning to unbuckle his pants (par. 8 and 11-12 of the Statement of Claim).

16. The above behavior violates Article 29.8 of the Disciplinary Regulations as it violates the dignity of the Respondent's peers. In the above situations, the Respondent failed to respect his peers (especially the charges described in par. 8 and 11-12 of the Statement of Claim, where his peers' time and efforts doing an academic exercise were disrespected), reducing them to being recipients of his sexually-themed comic performances. In this regard the Panel notes that the presence of humor in the Respondent's behavior or motivations does not make them any less a violation of Article 29.8. To the contrary, the turn to sexual jokes in the above contexts expresses a lack of respect and violation of his peers' dignity.
17. For these reasons, the Respondent's above behavior also violates Article 29.10 of the Disciplinary Regulations, as it is unbecoming of a student and of conduct in a university setting.
18. The remaining established facts cannot ground a conviction under the Disciplinary Regulations. Some of them lack sufficient gravity. Others, while sexual or demeaning to women, do not fit into the definition of Sexual Harassment under the Disciplinary Regulations.
19. We interpreted the definition of Sexual Harassment strictly, for two reasons:
 - a. The first has to do with protecting free speech. Some of the charges relate to statements or facial expressions, and their classification as Sexual Harassment depends on a subtle interpretation of the Respondent's exact words or tone. This Panel strongly believes that while the University should do its utmost to create a respectful, equal learning environment, it should be weary of policing speech among students.
 - b. The second reason has to do with due process. Some of the established facts, taken together, may well have amounted to what the Applicant's brief referred to as "environment harassment", that is, a category of sexual harassment that consists of the creation of an environment so sexualized that it disrupts the functioning of studies and/or work (Applicant Brief, par. 88-90). This form of harassment has been recognized by Israeli courts when interpreting Israeli legislation on sexual harassment. While from a strictly legal perspective the definition of Sexual Harassment applicable to this case could be interpreted to include environment harassment, since that is the way Israeli courts interpret the legislation incorporated by reference into the Disciplinary Regulations, the Panel is of the opinion that such an interpretation would be unfair to students who rely on the regulations published by the university. For purposes of deciding this case, the

Panel therefore applied only those elements of the definition of Sexual Harassment that are explicitly mentioned in the Disciplinary Regulations. Should the University wish to expand that definition, it should do so explicitly in its regulations.

Decided on September 1, 2022.



I. Rosen-Zvi



S.N. Lavie



N. R. Davidson

Sentence Decision

1. In our September 1st ruling we decided to convict the Respondent of the charges of inappropriate behavior and behavior not befitting the dignity of the University (Articles 29.8 and 29.10 of the Tel Aviv University Disciplinary Regulations - Students (5768) (hereinafter: the “Disciplinary Regulations”) and acquit him of the charge of sexual harassment (Article 29.11 of the Disciplinary Regulations).
2. Following our ruling, we held a sentencing hearing, on September 7th. The Applicant asked for the following two sentences: reprimand; and suspended removal from the university (should the Respondent commit another disciplinary offense). The Respondent, in turn, argued that there should be no sentence at all, given what he characterized as the mild accusations of which he was eventually convicted; the harsh consequences of the disciplinary proceedings that he already suffered (e.g., his harmed reputation, the fact that he was on leave during the proceedings, etc.); and the beneficial social activities he participated in as a student.
3. This Panel decides to impose on the Respondent a sentence of a reprimand.
4. We are of the opinion that a reprimand is a sufficient sentence given the circumstances. On the one hand, the Respondent’s acts should not be underestimated. As we wrote in our September 1st decision, these acts express a lack of respect for the Respondent’s peers and violate their dignity. On the other hand, we considered the fact that the disciplinary

proceedings in our case (and the resulting convictions), in and of themselves, already punished the Respondent. Hence, any additional punishment would be disproportional.

Decided on September 7, 2022.



I. Rosen-Zvi



S.N. Lavie



N. R. Davidson