

Tel Aviv University Student Disciplinary Tribunal—Appeal Panel

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

– Versus –

The Respondent

Before: Dr. Amit Pundik (Chair)
Prof. Rotem Oshman
Mr. Bar Tasat

Decision

Issued 25 June 2023

Dr. Amit Pundik (Chair):

1. This decision relates to an appeal and counter-appeal against the decision of the student disciplinary tribunal n° 60-2021, delivered on 1 September 2022. In that decision, the respondent was acquitted of the sexual harassment charges brought against him but convicted of conduct harming the dignity of the members of the University and unbefitting of the dignity of the University. The appellant subsequently filed an appeal against the acquittal of the respondent from the sexual harassment charges (Article 29.11 of the Disciplinary Regulations). The respondent also filed a counter-appeal against his conviction of the charges of conduct harming the dignity of the members of the University and unbefitting of the dignity of the University (Articles 29.8 and 29.10 of the Disciplinary Regulations).
2. The appeal panel conducted a preliminary hearing on 10 November 2022, in which both parties were asked for some written clarifications. After receiving the revised appeal and counter-appeal, the panel held another hearing on 9 March 2023.
3. The appeal panel decided unanimously to reject the appellant's appeal against the acquittal. The panel also decided, by majority, against accepting the respondent's appeal, against my

own position that the respondent's convictions should be quashed. Consequently, both appeals were rejected. This decision was communicated to the parties on 14 March 2023.

4. This decision first sets out the previous disciplinary panel's grounds for acquitting the respondent of the charges of sexual harassment, the appellant's grounds for appealing against that decision, and *this* panel's reasons for rejecting this appeal. The decision will then describe the previous disciplinary panel's grounds for convicting the respondent of the charges of conduct harming the dignity of the members of the University and unbefitting of the dignity of the University, together with the respondent's grounds for appeal. The remainder of the decision will explain my reasoning for why the respondent's appeal should have been accepted, while the other members of the panel will give their reasons for rejecting it in their judgements below.

The Claims against the Respondent

5. The charges in the Statement of Claim relate to the period October 2018–July 2021, during which the Respondent was a student on the international programme in the Sackler Faculty of Medicine at Tel Aviv University. They are based on complaints brought by four women who were also students at the Sackler Faculty during this period.
6. While the original Statement of Claims included numerous facts, only the following facts were found by the disciplinary tribunal to be sufficiently established by the evidence (paraphrased from Section 13 of Decision 60-2021):
 - a. He told 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. He demanded that a female student make him afternoon tea and told her that the (calories in the) pastry would go straight to her thighs (par. 7 of the Statement of Claim).
 - c. During a patient–physician role-play, he went off-topic to talk about his penis, sexual history, and sexually transmitted diseases, and began to unbuckle his trousers (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 responses were inappropriate, given that he was given a prompt by the lecturer directing him to provide other answers.
 - d. He began to unbutton his shirt (par. 9 of the Statement of Claim).
 - e. He wrote the names of male and female students on the board and, alongside each male name, wrote “winner” and alongside each female name, wrote “nurse” (par. 15 of the Statement of Claim).
7. As this is an appeal, this panel has not allowed the parties to admit new evidence to refute any of these facts or prove additional ones. This decision discusses only matters of law rather than matters of fact, and proceeds on the assumption that these facts, and only these facts, were proven beyond reasonable doubt.

The Disciplinary Panel's Grounds for Acquittal

8. The previous disciplinary panel decided unanimously that the established facts cannot ground a conviction under the Disciplinary Regulations because “[s]ome 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' (60-2021, section 18).

9. The previous disciplinary panel also chose to interpret the definition of Sexual Harassment strictly, for two reasons. The first is free speech: 'while the University should do its utmost to create a respectful, equal learning environment, it should be [wary] of policing speech among students' (Section 19(a)). The second is due process. The previous disciplinary panel accepted that '[s]ome of the established facts, taken together, may well have amounted to what the Appellant'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' (Section 19(b)). However, the panel refused to follow Israeli courts by applying its extension of the category of sexual harassment to disciplinary proceedings because 'such an interpretation would be unfair to students who rely on the regulations published by the university' and, furthermore, '[s]hould the University wish to expand that definition, it should do so explicitly in its regulations' (*ibid.*).

The Appellant's Grounds of Appeal

10. The appellant set out three grounds for its claim that the previous disciplinary panel had erred when acquitting the respondent from the charges of sexual harassment. The first is that the proven facts regarding the respondent's actions sufficed, in and of themselves, to establish the offence of 'sexual harassment' as defined in the Regulations and the Prevention of Sexual Harassment Law, 5758-1998 (hereafter, 'PSH Law'). After detailing the respondent's actions, the appellant claimed that they satisfied all three alternatives listed in the PSH Law, to wit:
 - a. Repeated propositions of a sexual nature, addressed to a person who has demonstrated to the harasser that he is not interested in the said propositions (Section 3(3) of the PSH Law).
 - b. Repeated references addressed to a person and focused on his sexuality, when that person has demonstrated to the harasser that he is not interested in the said references (Section 3(4) of the PSH Law).
 - c. An insulting or debasing reference to a person in connection with his gender or sexuality, including his sexual preference (Section 3(5) of the PSH Law).
11. This ground of appeal should be rejected. Only the first established fact ('fact A') forms 'a proposition of a sexual nature', so we found no repetition in the facts proven. Moreover, even if the respondent's actions were repetitive, he did not direct them toward a specific person, as Section 3(3) of the PSH Law requires. As for repeated references to a person's sexuality, the references in the third fact ('fact C') are to the respondent's own sexuality rather than to another's, which renders Section 3(4) inapplicable. They also lack the repetitive nature required by this subsection. The respondent's comments in the second fact ('fact B') and the fifth ('fact E') are, indeed, considered by this panel to be offensive, distasteful, and disrespectful of his fellow students, but we agree with the disciplinary panel that their gravity falls short of constituting the criminal offence and civil wrong created by Section 3(5). These comments, offensive as they may be, can neither justify up to two years imprisonment and up to 120,000 NIS compensation nor the severe consequences of a disciplinary conviction of sexual harassment, discussed later in this decision.

12. The event described in ‘Fact C’—the respondent’s beginning to unbuckle his trousers—requires special attention. We cannot accept the appellant’s claim that this is a humiliating act directed at the *complainant’s* sexuality, as required by Section 3(5). It should be emphasised that the disciplinary court did not find, and the appellant did not claim otherwise in their appeal, that any of the established facts constituted an ‘indecent act’, the offence defined in Section 348 of the Penal Law 5737-1977 and referenced by Section 3(2) of the PSH Law.
13. As for the respondent’s going off-topic to talk about his genitalia, sexual history, and sexually transmitted diseases, we cannot accept that this conduct amounts to sexual harassment in this specific context of medical training. The incident occurred on 23 October 2019, during a role-play exercise in which students learnt how to take a patient’s medical history. While the specific case of taking a medical *sexual* history was not taught until later, there was neither an explicit script that students were required to follow in this session nor any specific instruction to avoid certain topics, including matters of a sexual nature. Moreover, we are deeply troubled by the obvious real-life analogy of a male patient who brings up issues relating to sex when being interviewed about their medical history by a female doctor. Convicting such a patient of sexual harassment would be utterly wrong, as well as likely to have a chilling effect on patients’ willingness to share their sexual history with their doctors. In the case at hand, even if the respondent did go off-script and made his fellow students uncomfortable or even offended them, he acted as a real patient might act, in an exercise that was meant to train medical students in how to deal with their future patients (of all kinds). We cannot accept that a student should be disciplined and convicted of sexual harassment in such circumstances.
14. The appellant made much of another incident, which took place on 4 March 2020, in which the respondent, after volunteering to act as a patient in another role-play and being interviewed by his fellow students, added detailed descriptions of fictitious venereal diseases that he had supposedly had in the past (Section 12 of the Statement of Claim and, at more length, in Sections 23–24 of the Notice of Appeal). Unlike the previous incident, this incident took place in a class dealing with the collection of the patient’s *sexual* history. While this incident is not part of the established facts detailed above, the very fact that the appellant chose to include this incident in its Statement of Claim demonstrates that the medical context of these incidents and the importance of training doctors to deal with a wide variety of patients and situations were not fully appreciated by the appellant.
15. The appellant’s second ground of appeal challenged the previous panel’s decision not to follow the Israeli Supreme Court in interpreting the term ‘sexual harassment’ as including the creation of a toxic, sexualised, environment. The appellant’s reasoning was that the Supreme Court did not add a new alternative of sexual harassment to the statutory alternatives but interpreted the existing ones as already including the creation of a sexualized environment (AS 96-6713 *The State of Israel v Zohar Ben Asher*, PD 52(1) 650; see all Disciplinary Appeal – Civil Service 5771/01 *Podlovsky v The Civil Service Commissioner*, PD 56(1) 463). The appellant further argues that the Supreme Court’s interpretation of the statutory alternatives is binding on all courts and disciplinary panels in the State of Israel, hence the previous panel should have had no choice but to follow this interpretation.
16. We accept the appellant’s submission that University disciplinary panels are obliged to follow the authorities set by the Supreme Court whenever they are required to interpret terms that appear in the Disciplinary Regulations but are defined by law. However, we reach the same conclusion as the previous panel, although our reasoning is different. It is

not the lack of explicit prohibition in the University's Disciplinary Regulations that leads this ground of appeal to fail. The main difficulty with the appellant's claim is that the authorities it cited can, and should, be distinguished from the case at hand. In both authorities, the harasser was in *a position of authority*. In *Zohar Ben Asher*, he was a lecturer employed by the State who sexually harassed one of his students. *Podlovsky* was concerned with a manager employed by the State who sexually harassed the female soldiers who spent their mandatory army service in his office. In both cases, we can appreciate how the harasser abuses the power of his office to create a toxic, sexualised, environment (see Galia Schneebaum, 'What Is Wrong with Sex in Authority Relations? A Study in Law and Social Theory' (2016), 105 *J of Crim L & Criminology* 346). By contrast, in the case at hand, the respondent did not have any authority over the complainants: he was a fellow student of theirs at Tel Aviv University, on an equal level and with no institutional authority over anyone else. In the last hearing, we invited the appellant to provide us with an authority in which the harasser in question was not abusing their position of authority; but, not surprisingly, no such authority was provided. Consequently, the second ground of appeal also fails.

17. The third ground of appeal is that the previous panel erred when giving considerable weight to freedom of expression when interpreting the term 'sexual harassment' in the University Disciplinary Regulations. The appellant claims that the Law and Regulations on Sexual Harassment already settle how the right of the harasser to free speech and the right of the harassed to a decent and fair academic environment should be balanced: the latter should take precedence.
18. We disagree with this analysis. The Law and Regulations on Sexual Harassment apply to a wide variety of institutions and circumstances, and they should not be interpreted as settling the delicate balance between conflicting rights once and for all, irrespective of the context in which the speech was uttered. Free speech is important everywhere, but, in academic institutions, it is vital, given its role in teaching and research, which makes it constitutive to the very functioning of these institutions. The freedom of speech in academic institutions thus carries more weight than the freedom of speech in a corporate setting, for instance, and the Law and Regulations on Sexual Harassment should not be applied to certain speech acts without giving significant weight to the fact that they were made in an academic context of teaching and training future doctors how to treat their future patients. We hence reject the third ground of appeal also.
19. The appellant also appealed against the severity of the sentence, claiming that a reprimand does not fit the respondent's actions, which consist of four events directed at two different complainants. The appellant argued that the respondent's lack of remorse should also be taken into account and asks this panel to impose a further punishment of a suspended sentence of expulsion from studies.
20. In alignment with the previous panel, we also deny this request. The offences of conduct harming the dignity of the members of the University and conduct unbecoming of the dignity of the University are, after all, minor offences (if not the most minor in the Disciplinary Regulations). Even when these offences are punished with an additional sanction on top of a reprimand, the most that the student is usually required to do is to retake an exam or, exceptionally, repeat the entire subject. Importantly, no mention of their University conviction is made in the official record of their academic performance and grades, and potential employers are not informed of the facts or other details of the conviction.
21. The treatment of the respondent in this case has been starkly different. Based on legal advice on American Law that the appellant sought, the University instructed the Dean of

the Faculty of Medicine to actively distribute the previous panel's judgement to all medical schools in the United States. Consequently, a conviction for two minor offences imposed a significant burden on the respondent: in the extremely competitive market for medical internships in the United States, finding a suitable placement with a disciplinary conviction becomes significantly more difficult, if not impossible. This panel is divided on the relevance and weight of this consideration in respect to the respondent's appeal, as detailed below, but it is unanimously agreed that there is no need to further intensify the punishment already imposed on the respondent by adding a suspended exclusion from studies.

22. We therefore decide to reject the appellant's appeal.

The Respondent's Counter-appeal

23. The respondent has appealed against his conviction for two offences, namely:

- 29.8 Conduct that amounts to harming the dignity, person or property of Teachers, Employees or Pupils of the University, if made in consequence of or in connection with their status as Teachers, Employees or Pupils, or if committed within the confines of the University.
- 29.10 Conduct unbecoming the dignity of the University or the status of a Pupil, whether committed within the confines of the University or outside and whether committed in consequence or in connection with the status of a Pupil or activity on campus, either directly or indirectly.

For the purpose of this section, incitement to racism against University Employees, Teachers and Pupils will also be deemed conduct unbecoming the dignity of the University or the status of a Pupil.

24. The previous panel found the respondent guilty, based on two of the facts that were proven against him:

- Fact A: Telling a female student "*if you hate me so much, we should just make out to cut the tension*" (paragraph 6 of the Statement of Claim); and
- Fact C: During a patient-physician role-play, going off-topic to talk about his penis, sexual history, and sexually transmitted diseases, and beginning to unbuckle his trousers (paragraphs 8 and 11-12 of the Statement of Claim).

25. Based on these two incidents, the previous panel convicted the respondent of the offences of conduct harming the dignity of the members of the University and conduct unbecoming of the dignity of the University, because his behaviour 'violat[e]d the dignity of the Respondent's peers' and because he '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' (60-2021, Section 16).

26. The respondent challenged the factual determinations made by the previous panel—regarding both the list of facts stated above and their rejection of the Respondent's factual claims about the complaints against him being politically motivated (because of his Republican views). He also challenged the lack of a proper investigation into the complaints that he had made to the University against those who had complained about him. We refused to hear these grounds for counter-appeal, since we follow the Israeli Supreme Court guidance, according to which appeal tribunals should focus on questions of

law rather than on questions of fact (e.g., CA 6411/98 *Manbar v The State of Israel*, PD 52(2) 150). I therefore take no stand with respect to these factual claims.

27. Turning to the questions of law, the *actus reus* of these offences consists of two elements: an unrestricted conduct element (namely, any conduct) and two circumstances: (1) that the conduct either amounts to conduct harming the dignity of the members of the University or conduct unbefitting of the dignity of the University; (2) that it was in connection with the victim's status as a university member *or* took place on the campus. The second offence is clearly a conduct- rather than an outcome-offence, while the first offence could probably be understood as either.
28. More importantly, both offences require *mens rea*—the defendant's subjective awareness of the conduct and the circumstances surrounding it. The default rule under Israeli Penal Law (Section 19) is that an offence requires *mens rea* unless it is specified as an offence of negligence or strict liability, but the University Disciplinary Regulations make no such specification. Consequently, the defendant should be convicted of these offences only if he was aware of all the elements of the offence and, in particular, the inappropriateness of his conduct. This is not only the formal, legal, conclusion that follows from the Israeli Penal Law, which applies its General Part also to offences that sit outside the Penal Law (Section 34W). This conclusion is also required, and justified, by the same rationales that led the previous panel to interpret the sexual harassment offences narrowly, as detailed below.
29. I cannot be sure that the previous panel regarded these two offences as requiring *mens rea* or that it ensured that the Respondent's awareness of the appropriateness of his conduct was proven. The previous panel noted that 'the presence of humor in the Respondent's behavior or motivations does not make them any less a violation of Article 29.8' (Section 16). It is true that humour does not immunise a certain conduct from being deemed harmful or unbefitting; but, the question that the previous panel should have addressed is whether the respondent's humour indicated his unawareness of his conduct being harmful and unbefitting. It is not enough that the reasonable student (or panel member) would have been aware that such conduct is generally considered harmful and unbefitting; it is the respondent himself who should have been proven to be aware of the nature of his conduct.
30. The question of awareness is a factual one, and, as such, it should not be determined by an appeal tribunal. However, I do not think the case should be returned to the previous panel. Instead, in my opinion, the respondent's convictions for these offences should be quashed. Even before considering the weighty arguments that the respondent raised in his counter-appeal, this conclusion follows from the previous panel's rationales for acquitting the respondent of sexual harassment. In fact, these rationales are significantly stronger when they are applied to the minor offences of which the respondent was convicted, so I cannot see how his acquittals (for sexual harassment offences) and convictions (for minor offences) could be upheld simultaneously.
31. The first rationale that the previous panel gave for their decision to acquit the respondent of sexual harassment was free speech. The previous 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' (Section 19(a)). Yet, if free speech in academic institutions is a sufficiently strong consideration to justify the respondent's acquittal of sexual harassment, then surely it must require his acquittal of the offences of conduct harming the dignity of the members of the University and conduct unbefitting of the dignity of the University. This is because the offence of sexual harassment is significantly graver than these minor offences. Since the gravity of the offence reflects, among other considerations, the importance of the interests protected by that offence, the

offence of sexual harassment protects more important interests of potential victims than those protected by the minor offences, whatever those interests are. Consequently, if the interest in protecting free speech in the University is sufficiently strong to overcome the important interests protected by the offence of sexual harassment, it must also be a sufficiently strong interest to overcome the less weighty interests protected by the minor offences.

32. Moreover, the grave implications of this conviction for minor offences for the respondent's future career make the free-speech consideration against this conviction even more decisive. Not only should every student at the University be mindful that they might be disciplined if their behaviour, whether inside or outside the classroom, is deemed by the University to be harmful to the dignity of its members or unbefitting of its institutional dignity. They should also take into account that, if their behaviour is deemed harmful or unbefitting, their conviction might impact on their future career and hinder their chances of finding suitable employment. In my view, this case serves as a paradigmatic example of the chilling effect that disciplinary proceedings can have on free speech. I simply cannot contemplate how the rationale of free speech can allow the respondent to be convicted of these minor offences, let alone when this very rationale is considered strong enough to justify his acquittal of sexual harassment. Hence, I suspect that the previous panel reached their decision to convict without being (made) aware that their judgement would be distributed to the respondent's potential employers and that these minor convictions might have a major impact on his entire future career.
33. It could be argued that the implications of this conviction for the respondent's career should not be considered part of his punishment, since they are not directly imposed by the University but, rather, are indirect consequences of his actions. According to this line of reasoning, the respondent should not be spared the conviction he deserves just because of these indirect consequences, for he has only himself to blame for them.
34. I believe this reasoning is doubly flawed. First, the indirectness of these implications does not make them any less a punishment. Criminal conviction for serious offences (such as murder) is accompanied as a matter of course by moral condemnation and social indignation that are imposed on the murderer by other members of society. Yet, these indirect implications *do* form an inseparable, and arguably well-deserved, part of the murderer's punishment. Second, and more importantly, the University has both a strong obligation and an important interest to protect free speech on its campus. The disciplinary tribunals of the University cannot ignore the dire consequences of its decisions on free speech just because those consequences are indirect. Direct or indirect, the chilling effect of these disciplinary convictions on free speech is troubling all the same.
35. It could also be argued that the impact of the previous panel's decision to convict is limited to speech with *sexual* content, which arguably deserves weaker protection from the free-speech rationale than other forms of speech, because of the greater potential harm that sexual content can cause to other people. However, the fact that the respondent's speech acts were sexual in content cannot play a role in justifying his conviction for the minor offences, since his behaviour was not found to be sexually harassing—the previous panel acquitted him of these charges. Thus, if it is not the sexually harassing nature of his behaviour, what was it that rendered that behaviour harmful and unbefitting? My concern here is that upholding his convictions for these minor offences would render such offences overly extensive and invasive. Students might be disciplined for sexual and non-sexual speech acts whenever these offended their peers, disrespected their peers' time and effects, or used their peers as a 'captive audience' for their 'comic' performances. My view is

similar to that of the previous panel: it is not the role of the University to police the behaviour of its students, nor should it invade their privacy and undermine their liberty by monitoring and disciplining their behaviour whenever it deems that behaviour harmful or unbecoming.

36. The previous panel's second rationale for acquitting the respondent of sexual offences is entitled 'due process' (Section 19(b)): interpreting the disciplinary offence of sexual harassment as applying to the creation of a toxic, sexualised, environment without an explicit reference in the University's Disciplinary Regulations 'would be unfair to students who rely on the regulations published by the University'. The previous panel concludes that, '[s]hould the University wish to expand that definition, it should do so explicitly in its regulations' (*ibid.*). The requirements for fair warning and explicit definition of the prohibition derive from a core principle of substantive criminal law: the principle of legality (referred-to by the previous panel as 'due process').
37. As with free speech, the principle of legality provides an even stronger rationale for acquittal when extended from sexual harassment to the offences of conduct harming the dignity of the members of the University and conduct unbecoming of the dignity of the University. Clearly, not every conduct that offends a member of the University should be considered 'harmful' to the member's dignity or 'unbecoming' of the institutional dignity of the university. So what is it that turns an offensive act into one that is sufficiently 'harmful' or 'unbecoming' that it constitutes a disciplinary offence? While the definition of 'sexual harassment' is set out in detail in the PSH Law and is interpreted in numerous Supreme Court precedents, both the notion of 'harmful to the dignity' of the members of the University, and the notion of 'unbecoming of the dignity' of the University are not defined anywhere, either in the statutory law or in the Supreme Court precedents—and not even in the University Disciplinary Regulations themselves. These offences violate the principle of legality to an even larger extent than the offences of sexual harassment do, so if this principle justifies the acquittal of the respondent of the sexual harassment offences, it must justify all the more his acquittal of these vaguely-defined offences.
38. While I believe the University should explicate these offences in its Disciplinary Regulations, and perhaps even remove them altogether, it is not the role of this appeal panel to abolish offences that were set and approved by the Senate of the University. However, at the very least, since these offences violate the principle of legality, they should be interpreted narrowly. In other words, the disciplinary tribunals of the University should apply these offences but limit them to extreme cases in which the conduct is grossly harmful or grossly unbecoming and, yet, for one reason or another, is not captured by any other (more severe and better-defined) offences, such as sexual harassment or dishonesty offences. For example, a behaviour should be deemed sufficiently harmful or unbecoming to justify a conviction if it is malicious or intentionally offensive, if it is repetitive or follows an explicit request from the defendant to cease, or if it inflicts such considerable harm on a fellow member of the University that it cannot go unpunished. While I agree that the respondent's conduct was disrespectful of his peers, I do not believe either of these two events was sufficiently grave to justify a conviction.
39. Moreover, even if the respondent's conduct were sufficiently harmful or unbecoming to constitute these offences, there are further circumstances in this specific case that justify his acquittal. In his counter-appeal, the respondent raises another argument against his convictions of these minor offences, which is based on the disproportionality between his conduct and the dire consequences of these convictions for him. While the trial was still ongoing, as noted in point 21, the Dean of Medicine was required by the University to

inform hospitals across the United States that the respondent was being tried for disciplinary offences. During the hearings, the present panel was also informed that, following the convictions of the previous panel, the Dean of Medicine contacted the US hospitals once again, informing them of the respondent's conviction and providing them with the judgement of that panel. These are amongst the facts on which the respondent bases his argument for disproportionality.

40. The respondent also emphasised the impact of the proceedings themselves on him. Even before he was convicted, he was suspended from his studies for 50 days, prohibited from communicating with his classmates, forced to take one of his core clinical rotations in Hebrew with Israeli students (despite being enrolled on an American programme), prohibited from registering for the United States Medical Licensing Exam for months, and forced to take an entire year's leave of absence. The investigation and proceedings (not including this appeal) have lasted 16 months. Based on these claims, the respondent argues that the previous panel erred when considering the punishment of reprimand proportionate.
41. In my view, not only do these consequences justify a lighter sentence but they also justify a full acquittal. First, it is unclear what punishment could be lighter than a reprimand. Second, and more important, the implications described above, particularly those related to the respondent's future career, seem to stem from him being convicted (as opposed to acquitted) and not from the punishment being a reprimand (rather than a different punishment). Even if one ignores the rationales of free speech and the principle of legality and insists that the respondent's conduct does constitute a disciplinary offence nonetheless, one faces the following unhappy choice: either the respondent is under-punished and acquitted of all charges, evading the formal punishment he arguably deserves for committing the minor offences of which he was convicted; or he is convicted of these minor offences, despite the disproportionate consequences of this conviction. I believe that under-punishment is preferable to over-punishment, particularly when there is such a gap between the actual punishment and the punishment that is deserved for committing these minor offences. I therefore conclude that the respondent's argument of disproportionality should be accepted.
42. To sum up, I believe the counter-appeal should be accepted. This conclusion is supported both by the Israeli Penal Law, the two rationales of the previous panel (free speech and principle of legality), and the disproportionality of the punishment imposed on the respondent as a result of his conviction. If my view had been accepted, the Respondent would have been acquitted of all charges.
43. Having read the decision of Mr. Bar Tasat, I must clarify that I would have accepted the Respondent's appeal and would have acquitted him of all charges even if his convictions were to have *no* consequences for his future career. I believe that these acquittals are demanded by both the Israeli Penal Law and the two rationales of the previous panel (free speech and principle of legality), irrespective of the impact that any such conviction might have on a student's future career.

Mr. Bar Tasat:

1. Following an extensive and thorough examination of the case at hand, including an intelligent and meticulous evaluation of the arguments presented by both parties, in light of the evidence as a whole, I decide to acquit the Respondent from the sexual harassment charge (Article 29.11 of the Disciplinary Regulations); and 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).

2. Freedom of expression is fundamental to a democratic society. The significance of freedom of expression, both in a general sense and particularly within academia, cannot be overstated. It encompasses the right to articulate one's thoughts, opinions, and ideas, regardless of their popularity or controversial nature.
3. In academia, the preservation of freedom of expression is of paramount importance. Academic institutions are dedicated to the pursuit of knowledge, critical thinking, and the exchange of ideas. Freedom of expression is indispensable for intellectual growth, the advancement of knowledge, and the cultivation of a vibrant and creative academic community. It enables scholars and students to engage in rigorous debates, challenge prevailing paradigms, and explore innovative theories.
4. It is important to note that freedom of expression, like any other right, is not absolute. Freedom of expression enjoys very broad but not unbounded protection. It is subject to such limitations as are necessary to protect the fundamental rights and freedoms of others. It is incumbent upon academic institutions to establish policies and guidelines that safeguard the principles of freedom of expression while preserving a respectful and inclusive academic environment.
5. The disciplinary tribunals of the University are vested with the duty to establish the appropriate balance between conflicting rights, according to the context and circumstances of each case.
6. As described in the decision of the Chair of the panel, the established facts, as outlined in the previous disciplinary panel's decision, do not sufficiently establish the elements of the offense of sexual harassment.
7. Nevertheless, I find the Respondent guilty of the aforementioned charges. In my view, the importance of maintaining societal norms, protecting individual rights, and fostering a respectful and inclusive environment, necessitate the clear and sharp conclusion: the Respondent's behavior, embodied in the established facts denoted "A" and "C", falls within the realm of offensive conduct that cannot be justified or excused by the fundamental right of freedom of expression.
8. In other words, the Respondent's conduct in this case is deemed unbecoming and cannot be disguised as freedom of expression. By emphasizing this distinction, we affirm the importance of upholding societal norms, promoting respectful discourse, and protecting the rights and dignity of all individuals.
9. The Chair of the panel emphasizes the implications of this conviction for minor offences on the Respondent's future career. It appears that in the hypothetical scenario where the same circumstances apply to another student from the University, and the conviction would not have carried any consequences for that student's career, it is possible that the Chair of the panel would have rendered a guilty verdict. I would like to clarify: First, the Respondent's acts express a lack of respect and violation of his peers' dignity. These acts should not be underestimated. Second, if this conviction will have an effect on the Respondent's career, then it will stem from the severity of the Respondent's acts. Third, the ramifications resulting from a conviction do not establish or indicate the Respondent's absence of culpability.
10. Having very carefully weighed all the circumstances of the case, I have arrived at the conclusion that a reprimand is an appropriate sentence. On the one hand, it is necessary to

recognize the gravity of the Respondent's acts, which demonstrate a lack of respect for his peers and violate their dignity. On the other hand, it is imperative to consider the disciplinary proceedings conducted in this matter, which have already imposed punitive measures upon the Respondent. Therefore, any additional punishment would be disproportionate.

11. I hereby dismiss both appeals. The decision and the sentence rendered by the previous disciplinary panel shall remain in full force and effect.

Prof. Rotem Oshman:

Based on the same reasons as Mr. Bar Tasat's, I also decide to reject both appeals.

Decision

Decided by majority, against the opposing opinion of Dr. Amit Pundik (Chair), that both the Appellant's appeal and the Respondent's appeal are rejected.



Dr. Amit Pundik (Chair)



Mr. Bar Tasat



Prof. Oshman