



## EXAMINATION APPEALS BOARD

Decision of the Examination Appeals Board of Tilburg University

in the case between

**X, appellant**

and

**the Examination Committee of the Tilburg Law School, appellee**

### **1. Course of the proceedings**

In a decision of January 31, 2017, the examiner of the course Thesis Law and Technology assessed the appellant's thesis with a grade of 6.5 (hereinafter: "the contested decision").

The appellant filed a notice of appeal against this decision on February 23, 2017.

The parties did not reach an amicable settlement.

The appellee filed a written defense. At the Board's request, the appellee submitted the assessment forms.

The Board dealt with the appeal at the hearing on April 6, 2017. The appellant was present at the hearing. Y, Z and A appeared on behalf of the appellee.

### **2. Facts and circumstances**

2.1 The appellant was enrolled from February 1, 2016 through January 31, 2017 in the Master's Degree Program Law and Technology.

2.2 The appellant defended his Master's thesis on January 31, 2017. His thesis supervisor, B assessed the thesis. A was the second assessor.

### **3. Positions of the parties**

- 3.1 On appeal, the appellant argued that he had expected his thesis to be assessed with the grade 8. The appellant – for payment – engaged a professional proofreader to improve his usage of English. That proofreader and friends of the appellant assessed his thesis with a grade higher than 6.5. At the hearing, the appellant added that he had not previously received the assessment forms which the appellee submitted at the Board’s request. It is evident from those assessment forms that two of the six criteria referred to in Article 17 paragraph 1 of the Thesis Regulations were assessed as ‘good’. Consequently, in accordance with Article 17 paragraph 2 of the Thesis Regulations, the grade 7 should have been given, plus an increase of 0.5 of a point in connection with the appellant’s defense, through which a final grade of 7.5 should have been given.
- 3.2 In addition, the appellant asserts that, while writing his thesis, he was assigned a different thesis supervisor. C was his thesis supervisor until he wrote the last chapter in December 2016. The appellant incorporated all her feedback in his thesis. The assessment was then carried out by a different thesis supervisor. The appellant asserts next that he had not previously received the feedback explained to him at the hearing.
- 3.3 The appellee argues in response to the appeal that, in accordance with Article 14 of the Thesis Regulations, before the thesis is assessed, the following elements are assessed: language usage/style, structure and format. Both the thesis supervisor and the second assessor are of the opinion that it is not evident from the appellant’s thesis that he has a sufficient level of skills in English, despite the appellant’s visit to the Scriptorium. The thesis also lack structure and the contents are mainly descriptive. The appellant was informed of the shortcomings and a lot of feedback was given. A explained this feedback at the hearing. When A received the final version of the thesis, it proved not to be of sufficient quality. Because the appellant had expressed the wish to graduate by January 31, 2017 at the latest, only the feedback was communicated to the appellant with which he could arrive at a satisfactory grade, so the defense could take place on January 31, 2017. Because the appellant responded positively to the feedback he received during the defense and he also seemed to understand it, his final grade was increased by 0.5 of a point.
- 3.4 With respect to Article 17 of the Thesis Regulations, the appellee asserts that these are guidelines for the assessor for filling out the assessment form, and that students cannot derive expectations from these guidelines. The appellant could not derive expectations, either, from the assessment forms completed by the assessors, because these forms had not been provided to him. The assessment, as well as establishment of the grade, take place after the defense during the examination, and the forms are filled out only afterwards for the purposes of external accountability. Consequently, it cannot be asserted that, on the basis of the guidelines and the forms, that the appellant could have trusted that he would receive a higher grade than 6.5. A explained with reasons why the appellant’s thesis was assessed with a 6.5. The conclusion can then be only that the forms apparently should have been filled out differently. In any case, the appellee does not see any reason to adjust the grade in this matter.

3.5 The appellee asserts as well that C was indeed replaced at some time by B as the appellant's thesis supervisor, in connection with leave. This is not unusual and, moreover, this took place in such a way that the appellant had a thesis supervisor available at any time and there was supervision during the entire course of the thesis.

#### **4. Grounds of the Board**

4.1 Section 7.61 subsection 2 of the Higher Education and Research Act (hereinafter: WHW) provides that appeal can be brought against a decision that is in conflict with the law. It ensues from this that review by the Board must remain limited to lawfulness criteria, such as the question whether the appellee observed the necessary care in the examination and assessment procedure followed. The thesis assessment contested on appeal is thus not reviewed for its substance. Insofar as the appellant has put forth substantive arguments to demonstrate he was wrongly given the grade 6.5, they cannot, therefore, lead to the result they were intended to achieve.

4.2 Under Article 4.14 of the Teaching and Examination Regulations of the one-year Master's Degree Program of Tilburg Law School 2016-2017 (hereinafter: TER), the requirements set on the Master's thesis and the manner in which supervision and assessment are carried out are regulated in thesis regulations.

4.3 Under Article 14 of the Thesis Regulations, preliminary to assessment of the thesis, the following aspects will be assessed:

- language/style (...);
- structure (...);
- format (...).

A preliminary assessment will only be determined after all the above aspects have been assessed as sufficient.

4.4 Under Article 17 paragraph 1 of the Thesis Regulations, in assessing the thesis, the following six categories are assessed as insufficient, sufficient, good or very good:

- Research question/statement of the problem (...);
- Research (...);
- Use of the research material (...);
- Argumentation (...);
- Creativity and originality (...);
- Critical ability (...);

Under Article 17 paragraph 2 of the Thesis Regulations, the following guidelines apply to the calculation of the preliminary thesis grade:

The grade 6 will be given

- if all categories are 'sufficient' or if one category is 'good' and the other ones 'sufficient';
- if the independence aspect is 'poor' because the student has insufficiently shown his ability to independently realize the aims referred to in Article 2;

The grade 7 if at least two categories are assessed as 'good'; (...)

Furthermore, under Article 17 paragraph 3 of the Thesis Regulations, the level of the sufficient grade will also be determined by the presentation of the thesis subject for non-specialists (leken-praatje) and the defense of the thesis.

- 4.5 The Board establishes that a different supervisor was assigned to the appellant while he was writing his thesis. This, however, is not unusual, as the appellee asserted, and, moreover, the Board has no evidence that the appellant was prejudiced by this in any way.
- 4.6 Furthermore, the Board considers the appellant's argument irrelevant that he had engaged and paid a professional proofreader to improve his usage of English. Insofar as the appellant has demonstrated that he wants to assert that his English usage was indeed at a sufficient level, this argument fails, with reference to ground 4.1, as the substance of the contested decision will not be reviewed.
- 4.7 The Board considers the substantiation of the assessment of the thesis with a 6.5 in the written defense and its oral explanation by A in particular convincing. This substantiation, however, does not match the assessment as set out on the forms. For instance, it is stated in the written defense – which was also explained by A at the hearing – that the thesis was “unintelligible, even after a visit to the Scriptorium”, and that the appellant did not show “a sufficient level of academic English skills” in his thesis. Nevertheless, the first assessor included on the assessment forms under Language usage/style: “The grammar and syntax are sufficient but still weak. The reader sometimes feel[s] lost in the sentence structure and can notice some grammar mistakes. Nevertheless, overall the reading flows despite these minor errors.” And the second assessor included: “Fluent and adequate use of Academic English and good text fluidity. The text demonstrated a high level of spelling, punctuation, grammar use and respect for stylistic conventions.” Both assessors give the appellant a sufficient on the assessment forms for this element. Both assessors also give the appellant a 'good' on the assessment forms for several elements, whereas this is not reiterated in the substantiation of the written defense and its oral explanation.
- 4.8 For the criteria referred to in Article 17 paragraph 1 of the Thesis Regulations, the supervisor gave the classification 'good' twice and 'sufficient' four times, as the second assessor did as well. According to the guidelines, the appellant should have obtained a 7 on the basis of both assessments, whether or not with an increase of 0.5 of a point in connection with the assessment of the 'leken-praatje' and the defense of the thesis.
- 4.9 The Board cannot concur with the appellee's assertion that a student cannot derive expectations from the guidelines, because the guidelines are allegedly addressed only to the instructors, and instructors, if the Board understands the appellee correctly, are apparently free to ignore the guidelines and to arrive at an assessment, or a different assessment, in an entirely different way. Should the appellee's position be followed, the guidelines would not have any

meaning at all for students and that cannot be the intention. The Board concludes from Article 4.14 TER that the Thesis Regulations are, after all, also intended to give students advance insight into the way in which the Master's thesis is assessed. It is indeed possible to derogate, stating the reasons, from the guidelines in Article 17 paragraph 2 of the Thesis Regulations in calculating the preliminary thesis grade. A student should, however, be able to trust that the assessment will take place on the basis of the criteria set out in Article 17 paragraph 1 of the Thesis Regulations, and that, in the event of derogation from the calculation of the grade in accordance with Article 17 paragraph 2 of the Thesis Regulations, this must be done with substantiation.

4.10 It is, of course, up to the instructors to assess a thesis, and the Board may not and does not want to take the place of the assessors. Referring to ground 4.1, the Board should nevertheless judge whether an assessment was made carefully and properly. In the Board's opinion, this cannot be said of this assessment, in view of the foregoing. The assessment, as is evident from the written defense and its explanation on the one hand, and the assessment as evident from the assessment forms on the other, diverge and no explanation has been given for this, other than that the forms "apparently should have been filled out differently". Nor have reasons been given for why, in derogation from Article 17 paragraph 2 of the Thesis Regulations, despite the award of 'good' twice on the assessment forms by both assessors, no 7 was given.

4.11 In view of the foregoing, the Board is of the opinion that the assessment does not meet the requirements of due care and supported substantiation. The appeal must, therefore, be declared valid. The Board notes in this context that this does not imply that the Board is of the opinion that the appellant's thesis deserves a grade higher than the grade of 6.5 that was given. The Board is not authorized to do so and the appellee will have to examine this in more detail. The appellee, for instance, will have to examine the discrepancy between the assessment of the forms, on the one hand, and the oral explanations on the other, and, if so, why there was a derogation from the guidelines, in view of the assessments from the assessment forms.

## **5. Decision**

The Examination Appeals Board:

- I. declares the appeal valid;
- II. sets aside the decision of the appellee of January 31, 2017;
- III. directs the appellee to make a new decision within four weeks and to take due consideration of the findings of the Board in this decision.

Decided on April 6, 2017 by the Examination Appeals Board.