



## EXAMINATION APPEALS BOARD

Decision of the Examination Appeals Board of Tilburg University  
in the case between

**X, appellant**

and

**the examiner of the course Privacy and Data Protection, appellee**

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

In a decision of December 13, 2016, the appellee assessed the appellant's examination with the grade 7.5 (hereinafter: "the contested decision").

The appellant filed a notice of appeal against this decision on February 7, 2017.

An amicable settlement was reached with respect to the grade, entailing that the appellee has changed the appellant's grade to an 8.2. At the hearing, the appellant confirmed that the part of his notice of appeal that relates to the calculation of the grade can be considered to have been withdrawn, and therefore is no longer part of the further appeal proceedings.

Regarding the assessment of question 4 of the examination, however, the parties have not reached an amicable settlement. The appellant therefore maintains that part of his appeal.

The appellee has filed a written defense.

The Board dealt with the appeal at the hearing on April 20, 2017. The appellant was present at the hearing. Y and Z appeared on behalf of the appellee.

## **2. Facts and circumstances**

- 2.1 The appellant enrolled in the Master's Degree Program Law and Technology on September 1, 2016.
- 2.2 The appellant participated in the examination of the course Privacy and Data Protection on November 21, 2016. Inspection of the examination took place on December 20, 2016. The appellant was present during the inspection.

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

- 3.1 On appeal, the appellant states that he did not file the appeal within six weeks because he needed a copy of his examination in order to give shape to his grounds for appeal, and that he had not received that copy earlier than on January 19, 2017. The appellant needed the copy because his examination was gone through orally during the inspection, whereas the instructor had the examination in front of him and the appellant was, therefore, unable to inspect his examination clearly.

- 3.2 When the Board asked him about this at the hearing, the appellant asserted that it was indeed clear to him during the inspection how the grading of his examination had been done, but that he was unable to check the grading for errors because he did not have the examination in front of him.

In connection with a vacation period, the appellant did not receive the copy of his examination until January 19, 2017, and, afterwards, the appellant was abroad with limited access to internet. The appellant states that on December 22, 2016, A (education coordinator) pointed out the possibility to file an appeal at the Examination Appeals Board. As a result of this, he consulted the website with information on the appeal procedure and took note of the period for appeal. The appellant said that he was not aware of the possibility to file his appeal pro forma; otherwise he would indeed have made use of that possibility.

- 3.3 The appellant stated further that the answer to the fourth examination question did not sufficiently emerge in the prescribed literature. The complete answer cannot be found in the Handbook, and the instructor did not use slides during the lessons. The appellant cannot agree with the reasons the appellee gives to award 1.5 for that question instead of 2 points. The appellant especially cannot agree with the appellee's position that his answer was not sufficiently supported to have the full number of points awarded, because in his answer to question number 9, the appellant mentioned alternatives which were clear in themselves and consequently did not need further explanation.
- 3.4 The appellee asserts first of all that the appeal had not been filed within the period of six weeks set for this in the Higher Education and Research Act (hereinafter: "WHW") and Article 5.1 of the Teaching and Examination Regulations of the one-year Master's Degree program of Tilburg Law School 2016-2017 (hereinafter: "TER") and that the appeal is, therefore, inadmissible.

- 3.5 Furthermore, the appellee asserts that in the event that the appeal is nevertheless declared admissible, it has already been explained to the appellant why he obtained 1.5 of the 2 points for the fourth question of the examination. The appellant gave a general answer to the question, whereas he should have referred to specific, relevant statutory provisions. His answer shows that he was not aware of certain facts which were indeed part of the prescribed literature. Moreover, his answer was not supported to a sufficient extent to obtain the full number of points. The appellee adds that the examination question concerned was also part of the examination of October 2016, and that the model answer was published on Blackboard. The appellant did not participate in that examination.
- 3.6 The appellee states as well that he cannot remember well whether the appellant had the examination in front of him during the inspection. The appellee and appellant did indeed go through the examination together during the inspection, and the appellee explained to the appellant how he had formulated his grade. The appellant seemed to understand this during the inspection.

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

- 4.1 Under Section 7.59a WHW, the period for filing a notice of appeal is six weeks. The Board establishes that the contested decision dates from December 13, 2016, and the notice of appeal was filed on February 7, 2017. Consequently, the appellant's appeal was not filed within the period set.
- 4.2 Such exceeding of the period leads to inadmissibility, unless it cannot reasonably be held that the filer was in default.
- 4.3 Although the Board considers it understandable in itself that the appellant wanted to receive a copy of his examination in order to give shape carefully to the grounds for his appeal, and therefore waited to file his notice of appeal, the Board cannot but establish that the appellant received his examination on January 19, 2017. The period for appeal had not yet expired at the time. Consequently, the appellant had the opportunity at the time to file his notice of appeal immediately, at any rate still before the end of the period for appeal. The fact that he was staying abroad and, according to his – otherwise unproven – assertion, allegedly had only limited access to internet, does not affect this; such personal choices/circumstances are, after all, entirely at the appellant's risk.  
In short, the Board sees no justified reasons to assume that it cannot reasonably be held that the appellant was in default.
- 4.4 The Board also takes into consideration in this context that the appellant has acknowledged that he was already aware on December 22, 2016 of the possibility to file an appeal. After the education coordinator had pointed this out, he asserts that he then took note of the information on the website of Tilburg University on the possibility to file an appeal as well as the period for appeal. Information is also included on that website on the possibility to file a pro forma appeal.
- 4.5 In view of the foregoing, the appeal should, therefore, be declared inadmissible.

4.6 Without prejudice to the foregoing conclusions and opinion, therefore unnecessarily, the Board notes that *if* the appeal had been admissible, the appeal would have been considered unfounded. After all, in the Board's opinion, the appellant did not, at any rate did not convincingly assert, let alone prove that there were irregularities or inaccuracies in the grading of the fourth examination question and inspection of the examination concerned. The Board has no evidence either that this would have been the case.

## **5. Decision**

The Examination Appeals Board declares the appeal inadmissible.

Decided on April 20, 2017 by the Examination Appeals Board.

*You can file an appeal against this decision within six weeks after publication of this decision at the Appeals Tribunal for Higher Education (CBHO), P.O. Box 16137, 2500 BC The Hague. For more information, see [www.cbho.nl](http://www.cbho.nl).*