

OVERVIEW OF CLINICAL LEGAL EDUCATION IN AUSTRALIA

Most law schools in Australia operate CLE programs, many through the medium of law school run legal advice clinics. Some law schools have partnered with existing legal aid or community legal services, with students undertaking their CLE experience under the supervision of the host agency, often with some supervisory engagement by faculty.⁶ Others run their own clinics as part of their undergraduate program,⁷ where students are supervised by faculty or employed solicitors. A number of law schools also offer externship programs where students may be placed at private law firms, although placements are predominantly at public and community agencies.⁸ Most universities run several programs across a number of these options, often associated with different clinical courses.⁹

⁶ For example, Australian National University, Griffith University, James Cook University, Monash University, Murdoch University, the University of Queensland and the University of Western Sydney all operate clinics within existing legal aid agencies with the involvement of some faculty staff.

⁷ For example, Flinders University, University of South Australia, Adelaide University, Griffith University, Newcastle University and University of New South Wales have services that are primarily operated by the University with university funded staff.

⁸ For example, Deakin University, Adelaide University, University of South Australia, Griffith University, University of Technology Sydney, La Trobe University, Macquarie University, Queensland University of Technology and University of New South Wales.

⁹ Adrian Evans et al 'Best Practices Australian Clinical Legal Education' Report Prepared for the Australian Council of Law Deans (September 2012),⁹ provides a structured taxonomy of the different types of programs. <
http://www.cald.asn.au/assets/lists/Resources/Best_Practices_Australian_Clinical_Legal_Education_Sept_2012.pdf>

CLE in South Australia

In South Australia all three law schools run clinical programs.¹⁰ The University of South Australia operates a legal advice service that is located on campus with outreach services to two busy suburban courts.¹¹ Flinders University operates a clinic on campus, with an outreach to a suburban court.¹² Adelaide Law School operates two legal advice clinics, one co located at the Magistrates Court in Adelaide and the other co-located at homeless center in Adelaide.¹³ All schools also offer clinical externship placements in a range of legal, community, and government agencies.

In a small state like South Australia, where there are three law schools, and many graduates seeking post-graduate legal training opportunities, there is a high demand for experiential placement opportunities. This means that externship opportunities for undergraduate law students are limited. The problem of ensuring appropriate experiences on externship in a relatively small legal services market limits the number of externships that can realistically be offered.¹⁴ This is only exacerbated by the contraction of the

¹⁰ See Rachel Spencer, Margaret Castles and Deborah Ankor 'Clinical Legal Education in South Australia' (May 2014) 36:4 *Bulletin (Law Society of South Australia)* 38-40

¹¹ See <<http://www.unisa.edu.au/Business/Law/Clinic/>>

¹² See <<http://www.flinders.edu.au/ehl/law/legal-advice-clinic/>>

¹³ See <<https://law.adelaide.edu.au/alos/about/cleprogram/>>

¹⁴ Jeff Giddings 'Extern Placements for Law Students: Out of Sight Out of Mind or Putting Students in the Picture?' (Paper presented at 1996 Skills Development for Tomorrow's Lawyers: Needs and Strategies Australian Professional Legal Education Council Sydney 1996) Conference Papers Volume 1 575-598;

legal services market,¹⁵ and has led to focusing resources into law school operated clinics, which can only cater for a limited number of students.

The Magistrates Court Legal Advice Service

The MCLAS, which is one such service, is co-located at the Magistrates Court in Adelaide. It is run by the Adelaide Law School, and is independent from the court. It provides legal advice and support in claims up to \$15000,¹⁶ in the Minor Civil (Small Claims) Jurisdiction. Litigants may only be represented in trial in limited circumstances,¹⁷ and of necessity, a semi-inquisitorial approach is often adopted by the Court in trial.

MCLAS's work includes minor commercial, contract, neighborhood, dog attacks, fences, debt, property damage, motor vehicle, minor statutory claims, consumer claims, de facto property division, strata titles, failed investments and defamation. Typical of many such services, the monetary value may be low, but the legal issues, and the evidence, can be complex. MCLAS does not enter a formal retainer with clients,¹⁸ and does not go on the court record.

¹⁵ Cynthia Baker and Robert Lancaster 'Under Pressure: Rethinking Externships in a Bleak Economy' (2010-2011) 17 *Clinical Law Review* 71, 74 -76; Nancy M Maurer and Liz Ryan Cole 'Design Teach and Manage; Ensuring Educational Integrity in Field Placement Courses' (2013) 19 *Clinical Law Review* 115, 124.

¹⁶ The jurisdictional limit is \$25000, but the clinic limits assistance to matters up to \$15000 due to the limits of the service and the inevitable complexity and risk associated with higher claims.

¹⁷ Parties may be represented by leave of the court in certain limited circumstances. See *Magistrates Court (Civil) Rules 2013* (SA) r 13 (4).

¹⁸ Clients sign a release acknowledging that the service can only provide advice, not representation, and that they agree to the condition that the service can stop assisting them at any time.

Instead, support is provided via the preparation of legal opinions and research, drafting pleadings and correspondence for clients to send,¹⁹ and exploring alternative dispute resolution options.

The service operates two days per week, with two groups of 8 students, supervised by one solicitor, each attending one day for a twelve week semester. An intensive placement occurs over summer, two days per week for six weeks, and fortnightly clinics are offered over long university breaks.

THE COST CHALLENGE OF IN HOUSE LEGAL ADVICE CLINICS

There are many systemic and financial challenges in operating in house clinical services. The value to the student of a clinical placement is significant²⁰, but the operational and teaching cost is exponentially higher than almost any other law subject²¹. Close professional supervision, premises, office supplies, IT equipment and communication technology are costly. One-off grants, in kind contributions, or sharing of existing resources with other organizations can assist, but seldom provide certainty for future planning. Commonly, grants are available for new initiatives, but not for ongoing operating expenses. This can make it difficult to sustain, let alone develop, established clinic services.

¹⁹ Sometimes referred to as “ghostwriting”.

²⁰ Proponents of CLE argue that it is an essential component of educating lawyers. See, eg, Peter A Joy ‘The Cost of Clinical Legal Education’ (2012) 32 *Boston College Journal of Law and Social Justice* 309.

²¹ Paul Campos ‘The Crisis of the American Law School’ (2012) 46 *Michigan Journal of Law Reform* 177, 192.

The ongoing cost of solicitor/faculty supervision of students, and any associated running or insurance/registration costs, poses increasing strain on diminishing law school budgets.²² Whilst most law schools accept the value of clinical programs (if not the imperative to offer them²³) the funding model for law schools creates deep-rooted challenges.²⁴ Law schools have of necessity adopted high teacher/student ratios, low contact hours, and streamlined use of technology to deliver legal education at less than half the cost of comparable tertiary degrees.²⁵ The idea of experiential, low student: supervisor ratio, learning that is the foundation of other professional university degrees²⁶ is traditionally not part of a modern law curriculum and inevitably limits law school appetite for such programs.²⁷

²² Plerhoples Spratley above n 3, 393.

²³ Professor Jeff Giddings from Griffith University points out that many law schools see their clinical programs offering an “edge” in an increasingly competitive education market. Jeff Giddings *Promoting Justice Through Clinical Legal Education* (Justice Press, 2013)136.

²⁴ Law students in Australia pay on average \$10 000 per annum for a law degree. Of this approximately \$2000 of that sum is directed to the law school. The cost of an arts degree is approximately \$6000, with \$5500 going to the school. Medical students pay the same tertiary fees as law students, but \$21700 is paid to the school. (Figures based on funding rates for Commonwealth supported university places 2014 – The Hon Dr David Kemp and Andrew Norton

Report of the Review of the Demand Driven Funding System Australian Government Department of Education (2014) Commonwealth Department of Education and Training available at <http://docs.education.gov.au/node/35537>)

²⁵ See Giddings above n 22, 121.

²⁶ For example, medicine, health sciences, nursing and social work.

²⁷ Joy above n 19, 310 points out that clinical legal education is often the first area to receive budget cuts in financially difficult times. See also Jeff Giddings ‘A Circle Game: Issues in Australian Clinical Legal Education’ (1999) 10(1) *Legal Education Review* 33.

At an ideal student/supervisor ratio of 8:1 (sometimes 6:1)²⁸ for clinic supervision, the cost of a supervisor is many times the per student cost of a lecturer teaching between 30 and 400 students at a time.²⁹ Even with university funding for solicitor/supervisor positions, most university law clinics rely upon external funding support by way of grants,³⁰ to maintain the program and develop new initiatives.³¹

There are very persuasive reasons to find ways to minimize the cost of clinics to ensure a rich and accessible experience for as many students as possible. At the same time, quality control, risk management, and the need to ensure a valuable educational experience are paramount considerations that constrain the opportunities for expansion. One way to expand opportunities is to find different ways to enlist the support of the private profession.

²⁸ Evans et al above note 8, 27 suggest an even lower ratio of 4:1 in a busy “live client” advice context.

²⁹ Giddings, above n 22, 322.

³⁰ The Law Foundation of South Australia operates a benevolent grants process to support justice access initiatives in South Australia. It has been a constant support to the clinical programs operated by all three universities in SA by both seed funding for new initiatives and ongoing financial support. Without this support, the development of new initiatives, not to mention the maintenance of day to day services and community education work, would not be possible.

³¹ Giddings above n 22, 145 points out the importance of outside funding to clinical programs in Australia.

The traditional externship model

The most common way for law firms to participate in CLE is via externships, where law firms take one or more students on an experiential placement³². There are both financial and educational advantages with externship programs.

An extern program is much cheaper than an in house clinic, because there is no expenditure on supervisor/faculty salary.³³ In a diverse externship based program, a rich variety of social justice issues and work types can be incorporated in to the teaching component.

In a mixed CLE program, where students are placed both at in-house clinics, and on externships with private firms, the inclusion of private practice placements facilitates classroom exploration of different models of legal practice, and helps the class to consider professional values and ethics across the public/private divide.

Of course externships can be an educational failure if the firm or agency is not equipped to engage in the educational process with the students.³⁴ For that reason detailed guidelines have grown up around the management of

³² Griffith University; La Trobe University, Macquarie University, Queensland University of Technology, Southern Cross University, University of Newcastle, University of New South Wales, University of South Australia, University of Adelaide, Wollongong University all offer externships with private firms as part of their varied CLE offerings.

³³ See Baker and Lancaster above n 14, 83.

³⁴ Joy, above note 19 322 ; Roy T Stuckey and others *Best Practices for Legal Education: A Vision and a Roadmap* (Clinical Legal Education Association, 2007) 155 emphasize the need for clinical experiences with a high level of autonomy, and recognizes that not all externships will permit this degree of deep learning.

externship placements, so that students do receive educational experience consistent with the goals of the CLE program³⁵. It is also necessary to ensure that equitable work principles are not compromised by unclear placement expectations.³⁶

In a crowded legal marketplace, looking to the private profession as a source of externship experience is often quite difficult:

- Firms are already overburdened with Graduate Diploma of Legal Practice or Practical Legal Training students seeking professional placement and give priority to those students over undergraduates;
- Busy private practitioners can find it very difficult to supervise a clinical placement student effectively – finding time to mentor, educate, and patiently develop a student's skills can be a real challenge in a busy legal practice;³⁷
- The imperative to bill inevitably impacts upon the capacity of a private firm or solicitor to host students, in direct contrast to a CLE or government agency where there may be more flexibility to justify time spent on supervision and education;

³⁵ See Maurer and Cole above n 14, 132-135.

³⁶ In Australia there has been significant concern about the exploitation of students eager for work experience in the legal and other professions. See Andrew Stewart and Rosemary Owens *Experience or Exploitation Report for the Fair Work Ombudsman 2013* (University of Adelaide 2013) 43-44.

³⁷ Barbara A Blanco and Sandy L Buhai 'Externship Field Supervision: Effective Techniques of Training Supervisors and Students' (2003-2004)10 *Clinical Law Review* 611, 612.

- Few private practitioners will permit students to interview clients alone or actively participate in interviews. In many CLE programs client contact is critically important;³⁸
- The range and nature of work can be limited and unpredictable in a private practice setting, meaning that a relatively short placement (typically one day per week spread out over 12 weeks) may be unluckily devoid of variety or interest; and
- Supervising a CLE student is different to supervising a young lawyer, and the quality of supervision in private practice can be variable.³⁹

A DIFFERENT APPROACH: BRINGING PRIVATE PRACTITIONERS INTO THE CLINIC

Another way to engage the private profession with CLE is to include private lawyers in existing clinics. Instead of students in ones or twos being placed with a private firm, members of the private profession can come into the in-house clinic environment – a sort of ‘reverse externship’.

Alicia Plerhoples and Amanda Spratley operate a transactional legal clinic in Georgetown USA. They have introduced visiting supervisors from the private practice into this clinic, in response to some of the challenges outlined above. In their recent evaluation of the engagement of outside counsel in a the

³⁸ Evans and others above n8, 5, 15, emphasize the importance of interaction with and responsibility for real clients as part of clinical experience.

³⁹ Blanco and Buhai above n 36, 621, 623 Giddings above n22, 89.

clinic⁴⁰ they suggest several reasons a law school clinic can benefit from the inclusion of outside solicitors.

Firstly there is the direct justice access advantages that arise from the capacity to extend the breadth of services;⁴¹ secondly, there is the opportunity to leverage community legal resources- particularly by linking with private solicitors who may also be in a position to do *pro bono* work for the clinic community.⁴² In terms of educational outcomes, the involvement of different legal experts expands the depth and breadth of work students can engage in,⁴³ and enables students to engage with multiple styles and methods of lawyering in developing their own professional identity.⁴⁴

On an institutional or faculty level, connecting with the profession can enhance institutional relevance in the community,⁴⁵ and the professional support offered by expanded collegiate connections creates a richer and more realistic professional environment for faculty supervisors, who can find limited relevant support within faculty for practice/clinic dilemmas.⁴⁶

There are advantages for private solicitors who want to engage in *pro bono* work as well. The common problems that supervisors of externs encounter -

⁴⁰ Plerhoples and Spratley above n 3.

⁴¹ Ibid 383.

⁴² Ibid 386.

⁴³ Ibid 387.

⁴⁴ Ibid 388.

⁴⁵ Ibid 389-390.

⁴⁶ Ibid 390.

lack of time, lack of focus, pressure to bill,⁴⁷ are removed when the solicitors leave their own office and come to a clinic – they are physically separated from the daily pressures of their own practice and able to focus on their supervisory role without distraction. At the same time, their time commitment is predictable, being limited to the hours they will spend at the clinic.

These factors provide persuasive reasons for private practitioners to become involved as supervisors in a law school clinic.

Early experience of visiting supervisors in clinic

The Adelaide CLE program places approximately 32 students each semester,⁴⁸ of which 22 are placed in Law School operated or affiliated clinics, 8 are placed with community law centers/legal aid offices, JusticeNet⁴⁹ or government agencies. We place a small number of students on externship with private practitioners when their capacity permits, or when there is a particular need for *pro bono* legal work.⁵⁰

⁴⁷ Blanco and Buhai above n 36, 616-620. Jeff Giddings' recent survey of supervisors as part of an Australian Office of Learning and Teaching National Fellowship also indicates that supervisors find balancing their own workload with effective supervision consistently challenging. <<https://www.griffith.edu.au/criminology-law/effective-law-student-supervision-project/survey-results>> under heading Supervisor Surveys - Overview

⁴⁸ The program operates over three semesters, with a smaller number of students in the intensive summer semester where placement is two days per week over 6 weeks.

⁴⁹ JusticeNet is the South Australian equivalent of a public interest law clearing house – it processes applications for legal services on the basis of merit and means, and links clients with a large cohort of private practitioners prepared to act on a *pro bono* basis.

⁵⁰ For example, from time to time we have a surge in externships to firms working on refugee appeals, or in other areas of particular need.

The operation of the two legal advice clinics is the most costly aspect of the program, and the sort of pressures discussed above mean we are always looking for more cost effective ways of operating. Over the life of the CLE program at Adelaide Law School we have had several flirtations with engaging with the private profession in our clinical program, primarily with a view to cutting the costs of supervision.

At one of our clinics, the Adelaide Legal Outreach Service (which caters primarily for homeless and disadvantaged people) we invited community lawyers and private practitioners to participate as *pro bono* supervisors. The practitioners who volunteered to assist with supervision were experienced in community law, well suited to the supervisory/education role by virtue of their existing work in the community sector, and familiar with our client demographic. They did not need extensive training in dealing with our client base, or the notion of how an advisory service operates. Like most busy practitioners, they could not afford the time to be trained in clinical pedagogy,⁵¹ but having experience with law students on placement at their own agencies and in some cases teaching experience, were well equipped to interact effectively with students.

However, we encountered significant practical challenges. Firstly, the introduction of visiting supervisors brought home to us how important

⁵¹ Plerhoples and Spratley above note 3, 408 - 409 acknowledge this reality, suggesting that at the very least outside supervisors should have some induction to the model and ethos of the clinic.

continuity of supervision was both for educational experience and client service. Many of our cases take weeks or months to resolve, and it was time consuming for students to have to acquaint a new supervisor with details of a case and the reasons for strategy adopted a week or so previously with a different supervisor. The process of explaining a case to a third person is a valuable exercise for a student, providing a forum for reflection, review, and justification of decisions made, but the educational value of this exercise was eclipsed by the time it took for students in a challenging environment to acquaint visiting supervisors with often complex case histories whilst clients waited for advice.

Whilst visiting supervisors brought a fresh perspective to the clinic, and expanded the students' exposure to different practice styles, philosophies, experiences, and practices, this benefit was overshadowed by the difficulties of interposing visiting supervisors into the existing day to day operation of the clinic.

When Adelaide based international commercial law firm Lipman Karas raised the question of involvement in MCLAS, we welcomed the opportunity to revisit ways to develop a more structured partnership between a clinic and a private firm.

Potential benefits of clinic/private engagement

Ultimately, we decided that the pedagogical reasons for developing a partnership outweighed our concerns. We particularly valued the following opportunities:

- Expanding supervisory capacity: more supervisors available to spend one on one time with students on complex case work and challenging tasks;
- providing some “time out” for the clinic supervisor to work on policy/management issues;
- Raising the profile of our service within the broader legal community
- Extended pedagogical benefits for our students by facilitating engagement with different professional teachers/mentors from different backgrounds; and
- Developing a community of practice around the work done at the clinic, through formal professional/collegiate links.

We determined to keep the risks and concerns that we had identified at the forefront of our minds during development of the collaboration, and to explore any concerns as planning progressed.

Implementation of the partnership

Having considered the broad questions of ethos and values, we then turned to the day to day practicalities of developing a partnership, which I will deal with in turn. These include:

- Integrating visiting supervisors within the clinic model
- Memorandum of Understanding (“MOU”) between the parties
- Insurance
- Management of potential conflicts of interest
- Supervision training
- Partnership management

Integrating visiting supervisors

MCLAS operates two days per week, from 9.00 am-5.00 pm. Each day 8 students are supervised by one solicitor. In the morning, students work in pairs to interview one or two clients. In the afternoon, students do follow up case work.⁶² Clients self-refer, or are referred through the court process, or from other services. Unlike many duty solicitor services, MCLAS offers ongoing support to clients in civil matters, and may work with a client over weeks or months.

⁶² Where time permits, clinic students also observe court, and all students work on a major justice access project that is part of their assessable work. They also maintain clinic policy guidelines, resources, update case notes and other resources.

The clinical supervisor engages with students at all stages, although does not attend client interviews. Students see clients in pairs, without supervision, and consult with the supervisor during the interview before substantive advice is given. All follow up-work is signed off by the supervisor.

There are no offices at MCLAS. The clinic is situated in one large room (a disused courtroom) with students working at large tables, and the supervisor sitting “on the bench”⁶³ for case consultations, and in the larger area at other times. The supervisor is very much in a “helicopter” keeping an eye (and an ear) on everything that is going on. This enables constant tracking of learning needs, student dynamics, and work progress.

We decided that we would start with a modest proposal to minimize disruption to clinic operations. After introductory training and development covering the nature of the clinic, the role of supervisors, and the pedagogy of feedback and clinical learning models, LK solicitors would attend in pairs, one afternoon per month. We were concerned that the “organized chaos” of the morning sessions, with 8 students seeking direction on up to 6 clients, posed too much of a challenge, and that participation in the less busy afternoon case work activities would enable some structure to be built around these afternoon sessions. This is discussed further in the section on building a teaching partnership.

⁶³ Not in any attempt convey hierarchical dominance! It is the only workable option given the layout of the room!

Memorandum of Understanding

Plerhoples and Spratley, in their report of engagement of outside counsel in a transactional law clinic⁶⁴, suggest an exhaustive memorandum of agreement⁶⁵ which provides detailed instructions about every aspect of the interaction between clinic and outside solicitors, correctly pointing out that leaving things to “work themselves out” is likely to lead to problems in the future.⁶⁶ We were of the same mind, but decided to develop a much simpler MOU that reflected our goals and intent (as well as some of the critical organizational details that related to risk management and insurance) but that did not set out chapter and verse of the arrangement. We also found that whilst preemptive description of our goals and proposed working model was needed, we could not detail the precise working relationship on important matters of risk management until we had unraveled the insurance challenges that our partnership presented.

Our MOU canvasses:

- The combined educational and justice access goals of the clinic and the intent of the partnership;
- The nature of work that LK solicitors will be involved in;
- Protocols for managing potential conflicts of interest;
- Protocols for file responsibility and oversight;

⁶⁴ Above n 3.

⁶⁵ Ibid 425.

⁶⁶ Ibid 419-410.

- Explicit reference to our respective insurance arrangements; and
- Communication and problem solving mechanisms.

The MOU is partly aspirational, but contains step-by-step instructions for day to day management of critical processes to ensure that they are followed precisely. Thus the MOU forms part of our risk management strategy, given the insurance issues that inevitably arise in a collaboration of this nature.

Insurance

Professional indemnity insurance was inevitably the biggest hurdle. As part of the University of Adelaide, clinics are covered by University insurance. Practitioners in SA are insured under a professional indemnity scheme through the Law Society of SA. Both parties' brokers were far from convinced that any liability arising from work done by a visiting volunteer supervisor at the clinic would be covered by University insurance. LK were understandably concerned that in the event of a claim, they would be exposed by virtue of having been briefly involved in a matter at some stage.

One approach was to make all work done at the clinic by visiting solicitors subject to sign off and review by the clinic supervisor. We felt that this would entrench an unrealistic hierarchical approach, and failed to reflect the collegiate purpose of the partnership, and the expertise of the solicitors involved.

In any event, the professional indemnity insurance provided to law firms in South Australia requires them to demonstrate control over all work done by firm solicitors. This means that LK partners must retain organizational oversight of all work done by their solicitors in the course of supervision or supporting case work at the clinic, just as would be the case for work done within the firm, *pro bono* or otherwise. Although for reasons of service consistency the clinic supervisor often has the final approval on outgoing work, legal responsibility cannot be shifted even if the clinic supervisor “signs off” on all work.

To manage this, our MOU specifies that LK will maintain a file with details of all clinic matters worked on, along with copies of instructions provided by LK solicitors, letters sent under the authority of LK solicitors, and other relevant matters, so that partners of the firm can review the quality of the work undertaken by any LK solicitor on a clinic visit.

We also included in our MOU specific reference to role: that solicitors from LK work independently alongside the MCLAS supervisor, but in a collaborative and consultative way. This is consistent with our experience that overarching familiarity with the case, and the jurisdiction, by the supervisor is an important aspect of maintaining cohesive supervision and service, and visibly models good collaborative practice between professionals.

Conflict Management

Whilst LK and MCLAS have a very different client bases and are unlikely to encounter conflict, the possibility cannot be excluded. Our MOU contains detailed conflict protocols.

Details of all clinic clients and opposing parties are provided to LK to cross check for conflict. Additionally, each day that LK practitioners attend the clinic, an updated list of matters and a list of new clients for that day is sent to LK.⁶⁷ In the event of conflict, the clinic supervisor ensures that LK do not have any involvement with that file. So far there have not been any conflicts.

Pedagogy – preparing private solicitors to supervise clinic students

Once these practical issues were sorted out, we turned to the question of educational integrity of the initiative. The nature and quality of supervision is critical to successful clinical learning. New clinicians know how to practice law, but not necessarily how to engage in the supervisory/teaching process.⁶⁸ Although a wealth of scholarship and practical guidance has grown up around training clinicians for supervision,⁶⁹ with formal post-graduate

⁶⁷ Part of our intake procedure includes advising clients of this process and seeking their consent.

⁶⁸ Justine A Dunlap and Peter A Joy 'Reflection in Action : Designing New Clinical Teacher Training By Using Lessons Learned From New Clinicians' (2004-05) 11 *Clinical Law Review* 49, 53; Plerhoples and Spratley above n3, 408.

⁶⁹ Mylniec above n58, 505 outlines the complexity of this task, and a variety of approaches and models developed in recent years.

training now available,⁷⁰ it is inevitable that informal and unstructured approaches to training supervisors will continue.⁷¹ Our own experience with various supervisors moving into our two legal advice services has been that a combination of supported training (materials, meetings, formal learning) and unstructured, needs-based and flexible collegiate mentoring have worked effectively. Engaging our visiting solicitors in lengthy training program was not realistic.⁷² However both partners were committed to ensuring an effective supervisory relationship between visiting practitioners and students. There were obvious synergies between LK's existing structured process for mentoring and support of their own legal staff and the pedagogy of clinical supervision, that meant we were "on the same page" from the outset. Solicitors from LK were for example familiar with ideas like structured feedback,⁷³ and mentoring relationships. However we recognized that the visiting solicitors were not preparing for a career in academia as clinical supervisors, and our training processes had to be relevant and achievable. This pragmatic approach is reflected in the US where training of externship supervisors does not require separate training sessions, but may consist written materials about the purpose of the program, manuals and 'tip sheets'

⁷⁰ The University of York in the United Kingdom and Georgetown University in America both offer post graduate clinical teaching degrees.

⁷¹ Dunlap and Joy above n 67, 53. See also Evans et al above n 8, 17,19 indicating that the Australian Council of Law Deans also recognizes the importance of "in clinic" integration of supervisors to the clinical program.

⁷² The sort of structured training program that, for example, Mylniec (above n 58) proposes for new clinicians was just not achievable in the context of visiting solicitors.

⁷³ See for example Stuckey above n33, 176.

and basic guidance on providing feedback and supporting learning.⁷⁴ We also believed that our insights into the pedagogy of supervision would benefit LK in their mentoring program.⁷⁵

We appreciated that there would be challenges for private practitioners coming into our clinic environment. In extensive surveys of the experiences of new clinicians in the late 1990s/early 2000's Joy and Dunlap identify some of these challenges. We expected, correctly as it transpired, that key challenges to our visiting practitioners would be ceding responsibility to students, knowing when (or how extensively) to intervene, and balancing the needs of the client with the educational goals of the clinic.⁷⁶ The clinical supervision model calls for restraint. The clinician has to put aside the decisive activist temperament that typifies many lawyers and let the student interrogate the issue, and explore responses. There will often be much more latitude in terms of time efficiency and attention to options in clinic in order to meet educational outcomes; a significant amount of supervisor/student interaction will involve the supervisor assisting the student in developing both autonomy and reflective practice, rather than a more directive and task-focused approach.

⁷⁴ James H Backman 'Where do Externships Fit? A New Paradigm is Needed: Marshalling Law School Resources To Provide an Externship for every Student' (2006) 56 *Journal of Legal Education* 615, 635-636.

⁷⁵ Plerhoples and Spratley above n 3, 408 identify familiarity with clinical teaching pedagogy as a critical aspect of successful supervision.

⁷⁶ Dunlap and Joy above n 67, 62 – 64.

The experience of supervising law clerks or junior lawyers does not automatically transpose to clinical teaching, largely because of the other imperatives of non-clinical practice (efficiency, client focus, deadlines and time recording)⁷⁷. Additionally, we were aware that the visiting supervisors from LK would be drawn from solicitors experienced in supervising junior lawyers and clerks, as well as from the ranks of junior lawyers themselves. We expected different dynamics based on the career stage of the participating lawyers.

The legal profession has come a long way in understanding the importance of training mentoring and supervising solicitors, particularly early career practitioners. For example, the Queensland Law Society has a supervision guide⁷⁸ which contains relatively detailed information about motivation and education of junior lawyers,⁷⁹ guidance on structures for performance reviews, giving and receiving feedback, and even some suggested language/phrases for interaction between supervisors and junior staff.⁸⁰ Aspirational in nature, the guide is an excellent start in imbuing a culture of effective supervision. However it goes nowhere near the depth and complexity of the clinical supervisor's day to day tool kit.

⁷⁷ Ibid 67, 84.

⁷⁸ Queensland Law Society 'Guide to Effective Supervision in Legal Practice: Practice Support' (Queensland Law Society 2010).

⁷⁹ Ibid n 77 Section 3 Effective Delegation.

⁸⁰ Ibid n 77 section 8.4 Performance Discussions.

We approached the teaching partnership from the common ground of our supervision/career mentoring programs. We provided an initial Continuing Professional Development (“CPD”) session with LK solicitors, to outline the principles and practice of clinical supervision, following up with an informal review/discussion soon after the partnership started. We were then lucky enough to have Professor Jeff Giddings from Griffith University offer a supervision workshop to clinical supervisors in SA, later in the year. We plan to have two formal or semi-formal sessions dealing expressly with supervision practice each year.

In terms of the area of practice, we have jointly offered sessions to the legal community in SA, including judiciary and tribunal members, on working with Self Represented Litigants, young lawyer training and education, and mediation practice in the Magistrates Court. All of these build into our overall goal of building awareness of grass roots justice access challenges in the legal community. We intend to offer two such sessions each year to the broader legal community.

Solicitors who attend MCLAS each fortnight are debriefed by the LK coordinator soon after each visit, so we can keep track of impressions, challenges, and areas we can develop.

The teaching partnership thus encompasses both working in the clinic, and a program of professional development for all participants.

Impact of the visiting supervisors on clinic operations and educational outcomes

Having decided to go ahead our initial focus was on having an extra pair or so of supervisory hands on deck to supervise students. We hoped that this might free up the MCLAS supervisor to focus on office management and policy development. In common with many university law clinics, we have no administrative support and the day to day management and supervisory updating of resources often falls to the single supervising solicitor.

One or two LK solicitors attend on a rotating basis for half a day per fortnight, in the afternoon. The client interviews have usually finished at that stage, and follow up work is being undertaken by students.

We recognized that we would not be able to parachute solicitors into the supervision of case work, much of which had already been discussed between student and supervisor during supervision of interviews earlier in the day. Our past experience with visiting supervisors demonstrated that a degree of “helicopter” coordination would be necessary. This necessitated a change in the way the clinic was managed on “LK days”.

Instead of the 8 students focusing on the clinical supervisor for task guidance and settling work, the supervisor takes a more managerial approach. In the morning, the supervisor identifies particular case tasks that students can work on with a LK solicitor in the afternoon. These will range from file review, drafting documents or letters, research, or case analysis. This provides

an opportunity for the students to relate the story of the case to another solicitor (thus organizing their own thoughts and ideas); requires them to think about and respond to questions posed; and creates a valuable opportunity for one-on-one discussion. Where a student has a complex task or challenging case, they can have the undivided attention of a solicitor for a couple of hours to deeply explore the issue.

Allocation of work does depend in part on the experience of the particular solicitor. Sometimes instead of case specific work a complete file review of a student's file load will be undertaken. This is particularly valuable in testing students' knowledge of the detail of their case and helps them to understand the diligence and responsibility that "owning" a case, and managing a case load, entails. Responding to and later reflecting on the questions that a solicitor will fire off when reviewing a file helps students to see the critical issues and think about the responsible management of the case in a more analytical way.

These one on one interactions are additionally valuable in that they enable the students to interact with mentors and role models, to explore different perspectives and experiences. A fair bit of *ad hoc* career advice occurs! Often this leads to larger group discussion on a relevant issue – perhaps methods of dealing with a difficult client, ethics, or adversarial conduct.

Plerhoples and Spratley talk about the “chilling effect”⁸¹ of visiting practitioners. My observation of final year students is that they remain terribly reluctant to ask “stupid” questions, or to potentially appear foolish. We continually press the importance of “asking questions” no matter how obvious they might seem, and emphasize the collegiality of the legal profession. It is valuable for our students to find that practitioners from private practice are approachable, helpful, and keen to work with students to find a solution.

OUTCOMES

As is discussed below both Adelaide Law School and LK were surprised by some of the things we found, and have developed a much richer and more nuanced understanding of the potential benefits of this partnership as it develops.

Of perpetual interest to the clinical supervisor is the nature of the relationship with students. Whilst our primary focus will be the dual goals of educational experience and client service, we wear many hats - supervisor, teacher, mentor, counselor, judge, assessor, guide, and colleague.⁸² As primary supervisors, we are mindful about the limits of self-disclosure, avoiding too many (sometimes dated) “war stories”, and keeping enough professional

⁸¹ Plerhoples and Spratley above n 3, 412.

⁸² Jennifer P Lyman ‘Getting Personal in Supervision: Looking for That Fine Line’ (1995) 2 *Clinical Law Review* 211, 213.

distance between ourselves and students to visibly maintain equity and objectivity. We also strive to balance hierarchical structures necessary to manage the service, with the educational goal of vesting responsibility and autonomy with students.⁸³

Visiting practitioners enrich the clinical experience by providing different relationships. Some of them are newly admitted, experiencing the challenges of their first job, and grappling with a tight legal market. Their relationship with students is much more of a peer to peer connection. More senior practitioners share experiences that can illuminate student's understanding of legal practice, and provide the opportunity for student and solicitor to talk frankly about managing disaster ethically, working out professional and interpersonal problems, and normalizing some of the challenging experiences of legal practice.

A second significant observation is that the presence of one or two solicitors provides much more flexibility in tailoring educational experience for students. The clinic supervisor can " earmark " a complex case, or a particular task, for one on one time with a visiting solicitor. This gives the student more focused attention. A student who is having difficulty managing workload might be asked to discuss their files with a LK solicitor, with a view to getting help devising a realistic "to do" list with achievement deadlines. Another

⁸³ Margaret Martin Barry 'Clinical Supervision: Walking That Fine Line' (1995) 2 *Clinical Law Review* 137, 145-151.

valuable exercise is the “case review” where a student is asked to provide a summative explanation of all of their live files (usually about 4 or 5) to a visiting solicitor, who will prompt the student to probe legal issues, process options, and ways to achieve different outcomes. This engagement is also a good way for files to be reviewed by another solicitor, and for discussion of case strategies and legal options between supervisors. It expands the resources of the supervisor.

A student struggling to see the wood from the trees can be paired with a solicitor to tease out critical issues in a case and work on an advice on merit. A student not quite grasping the rigor of managing a “real” case can be teamed with a solicitor to do a risk management review of their file. A student who needs to develop research or letter writing skills can be teamed with a solicitor to work on a specific task to develop their skills. Thinking very much “in the moment” – because these opportunities have to be developed on the run and put in place with little forward planning – the supervisor adapts to the work on hand and the educational needs of the particular students to make best use of the visiting practitioners. In a sense the clinic supervisor is adding a second dimension to her role as teacher/educator by directing the visiting solicitors into that role as best suits the needs of students.

We have also developed some structured materials to enable lawyers and students to work effectively together – including a research report pro forma and a file review/risk management check sheet. These assist in putting some educational supports in place to ensure that specific learning outcomes are met.

The presence of visiting solicitors has not, as we had rather naively hoped, reduced the workload of the supervising solicitor. Rather it has changed the dynamic of the service on LK days, and has expanded our opportunity to provide a range of different and more personally focused learning platforms for the students, as well as welcome collegiate support for the supervising staff.

CONCLUSION: MOVING FORWARD

It seems inevitable that such partnerships will evolve in different ways depending on their context, purpose and participants. Clinical programs in Australia have taken on diverse and sometimes specialist roles, guided by particular needs, and available participants and resources. Structured involvement of private solicitors within the clinical program is one more way of enriching the offerings of clinical programs. Whether in a specialist clinic – perhaps family law or transactional law for community organizations, or a generalist civil clinic like the MCLAS, private law firms, have much to offer at many levels. Ongoing partnerships such as that between LK and MCLAS are

one option, but short term or needs related arrangements may also offer opportunities for tailored collaboration.

My concluding advice:

- 1 Don't expect it to save time or money! Plerhoples and Spratley suggest that visiting supervisors can help to expand student numbers at little cost.⁸⁴ Our experience thus far is that the educational value to students is significant, but is still dependent upon a faculty/clinic supervisor managing both students and visiting solicitors. Whilst our partnership has not cost the Law School anything, there are embedded costs. Setting up and administering the partnership has taken time and commitment and a lot of thought on both sides. Managing conflict checks, visiting rosters, and continuing professional development and monitoring of the partnership is not onerous, but does take additional time. The supervisor's role has changed, and requires a different skill set to that needed on a 'normal' clinic day.
- 2 Be prepared to name and discuss the different approaches to practice in private and community law, and to be clear in discussions with students about different imperatives in different types of practice. Lawyers from different types of practice experience different demands, and different levels of risk. Be prepared to discuss these with any potential partners, so that a realistic approach to identifying and managing risks is taken.

⁸⁴ Above note 3, 391-4.

- 3 Provide structure for one on one interaction between solicitors and students –develop a research report pro forma, a risk management check sheet, or a file review protocol, to ensure that learning outcomes are met. It is valuable for students to have the opportunity to discuss a case (or career options) with another solicitor, but a deeper professional engagement can be achieved by using more structured exercises.
- 4 Maintain communication – formal presentations on pedagogy and supervision practice have been invaluable, as have informal meetings of all participants to discuss experiences and answer questions. Incorporate professional development about supervision and the legal and practice dynamics of the clinic practice as part of the firm’s regular CPD program.
- 5 Take as long as is needed to sort out the professional indemnity insurance issues. We felt that we were going around in circles for weeks between insurers, University risk management services, brokers, and the Law Society. Between the various participants in this negotiation we identified and tested every possible thing that could go wrong and teased out how we would be covered. Eventually, it was sorted out. Once it is, make sure it is recorded in written form.
- 6 Make the MOU work for you. Ours provides a constant reminder of the point of our partnership, as well as risk management protocols that can

be used to ensure our professional ethical and insurance obligations are met.

- 7 Meet regularly and not always formally – the opportunity to learn about supervision both for visitors and faculty staff in a low key collegiate environment is valuable in identifying day to day opportunities to incorporate flexible learning, and can deal quickly with any issues arising.

Originally attracted by the practical time/cost reasons for engaging in this partnership, we have found the benefits to be elsewhere.

There is strong pedagogical support for developing a community of practice in a clinical program. Our clinic is as much about discovering personal role and professional identity, as it is about learning how to “do law”. Robert Condlin⁸⁵ makes a strong case for the background learning afforded by conversation, interaction, and the impact of the “complicated mix of role and relationships” that feed into a deep educational experience for clinic students. The more we can reflect the ecology of a law office, even on a limited scale, the better we are equipping our students for their next steps.

This engagement has taken thoughtful planning, but has been introduced with relatively little inconvenience and disruption. It has not offered more

⁸⁵ Robert J Condlin ‘Learning from Colleagues: A Case Study in the Relationship Between ‘Academic’ and ‘Ecological’ Clinical Legal Education” (1997) 3 *Clinical Law Review* 337, 347.

clinical placements to our student body, but it has enhanced the depth of experience offered to our clinical cohort, and has highlighted within the legal community the value of clinical work, and the justice access challenges our legal system faces. It has strengthened the depth and breadth of the legal support that we can offer our clients by expanding the legal expertise available for complex cases.

There could never be a “one size fits all” model for such an engagement, but where interests, capacity, practice models, risk management, organizational practicalities, and commitment allow, flexible adaption of such a partnership is worth a second look.

Reviewed Article: Clinic, the University and Society

REFORMING THE VIETNAMESE LEGAL EDUCATION SYSTEM: POSSIBILITIES AND PERSPECTIVE

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INTRODUCTION

This paper discusses the demand and various possibilities for the reform of Vietnamese legal education. A particular emphasis will be placed on clinical legal education (CLE) as a potential option for this reform.

Vietnamese legal education is a relatively new and underdeveloped system. Although as much as ten thousand law graduates are produced every year,² in most cases, they have to be re-trained or given further training before they can start to work.³ This situation mainly results from a legal education system over-emphasizing the teaching of legal doctrine, rules and basic codes and lacking professional training. Additionally, while the disconnection between legal education and the profession is a challenge for Vietnamese law schools to design a suitable curriculum, law schools' lack of autonomy also contributes to this problem. Due to limited self-

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² See, e.g., Huy Quang Tran, 'Globalization and Its Challenges to Vietnamese Legal Education' (Paper presented at the Legal Education in The Context of Globalization, Hanoi - Vietnam, at 11/2014), 9.

³ See, e.g., Mark Sidel and Nghia Duy Pham, *Reforming and Strengthening Legal Education in Vietnam*, UNDP Vietnam (2010), 7.

determination, Vietnamese law schools cannot design their curricula in alignment with the legal profession's requirements.

Further, law graduates' lack of capacity to think independently, creatively and critically still remains as a long-standing challenge. There are a few reasons for this situation, notably the one-way-communication education style, the theoretical legal education system, and the relative youth law students in Vietnam. Finally, due to the lack of training in legal ethics and professional responsibility, most Vietnamese law graduates are not practice-ready. This situation is a result of the two-stage approach, in which general education is delivered by law schools, whereas professional training, including legal ethics and professional responsibility, is the Judicial Academy's business.

Accordingly, the paper begins with a discussion on the demand for reforming Vietnamese legal education. There is a growing dissatisfaction among the profession, public agencies and private companies in Vietnam with the poor quality of the current legal education system. The need to reform legal education, therefore, is widely accepted by all stakeholders - law students and teachers, lawyers, governments, public agencies and international donors. This reform is regarded as an essential condition to foster a rule-of-law⁴ society, provide legal human resources for national social-economic development, and strengthen the legal profession in

⁴ In one sense, 'rule of law' can be defined as system that enables a weaker party to be able to invoke a process that requires a more powerful party to obey a set of predetermined and knowable rules. To some extent, 'rule of law' involves controlling governmental officials which means that people in the society are able to challenge the exercise of authority (or the failure to exercise authority) to a decision-maker who is empowered to review the behaviour and overrule it if it is inconsistent with announced rules or procedures. See, e.g., Elliott Milstein, 'Experiential Education and the Rule of Law: Teaching Values through Clinical Education in China' (2009) 22 (1) *Global Business and Development Law Journal* 55, 56.

Vietnam. The paper then examines various possibilities for legal education reform, based on international experience and the context of Vietnam. Building graduate legal education programs, reforming curriculum and teaching methodologies and adopting CLE are seen as potential options. The author, however, argues that CLE is the most promising and effective means that Vietnam should consider for legal education reform. Finally, the paper turns to the potential benefits of CLE to legal education. In particular, CLE is a promising strategy for Vietnam to address various challenges facing the legal education system. These are also reasons why CLE appears to be the most appropriate and effective option in this reform.

THE DEMAND FOR THE REFORM OF THE VIETNAMESE LEGAL EDUCATION SYSTEM

In Vietnam, legal education plays a significant role in national social-economic development. As Sidel and Pham⁵ have pointed out, legal education is a strategic area for development assistance and is significant for further promotion of a rule-of-law society in Vietnam. From the judiciary system perspective, UNDP maintain:

“Education in law schools is the fundamental underpinning of the future human resources for the entire legal and judicial system, whether it be judges, government lawyers, private lawyers or legal advisers in business and civil society in Vietnam”.⁶

⁵ Sidel and Pham, above n 3, 1.

⁶ See UNDP Vietnam, 2008, *Terms of Reference, National Consultant for UNDP Resource Paper on Law Clinics*, at <<http://www.vn.undp.org/>> at 5 November 2009; Opinions about the need to reform Vietnamese legal education were found in

Vietnamese legal education, however, is seen as an ineffective system failing to prepare students to be practice-ready.⁷ The urgent need for reform has consequently been widely recognized by national government, relevant agencies, legal scholars and international institutions.

At a national level, *Resolution 14/2005/NQ-CP on 'Substantial and Comprehensive Renewal of Vietnam's Tertiary Education in the 2006-2020 Period'*, promulgated by the central Government in 2005 stated:

“...higher education in Vietnam remains unstable, unsystematic and insubstantial, failing to satisfy the requirements of national industrialization, modernization and international integration...”

“...there are weaknesses and inadequacies in management mechanisms, systematic structures, disciplinary structures, the network of tertiary education institutions, training processes, teaching and learning methods, lecturers and educational administrators, the efficiency of examination resources and cheating in examinations, the grant of diplomas and other educational activities, and that all need to be addressed soon.”

“...that national tertiary education should be renewed in a vigorous, substantial and comprehensive manner”.⁸

the interviews conducted with Vietnamese law school leaders and managers, law teachers, law students, and practicing lawyers. The interview was a part of the author's PhD empirical research in Vietnam in 2014 (hereinafter referred to as *the 2014 Research Interviews*).

⁷ See, e.g., Sidel and Pham, above n 3, 1-25; Lien Thi Bich Bui, 'Legal Education and Legal Profession in Contemporary Vietnam: Tradition and Modification' in John Gillespie and Albert Chen (eds), *Legal Reforms in China and Vietnam: A Comparison of Asian Communist Regimes* (Routledge, 2010), 299 – 312.

⁸ See Resolution 14/2005/NQ-CP, by Vietnamese Central Government on 2 November, 2005 on 'Substantial and Comprehensive Renewal of Vietnam's Tertiary Education in the 2006-2020 Period', at <http://www.moj.gov.vn/vbpq/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=17258> at 1 April 2015.

In legal education, *Resolution 48/NQ-TW on 'The Strategy for the Development and Improvement of Vietnam's Legal System to the Year 2010 and Directions for the Period up to 2020'*, issued in 2005 by the Central Committee of Vietnamese Communist Party, called for:

“...ensuring the quantity and quality of human resources officials and civil servants who work on legal sector by renewing state management of the training of legal officials; building Hanoi Law University and Ho Chi Minh City Law University to become two key legal education institutions; frequently training and updating legal knowledge for officials responsible for state management and administration, particularly the legal staff of ministries and national agencies; renewing the training of judicial sector positions to meet the requirements and demand from the practice and improving the rotation of judicial sector positions; emphasizing professional ethics education for judicial sector positions; and upgrading technical infrastructure and modernizing teaching equipment in legal education institutions and training institutions for judicial sector positions”.⁹

Likewise, *Resolution 49/NQ-TW on 'The Strategy of Judicial Reform to the Year 2020'*, issued in 2006 by the Central Committee of Vietnamese Communist Party, contains a similar vision about Vietnamese legal education:

⁹ See *Resolution 48/NQ-TW* issued on 24 May of 2005 by the Vietnamese Central Committee Communist Party on *'The Strategy for the Development and Improvement of Vietnam's Legal System to the Year 2010 and Directions for the Period up to 2020'*, at <http://thuvienphapluat.vn/archive/Nghi-quyet/Nghi-quyet-48-NQ-TW-chien-luoc-xay-dung-va-hoan-thien-he-thong-phap-luat-Viet-Nam-den-nam-2010-dinh-huong-den-nam-2020-vb54373t13.aspx> at 1 May 2015.

“...further renewing the curricula and teaching methodology of higher legal education for training officials as a source of judicial sector positions and agencies; training judicial sector officials and judicial sector bodies toward up-to-date political, legal, economic, social knowledge; providing them with updated political, legal, economic and social information and knowledge, so that they can have higher professional skills and practical knowledge, quality, pure ethics, and courageously fight for justice, and defend socialist legality; building Hanoi Law University and Ho Chi Minh City Law University to become two key legal education institutions; building the Judicial Academy to become a major centre for training judicial sector officials...”¹⁰

The demand for legal education reform is obvious in Vietnam. This can be seen from three perspectives: the building of a rule-of-law society, the provision of legally qualified human resources for national social-economic development, and the need to strengthen the legal profession capacity.

First, building a society governed by law has been an important priority of the Vietnamese central government – led by the Vietnamese Communist party. A rule-of-law society is seen as a condition for strengthening social justice and improving democracy. In that process, legal education plays a significant role in training and providing legally-qualified human resources. Legal education reform, therefore, will

¹⁰ See *Resolution 49/NQ-TW* issued on 2 June of 2006 by the Vietnamese Central Committee Communist Party on ‘*The Strategy of Judicial Reform to the Year 2020*’, at <http://www.moj.gov.vn/ct/thongtinchienluoc/Lists/VanBanThongTin/View_Detail.aspx?ItemID=12&> at 1 May 2015.

increase the likelihood to have more well-qualified lawyers, judges, procurators¹¹, and the like. These people are important actors in making a rule-of-law society possible in Vietnam.

Additionally, the reform of Vietnamese legal education is required in order to bridge the 'gaps' between legal education and the legal profession. The disconnection between legal education and the profession is widely recognized as a long-standing challenge in Vietnam that makes law graduates not practice-ready.¹² This problem is also identified in *Resolution 48/NQ-TW*: "The training and improving legally-qualified officials and conducting legal research projects have not yet caught up with the demands of reality".¹³ The reform, therefore, is needed to assist Vietnam in connecting legal education with practice. This in turn helps produce generations of highly-qualified law graduates to take on various positions in the national social-economic development and international integration.

Further, reforming legal education will potentially help Vietnam produce generations of lawyers having not only professional knowledge but also the ability to think independently, creatively and critically. Importantly, the reform will help train Vietnamese lawyers who are ethically and professionally matured and willing to stand up for social justice. Moreover, legal education reform may assist Vietnam in producing 'global lawyers'. As described by Wenzler and Kwietniewska, 'global lawyers' are legal practitioners knowledgeable in not only law of a country but also

¹¹ To some extent, 'procurators' are similar to 'prosecutors' in other countries. Vietnam has been using this name following the experience of the former Soviet Union.

¹² Bui, above n 7, 299.

¹³ Vietnamese Communist Party, above n 9.

foreign law and international law.¹⁴ A global lawyer can also effectively handle transnational and international legal matters and efficiently address the complexity of legal profession created by the globalization. Obviously, these generations of global lawyers will be an important actor to strengthen the Vietnamese legal profession capacity.

In summary, as is the case of many countries around the world,¹⁵ Vietnamese legal education has failed in efficiently preparing students for the profession. The demand for reform has consequently been recognized and agreed among various stakeholders. Vietnam is not unique to this issue as legal education reform has been an urgent need in many other countries. The next part of the paper will discuss this issue further.

POSSIBILITIES FOR THE REFORM OF VIETNAMESE LEGAL EDUCATION

i) Moving to graduate-level legal education?

One possibility for reforming Vietnamese legal education would be adopting a graduate-level legal education. In fact, Vietnamese law schools have already offered graduate-level legal education – the ‘second-degree’. The second-degree is designed as a 2.5-year program delivered in five semesters to those holding a bachelor degree. This form of training has been an effort by law schools to diversify legal education in

¹⁴ See Hariolf Wenzler and Kasia Kwietniewska, 'Educating the global lawyer: the German experience' (2012) 61 *Journal of Legal Education* 462, 462-466.

¹⁵ See, e.g., Roy Stuckey, *et al.*, 'Best Practices for Legal Education: A Vision and Roadmap' (2007) 1-2; See also William M. Sullivan, *et al.*, *Educating Lawyers: Preparation for The Profession of Law* (Carnegie Foundation, 2007), 4.

Vietnam. It has created more study options available for the learners. However, unlike in Japan¹⁶ and South Korea¹⁷ where a new law school system was established, Vietnamese law schools have modified their existing bachelor degree curricula to fit with 2.5-year time frame of the second-degree program. This may be one of the reasons why the second-degree has not been seen as an effective reform of legal education in Vietnam.

Can Vietnam follow Japan, South Korea or other countries¹⁸ in adopting a JD degree as graduate legal education? Yes, it can. But Vietnam needs first to look at experience and lessons from these countries.

In Japan, after almost 10 years since the establishment of new law schools, the legal education system has not been much improved. As Shigenori has pointed out: "...the Japanese legal education system has some serious drawbacks and further drastic changes are needed to ensure the system's long term success."¹⁹ Similarly, in the view of Maxeiner and Yamanaka, there are many pedagogical and practical challenges facing the new Japanese law schools and further needs to be done.²⁰ Some other people even regard the 2004-reform in Japan as a 'failure'. Steele and Petridis,

¹⁶ See, e.g., James R. Maxeiner and Keiichi Yamanaka, 'The New Japanese Law Schools: Putting the Professional into Legal Education' (2004) 13 *Pacific Rim Law and Policy Journal* 303, 303-313 (Identifying that in 2004, sixty law schools were established in Japan, following the United States experience, to deliver legal education at graduate level. Japan now has two parallel systems: undergraduate legal education delivered by Faculties of Law and graduate law degree provided by Law Schools.

¹⁷ See, e.g., Rosa Kim, 'The 'Americanization' of Legal Education in South Korea: Challenges and Opportunities' (2012) 12-15 *Brooklyn Journal of International Law, Forthcoming*; *Suffolk University Law School Research Paper* 1, 15-17 (Identifying that in 2007, South Korea established twenty five law schools to deliver three-year graduate legal education. With this reform, South Korea has two systems: undergraduate legal education provided by 'old' law colleges or departments and graduate legal education delivered by these new law schools.

¹⁸ Australia and China are another two examples of countries adopting a graduate-level legal education. See, e.g., Donna Cooper, *et al.*, 'The Emergence of JD in the Australian Legal Education Marketplace and Its Impact on Academic Standards' (2011) 21 *Legal Education Review* 23; Matthew S. Erie, 'Legal Education Reform in China Through U.S.-Inspired Transplants' (2009) 59 *Journal of Legal Education* 60.

¹⁹ See Matsui Shigenori, 'Turbulence Ahead: The future of Law Schools in Japan' (2012) 62 *Journal of Legal Education* 3, 3.

²⁰ Maxeiner and Yamanaka, above n 16, 315.

for example, argue that the reform has failed to bring about a meaningful change to the Bar Examination and continue to create challenges in preparing students for an internationalized legal market.²¹ Many years since the reform, Japanese legal education is still a 'messy' system.²² The fact that the national philosophy of legal education is dictated by the National Bar Examination has made it worse by presenting the biggest obstacle to the continued reform of the Japanese legal education system.²³

Similar to Japan, South Korea introduced three-year graduate legal education in 2007 following the United States JD model. However, various challenges resulting from the reform such as economics, culture, and pedagogies²⁴ have been identified. From the perspective of economics, for example, Kim believes there is an increased number of legal job seekers and tension between students graduating from the 'old' system and those from the 'new' one.²⁵ In fact, a common belief in South Korea has been that law students studying at the new law schools have an 'easier' route to become a qualified lawyer and this creates an 'unfair competition' for legal jobs.²⁶

Additionally, the difference between two legal systems is identified as another challenge for South Korea in adopting and maintaining the United States JD model.

While South Korean civil-law legal education traditionally emphasizes the teaching of a greater degree of substantive law, professional practice training is more on a

²¹ See Stacey Steele and Anesti Petridis, 'Japanese Legal Education Reform: A Lost Opportunity to End the Culture of the National Bar Examination and Internationalize Curricula?' in William Van Caenegem and Mary Hiscock (eds), *The Internationalization of Legal Education* (Cheltenham : Edward Elgar Pub. Ltd., 2012), 92.

²² Ibid, 118.

²³ Ibid, 92.

²⁴ Kim, above n 17, 21-30.

²⁵ Ibid, 23.

²⁶ Ibid.

focus in the United States system.²⁷ Further, South Korean law teachers mainly employ the lecture as teaching methodology whereas in the common-law system of the United States, teaching pedagogies are diverse.²⁸ This difference in legal education focus between the two systems has in turn created barriers for the JD program to be successful and take root in South Korea.

Moreover, the problem also remains with the delivery of professional training at the South Korean new law schools system. The new generation of law schools in South Korea is missioned to provide students with professional knowledge and skills. Law teachers in South Korea, however, are believed not to have enough practical skills and knowledge to teach students. Accordingly, hiring practicing lawyers to teach at these new law schools is an alternative but another problem is that they may not have necessary teaching skills.²⁹

Among common law countries, Australia is also experiencing challenges with the JD degree. As Cooper *et al.*, have pointed out, not all the JD courses are equal because some of them, as graduate courses, have the same learning outcomes as the LLB courses.³⁰ In addition, the introduction of the JD degree in Australia was partly a response to the demand for more professional skills training. The design of the JD curriculum, therefore, includes a significant component of professional training. Consequently, it is argued that some Australian universities might struggle to

²⁷ Ibid, 27-28.

²⁸ Ibid.

²⁹ See Young-Cheol K. Jeong, 'Korean Legal Education for the Age of Professionalism: Suggestions for More Concerted Curricula' (2010) 5 *East Asia Law Review* 155, 191, cited in Kim, above n 17, 29.

³⁰ Cooper, *et al.*, above n 18, 37.

provide funding for the operation of these JD courses.³¹ To put it another way, offering professional skills training courses will cost law schools more because more resources will be allocated for organizing students' practical learning activities. Further, Cooper *et al.*, also suggest that the JD degree may increase the social inequality in education. The reason is that some law schools, due to financial concerns, may replace the LLB degree by the more-expensive JD courses. This in turn leads to a situation where students from low social-economic background are less likely to apply for places in the JD programs.³²

In general, given the similarities in legal system, legal education and culture between Japan, South Korea and Vietnam, barriers and challenges facing Japan and South Korea may apply to the Vietnamese context. In addition, financial challenges and other concerns in Australia when running a JD program are likely to occur in Vietnam where most law schools are underfunded. Further, challenges facing these countries have also demonstrated that reforming legal education is not just simply applying a model of other countries without carefully examining other issues such as culture, economics, and political and legal systems. The author, therefore, argues that if a similar reform strategy is considered for Vietnam, these challenges and barriers should be carefully examined.

³¹ Ibid, 38.

³² Ibid, 39.

ii) Reforming the law curriculum in Vietnam: what to expect?

Curriculum reform is another option to be considered for Vietnam. This reform has been demanded and motivated by the legal profession and the increasing competition pressure in legal education market. Another driving force for curriculum reform can be seen as ‘internal’. Vietnamese law students are currently required to study various non-law courses such as *Psychology, Sociology, Culture, History of Vietnamese Communist party, Socialist science, Marxist-Leninist political economics*, and more. As maintained by many Vietnamese law school leaders, teachers and lawyers,³³ there are too many non-law courses in the current curricula. In their view, many of these courses are not necessary since students are studying to obtain a legal qualification.³⁴ They are consequently calling for reform.

In curriculum reform, there are two options to be considered: (1) increasing courses on commercial and international trade law; and (2) including courses teaching practical skills, professional responsibility and legal ethics.

First, adding courses teaching commercial and international trade law to curriculum is an option. Some Vietnamese law schools have reviewed their curricula and made changes toward this trend. This is in fact a response by law schools to the demand in Vietnam for more knowledge of these law areas. In particular, since 1995 when the country started negotiations for its access to World Trade Organization (WTO), there has been a growing number of international trade transactions and consequently an increasing demand for lawyers in this area. Vietnam’s access to WTO in 2006 has

³³ The 2014 Research Interviews.

³⁴ The 2014 Research Interviews.

made the demand for courses such as commercial law, international trade law, and law of WTO increased considerably.

Accordingly, an academic department specializing in international trade law has been established³⁵ at two principal Vietnamese law schools – Hanoi Law University (HLU) and Ho Chi Minh City Law University (HCMCLU). The HLU Department of International Trade Law has become a dynamic and attractive academic unit to many law students.³⁶ Meanwhile, the Department of International Trade Law is one of the units having a large number of student enrolments in HCMCLU.³⁷ As the international economics and trade become an important national priority, courses teaching this knowledge will continue to be common in Vietnamese law schools' curricula.

Another trend of curriculum reform to be considered for Vietnam is the inclusion of courses teaching practical skills, professional responsibility and legal ethics. Some law schools in Vietnam have already been in the process of this reform. As UNDP has pointed out, clinical courses have been introduced by some Vietnamese law schools to teach practical skills.³⁸ This reform is reasonable since 'lack of professional skills training' has been a long-standing limitation of the current system. In some law schools, professional courses are taught by inviting judges, practicing lawyers or procurators. At Hue University School of Law (HUSL), for example, the Department

³⁵ For more details about the case of HLU, see <<http://www.hlu.edu.vn/gioithieu/>> at 20 June 2015; for more details about the case of HCMCLU, see: <http://www.hcmulaw.edu.vn/> at 20 June 2015.

³⁶ Interviews with HLU law teachers.

³⁷ Interviews with HCMCLU law teachers.

³⁸ *UNDP 2014 Clinical Project Report* (Identifying that by November of 2014, eight Vietnamese have developed and included clinical courses in their undergraduate curricula).

of Legal Professional Practice has organized various skills courses for students to learn practical knowledge from inviting judges, lawyers and procurators.³⁹ In others, professional knowledge and skills are taught as supplementary courses delivered outside formal curricula. These courses are designed as short-term training organized by law school *Centers for Legal Consultancy and Short-term Training*. This can be seen as an increasing trend in law schools such as HLU,⁴⁰ HCMCLU⁴¹ and HUSL.⁴²

These two options for curriculum reform, however, remain problematic in the Vietnamese system. At present, the MOET framework curriculum provides relatively limited space for law schools to include courses on their interests. Which courses will be ‘sacrificed’ in order to leave places for adding new courses? This is a major question remaining with Vietnamese law schools whenever curriculum reform is discussed. Curriculum reform, therefore, has to be considered alongside law schools’ autonomy. In a heavily centralized and top-down country like Vietnam, it is quite challenging for law schools to obtain a full autonomy in education, particularly in curriculum design.

Further, it seems reasonable to replace non-law courses with law courses as proposed by various scholars. This option, however, is not seen as simple in the Vietnamese political system context. The central Government - led by the

³⁹ Interviews with HUSL law teachers.

⁴⁰ For more details about the short-term training of HLU, see <<http://tuvanphapluatdhl.vn/vi/news/Thong-bao/GIOI-THIEU-TRUNG-TAM-TU-VAN-PHAP-LUAT-TRUONG-DAI-HOC-LUAT-HA-NOI-252/>> at 27 April 2015

⁴¹ For more details about short-term training programs of HCMLU, see <<http://www.hcmulaw.edu.vn/tvpl-dtnh/>> at 27 April 2015.

⁴² For more details about the Centre for Legal Consultancy and Short-term Training established under HUSL, see <<http://www.hul.edu.vn/gioi-thieu-tt-tu-van-th-phap-luat.html>> at 27 April 2015.

Vietnamese Communist party – may not accept the removal of ideology-related courses from law curricula. As Bui maintained, Vietnamese legal education has been heavily shaped by the socialist theories and the central Government aims to ‘produce’ generations of ‘socialist’ lawyers.⁴³ To some extent, the maintenance of these ideology courses at higher education⁴⁴ (and may be at other levels of education) is an essential condition for Vietnam to maintain and stabilize the communist regime.⁴⁵

iii) Reforming teaching methodologies: what should it be?

The reform of teaching methodology has an interconnection with curricula reform. To some extent, curriculum may determine how the courses are handled. For some people, lecture is a reasonable methodology for teaching a large degree of legal doctrines, principles and basic codes in a civil-law jurisdiction like Vietnam.⁴⁶ From the perspective of producing practice-ready law graduates, however, lecture by itself is not an effective teaching approach. More often, heavy emphasis on theoretical legal education is delivered at the price of lack of professional training. It is reasonable, therefore, for Vietnamese law schools to employ interactive methodologies in teaching law.

43 Bui, above n 7, 299-304.

44 In the Vietnamese system, courses such as *Marxist-Leninist Philosophy*, *Marxist-Leninist Political Economic*, *Socialist Science*, *History of Vietnamese Communist Party*, and *Ho Chi Minh thought* are required for all higher education students.

45 See, e.g., Elizabeth St. George, 'Socialist Ideology and Practical Realism: The Process of Compromise in Vietnam's Law on Education' in Gillespie John and Nicholson Pip (eds), *Asian Socialism and Legal Change: The Dynamics of Vietnamese and Chinese Reform* (ANU Press, 2005), 115-134.

46 Interviews with Vietnamese law teachers; also see Charles R. Irish, 'Reflections of an Observer: The International Conference on Legal Education Reform' (2007) 24 *Wisconsin International Law Journal* 5.

Additionally, it is necessary to diversify the teaching methodologies to meet the demands for both legal knowledge and professional skills. In an ideal environment, law teachers give lectures on fundamental legal doctrines and rules, and then assign students to do more readings and research. Credit time resulting from lecture reduction will be allocated to other teaching and learning activities such as simulations, case method, seminars or clinical programs. An appropriate combination of lecture and interactive methodologies will in turn improve the teaching at Vietnamese law schools.

iv) Adopting and incorporating CLE into law curricula

As an innovative methodology for teaching law, CLE has been employed to reform legal education in many countries.⁴⁷ CLE has recently been introduced into Vietnam by some international organizations to address various challenges facing legal education. In its early stage of development, CLE has received different reactions from Vietnamese legal education stakeholders. Many people have realized the potential of CLE and consequently supported the incorporation of clinical programs into law curricula. Some express resistance for various reasons, including costs and other regulatory barriers for running and maintaining a clinical program. Other opinions remain neutral.

⁴⁷ See, e.g., Frank S. Bloch, *The Global Clinical Legal Education Movement: Educating Lawyers for Social Justice* (Oxford University, 2011) (Identifying various countries around the globe have been using CLE as a means to reform legal education system. Beside the United States, Australia, Canada, South Africa, and UK recognized as pioneers in the CLE global movement, many other countries in Latin America, Central and Eastern Europe, Southeast Asia, Japan, China, and India are in the process of CLE adoption); See also, Shuvro Prosun Sarker, *Legal Education in Asia* (Eleven International Publishing, 2014) (Identifying that some Asian jurisdictions have adopted CLE as an option for reforming their legal education systems including Thailand, China and Hong Kong).

It is the author's position in this paper that CLE is the most promising and effective reform that Vietnam should consider. The next part will examine this issue further by explaining the reason why CLE is desired reforming Vietnamese legal education.

WHAT MAKES CLE AN APPROPRIATE OPTION FOR VIETNAMESE LEGAL EDUCATION REFORM?

CLE is a process of 'learning by doing' where students are given opportunities to practice law under supervision of qualified lawyers. Brayne, Duncan and Grimes point out:

"Clinical legal education is learning by doing the types of things that lawyers do. It can take the form of simulated cases, including role-playing, which is an effective way of getting to understand the subtleties of how the law is actually applied. In its fullest form clinical legal education enables students to take on real clients' problem and work with them".⁴⁸

As an innovative teaching methodology, CLE has been considered as the most significant legal education reform, since the introduction of case-law method by Christopher Columbus Langdell in 1890.⁴⁹ Evans *et al.*, have identified various values of CLE to legal education:

"CLE has the potential to: help students reflect on and analyse their experiences; develop student awareness of law in the context of society;

⁴⁸ See Hugh Brayne, Nigel Duncan and Richard Grimes, *Clinical Legal Education-Active Learning In Your Law School* (Blackstone Press Limited, 1998), xiii.

⁴⁹ See, e.g., Richard J. Wilson, 'Training For Justice: The Global Reach of Clinical Legal Education' (2004) 22 *Penn State International Law Review* 421, 421.

engage students in deep and active learning, with timely, rich feedback; develop student emotional skills, values, responsibility, resilience, confidence, self-esteem, self-awareness and humility; move a student towards responsible professional identity; sensitise students to the importance of all relationships – including with clients, students, professionals; benefit from student-centred learning, which comes out of flexible and adaptable approaches; and educate students to become effective, ethical practitioners”.⁵⁰

Globally, because of its benefits and strengths, CLE has been chosen as an option for reforming legal education. In the Vietnamese context, CLE is a promising option for legal education reform because it can potentially help address various challenges facing the system.

i) CLE helps address the problem of ‘lack of professional skills’

CLE can help address the ‘lack of professional skills’ – a major problem of Vietnamese legal education. In a clinical setting, students learn professional knowledge and skills by practicing. Successful CLE is often referred to as a process of ‘learning by doing’, ‘experiential learning’,⁵¹ or ‘context-based education’⁵² where students take the proactive position in the learning process. Experiential learning is a very effective environment for students to learn law-in-context and practice ‘hands

⁵⁰ See Adrian Evans, *et al.*, *Best Practices: Australian Clinical Legal Education*, Department of Industry, Innovation, Science, Research, and Tertiary Education (2012), 5.

⁵¹ See, eg, Evans, *et al.*, above n 50, 4 (Identifying that in a clinical setting, experiential learning can take various forms such as: simulation, externship or in-house clinic).

⁵² In a clinical setting, three terms ‘learning by doing’, ‘experiential learning’ and ‘context-based education’ can be used interchangeably. See Sullivan, *et al.*, above n 15.

on' professional skills. In many countries, CLE programs have been designed as general practices where free legal service on various areas of law is delivered by students under the same supervisors. Meanwhile, specialized clinical programs have also been established in order to help clients with specific legal problems⁵³ such as children rights protection, employment law, family law, human rights protection, immigration, and labor law.

Further, CLE in many law schools has gone beyond the traditional law-student-alone approach and moved to multidisciplinary clinics where students from different disciplines work together in helping the same clients.⁵⁴ This new CLE model has proven to be an effective teaching methodology as students and supervisors from different disciplines begin learning from each other.⁵⁵ Clients of this multidisciplinary clinical approach also benefit from the application of a wide range of knowledge from different disciplines, all delivered in the knowledge of each other's contribution.

For those becoming practicing lawyers, skills and knowledge taught by CLE will assist them in comprehending professional work quickly and effectively. In Vietnam, a growing number of students are starting their legal education without an intention

⁵³ See, e.g., Jeff M. Giddings, 'Influential Factors in the Sustainability of Clinical Legal Education Programs' Griffith University, (2010), 92-96.

⁵⁴ A good example of this model is the Multidisciplinary Clinic at Monash-Oakleigh Legal Service in Australia where students from Law, Finance and Social Work come to work together in the same clinic on the same cases and clients. See, e.g., Ross Hyams, 'Multidisciplinary Clinical Legal Education: The Future Of The Profession' (2012) 37(2) *Alternative Law Journal* 103, 103-105; Ross Hyams, Grace Brown and Richard Foster, 'The Benefits of Multidisciplinary Learning in Clinical Practice for Law, Finance, and Social Work Students: An Australian Experience' (2013) 33 *Journal of Teaching in Social Work* 159, 165-168.

⁵⁵ See, e.g., Ross Hyams and Denise Sadique, 'The Value of Incidental Learning in a Multidisciplinary Setting' (2014) 20 *International Journal of Clinical Legal Education* 439, 444-456.

of practicing law.⁵⁶ Nevertheless, skills learned in clinical programs such as communication, negotiation, writing, presentation, and time management are all important for general career success, whether or not this involves legal practice. As Grimes maintained, professional skills delivered by CLE 'may better equip a student to practise the law or other chosen career now or at some later stage'.⁵⁷ These skills help students become more employable and enable them to develop the so-called 'soft' or social skills. In a society, 'soft' skills are identified as critical for not only a better lawyer but also a better human being.⁵⁸

ii) CLE is a better approach for teaching professional responsibility and legal ethics

CLE can be a promising solution to address the challenge of professional responsibility and legal ethics training in Vietnamese legal education. It is widely agreed that clinical approach is the best environment to teach professional responsibility and legal ethics.⁵⁹ Edwards, for example, argues: "...doctrine, theory, and skills cannot be appreciated if they are introduced without engaging the pathos

⁵⁶ Bui, above n 7, 303 (Identifying a research in 2008 revealed that by the end of 2007, Hanoi Law University alone has produced approximately 53,000 bachelors of law while the number of practicing lawyers nationwide only reached just over 4,000); In addition, our surveys carried out in some Vietnamese law schools in 2010 revealed that less than 20% of law graduates became practicing lawyers even though there is a growing number of students studying law; This figure was reinforced in the 2014 *Research Interviews*. For example, the interviews conducted in Cantho city with Vietnamese law teachers and lawyers revealed that less than 5% of Cantho University law graduates follow lawyering career. In some other law schools such as HUSL, VUDL, and Danang Economics University Department of Law, the interviews revealed that the number of graduates practicing law fall below 10%.

⁵⁷ See Richard Grimes, 'Reflections on Clinical Legal Education' (1995) 29 *The Law Teacher* 169, 172.

⁵⁸ See, e.g., Richard A. Matasar, 'The Maccratte Report from the Dean's Perspective' (1995) 1 *Clinical Law Review* 457, 474.

⁵⁹ See, e.g., Christine Mary Venter, 'Encouraging Professional Responsibility - An Alternative Approach To Teach Legal Ethics' (1995) 58 *Law and Contemporary Problems* 287, 290-293; James E. Moliterno, 'On the Future of Integration Between Skills and Ethics Teaching: Clinical Legal Education in the Year 2010' (1996) 46 *Journal of Legal Education* 67.

of the human issues that the lawyer encounters when representing clients".⁶⁰ Similarly, Posner maintains: "Through interactive education, such as client representation, simulations and problem-solving, individuals can enhance skills in moral analysis and build awareness of the situational pressures that can skew judgment".⁶¹ Further, Milstein argues that studying legal ethics in a clinical setting can produce 'an experiential learning experience that is powerful and very distinct from what can be learned in the classroom'.⁶²

In a clinical setting, students not only learn about relevant principles of legal ethics, but more importantly, they practice acting ethically under close supervision of practicing lawyers. The externship model,⁶³ for example, often places students at private law firms, under the supervision of qualified practicing lawyers, to work directly with clients. In their daily interactions with clients, students have to learn how to deal with various real issues of legal ethics and responsibility such as confidentiality (including client privilege), conflict of interest, undertakings and the duty not to mislead the court.⁶⁴

⁶⁰ See Harry T. Edwards, 'The Growing Disjunction between Legal Education and the Legal Profession' (1992) 91 *Michigan Law Review* 34, cited by Margaret Barry, Jon C. Dubin and Peter A. Joy, 'Clinical Education for This Millennium: The Third Wave' (2001) 7 *Clinical Law Review* 1, 34.

⁶¹ See, e.g., Richard Posner, 'The Deprofessionalization of Legal Teaching and Scholarship' (1993) 91 *Michigan Law Review* 1921, 1924, cited by Deborah L. Rhode, 'Legal Ethics in Legal Education' (2009) 16(1) *Clinical Law Review* 43, 48.

⁶² See Robert D. Dinerstein *et al.*, 'Legal Interviewing and Counseling: An Introduction' (2003) 10 *Clinical Law Review* 281, cited by Milstein, above n 4, 60.

⁶³ See Evans, *et al.*, above n 50, 9; See also Elliott S. Milstein, 'Clinical Legal Education in the United States: In-house Live Client Clinics, Externships, and Simulations' (2001) 51 *Journal of Legal Education* 375, 376.

⁶⁴ For more details of discussion on issues of legal ethics and professional responsibility, see Adrian Evans, *The Good Lawyer* (Cambridge University Press, 2014), Chapters 5-8.

However, a better educational result in teaching legal ethics and professional responsibility can be achieved through a live client in-house clinic.⁶⁵ Designed as a small law firm but not charging a fee for legal service, an in-house clinic provides students with opportunities to work on real cases and with real clients. When acting on their clients' behalf, clinical students have to address similar issues of legal ethics and professional responsibility as those faced by a qualified lawyer in a private law firm. Compare with those in a law firm, however, in-house clinic students and teachers are not under any business pressure and this helps them focus more on the educational objectives. Moreover, clinical teachers are not constrained by fee considerations and are able to take a broader and more holistic approach to their clients' problems than does a lawyer working in a fee-generating environment.⁶⁶ There are reasons, therefore, to believe that in-house clinic is the best CLE model in preparing law student to be ethically and responsibly practice-ready. Of course, the teaching of legal ethics and professional responsibility can also be well achieved through other clinical models such as Simulations and Street Law.

iii) CLE can better prepare students to be 'justice ready'

CLE is an effective means to strengthen law students' 'social justice' awareness. When clinical students represent clients in legal matters, they are exposed to poor people, injustice, and other socially inequitable matters. This exposure helps law

⁶⁵ See Evans *et al.*, above n 50, 9; see also Stacy Caplow, 'Clinical Legal Education in Hong Kong: A Time to Move Forward' (2006) 36 *Hong Kong Law Journal* 229, 233-235.

⁶⁶ See, e.g., Ross Hyams, "'On teaching students to 'act like a lawyer': What sort of lawyer?'" (2008) 13 *Journal of Clinical Legal Education* 21, 27.

students realize that there are injustice and inequitable problems in society. With time, it will build students' sense of social responsibility and creates a desire to help people in difficult situations. In other words, CLE can potentially assist in strengthening law graduates' awareness of social justice and pro bono responsibility. Social justice education can be well achieved through various clinical models such as in-house clinics, simulations, externships or street law. It is believed, however, that a real client in-house clinic may be the best vehicle to teach students social justice. Quite often, in-house clinic students are working under the close supervision of law teachers who are qualified lawyers to help under-served clients.⁶⁷ Without this invaluable assistance, in many cases, social justice cannot be addressed. Rice even believes that education objective cannot be realized if clinical programs do not provide legal assistance to the poor.⁶⁸ This in turn reminds students about the social responsibility of being a lawyer. As William maintained, educating a law student to develop a sense of social responsibility, as well as professional skills, becomes important for their future lawyering career and for the stability of their country as a whole.⁶⁹

In a society, learning to be responsible is identified as critical for human functioning. For example, to learn how to empathise with others' difficulties and to accept social responsibilities for others is important for a person to grow ethically and

⁶⁷ See, e.g., Simon Rice, *A Guide to Implementing Clinical Teaching Method in the Law School Curriculum*, Centre for Legal Education (1996), 10 (Identifying from the perspective of global CLE that in most cases, legal clinics provide legal assistance to the poor and underserved people. However, there are also taxation law or business clinics established for education purposes only).

⁶⁸ *Ibid.*, 12.

⁶⁹ See, e.g., Quigley P. William, 'Letter to a Law Student Interested in Social Justice' (2007) 1 *DePaul Journal for Social Justice* 7, 13-14.

responsibly. The law school, therefore, should be not only a place to teach law and professional skills, but also a school of life where students can learn values and the benefits of being human. In this regard, Rice believes that CLE is not only a method of teaching professional skills but also 'a means for conveying a sense of professional responsibility, personal morality, and the reconciliation of personal and structural notion of justice'.⁷⁰

In the context of Vietnam, a similar justice education result can be achieved if a clinical approach is employed. To put it another way, CLE will potentially help Vietnamese law schools prepare their students to be not only practice-ready but also 'justice-ready'.⁷¹

iv) CLE helps build up and strengthen students' ability to think like a lawyer

In legal education, training students to 'think like a lawyer' is an important mission.⁷² To some extent, 'think like a lawyer' is the ability to think independently, creatively, and critically. Nowadays, in order to cope with the complexity of legal problems and be successful, it is obvious and crucial that lawyers are required to have not only a broad base of knowledge but also good thinking ability. This capacity can be built and sharpen in an experiential learning environment such as CLE.

⁷⁰ Rice, above n 67, 13.

⁷¹ See, e.g., Jane H. Aiken, 'The Clinical Mission of Justice Readiness' (2012) 32(2) *Boston College Journal of Law and Social Justice* 231, 241-245.

⁷² See, e.g., Anthony G. Amsterdam, 'Clinical Legal Education - A 21st Century Perspective' (1984) 34 *Journal of Legal Education* 612, 612.

As an integral part of CLE, reflection is the key factor that helps strengthen students' thinking ability. In a clinical setting, students are not only given opportunities to learn professional knowledge and skills but also required to reflect from their experience. With time, the reflection process will help students study better and mature professionally and ethically. Ledvinka, *et al.*, even believe that reflection is the 'magic ingredient that converts legal experience into education'.⁷³ Similarly, Hathaway maintains: "while professional skills training can be provided by bar admissions courses, articling programs, or professional life, none of these settings can replicate the opportunities for reflection, self-consciousness, and a more complete understanding of the legal order which a structured program of clinical education can provide".⁷⁴

A well-known educational theory asserts that there are four stages of learning, in each of which reflection is an important step.⁷⁵ This learning process can be described as the experience-reflection-thinking-acting cycle which can be entered at any point, but the learners always follow the same reflective sequence.⁷⁶ A clinical program where reflection is graded as 'insight assessment'⁷⁷ will motivate students to work harder and try their best to understand the problems more

⁷³ See Georgina Ledvinka, 'Reflection and Assessment in Clinical Legal Education: Do You See What I See?' (2006) 9 *Journal of Clinical Legal Education* 29, 30.

⁷⁴ See James C. Hathaway, 'Clinical Legal Education' (1987) 25 *Osgoode Hall Law Journal* 239, 244.

⁷⁵ See, e.g., Kolb D. A. and Fry R., 'Toward an Applied Theory of Experiential Learning' in C. Cooper (ed) *Theories of Group Process* (London: John Wiley, 1975) (Describing four stages of the education process which follow from each other: Concrete Experience is followed by reflection on that experience on a personal basis. This may then be followed by the derivation of general rules describing the experience, or the application of known theories to it (Abstract Conceptualization), and hence to the construction of ways of modifying the next occurrence of the experience (Active Experimentation), leading in turn to the next concrete experience.

⁷⁶ Ledvinka, above n 73, 32.

⁷⁷ See Ross Hyams, 'Assessing Insight: Grading Reflective Journals In Clinical Legal Education' (2010) 17 *James Cook University Law Review* 25, 25.

comprehensively, and not just for the purpose of writing a good reflective journal for grading. In this regard, reflection is a 'critical educational tool' which powerfully assists students to develop their professional skills, including thinking ability.⁷⁸

From a reflective journal perspective, Ogilvy maintains: "Through writing about what and how they are studying, students can move from superficial comprehension to employing critical thinking skills in their engagement with the material."⁷⁹

Further, reflection also means that students think about their experience in order to evaluate their performance and identify what they could have done better.⁸⁰

Consequently, the harder students work, the more they have to reflect and the more reflections they have, the more opportunities for them to practice and sharpen their thinking ability. From the educational perspective, students' reflection can give clinical supervisors early and profound understanding of their students' progress or blockages, and their educational growth within their clinical course.⁸¹ Moreover, reflection within a clinical setting becomes a way of developing a 'reflective practitioner' in each and every student.⁸² With time, this will help build 'students' sense of responsibility, resilience, confidence, self-esteem, self-awareness, courage and humility'.⁸³

⁷⁸ Ibid, 31.

⁷⁹ Ogilvy J., 'The Use of Journals in Legal Educating: A Tool for Reflections' (1996) 3 *Clinical Law Review* 55, quoted by Hyams, above n 66, 28.

⁸⁰ See, e.g., Bryan L. Adamson, *et al.*, 'Clinical Faculty in the Legal Academy: Hiring, Promotion and Retention' (2013) 62 *Journal of Legal Education* 115, 133.

⁸¹ Hyams, above n 77, 31.

⁸² Evans, *et al.*, above n 50, 20.

⁸³ Ibid.

v) CLE helps bridge the gaps between legal education and the legal profession

By filling the gap between law curricula and the legal profession,⁸⁴ CLE is seen as a potential option for legal education reform in Vietnam. The disconnection between legal education and the legal profession has been identified as a major limitation of the Vietnamese system.⁸⁵ Since CLE is believed to be the best way to study law-in-context,⁸⁶ it will potentially help Vietnamese law schools to effectively address this challenge. As Evans *et al.*, maintained, a clinical program involving real legal and client work will: “teach students to think critically about law, rules and practice from a variety of perspectives and theoretical understandings of law”.⁸⁷ Similarly, Bui argues that ‘on-the-job’ training or ‘learning-by-doing’ is the most effective way to connect Vietnamese legal education with the profession.⁸⁸

In a clinical setting, students are in a proactive position to study law. Brayne, Duncan, and Grimes have pointed out: “clinical legal education requires students to take an active part in the learning process. They assume a degree of control over their own education and they see law in its real-life context”.⁸⁹ Since there is always a ‘gap’ between the law and practice, learning the law in practice is the most effective way of studying law. CLE, by linking ‘black letter’ law with real life situations, will provide students with a context for a deeper understanding and

⁸⁴ See, e.g., Nisreen Mahasneh and Kimberly Thomas, ‘Learning from the Unique and Common Challenges: Clinical Legal Education in Jordan’ (2012) 5 *Berkeley Journal of Middle Eastern and Islamic Law* 1, 11-17.

⁸⁵ Bui, above n 7, 299.

⁸⁶ Evans, *et al.*, above n 50, 4-6.

⁸⁷ *Ibid.*, 15.

⁸⁸ Bui, above n 7, 312.

⁸⁹ Brayne, Duncan and Grimes, above n 48, 1.

application of legal knowledge.⁹⁰ Students not only improve their understanding of the law and its application, but also get exposed to whether the laws are adequate for solving social problems. In other words, by juxtaposing what the students learn in the academy versus how such learning gets applied in practice,⁹¹ CLE thus bridges the gap between legal education and the legal profession.

In summary, there are concrete reasons to believe that CLE will help address various challenges facing Vietnamese legal education. The fact that more and more law schools around the world are moving toward clinical approach has proven that CLE is an appropriate option for legal education reform. In the global clinical movement these days, Vietnam is not and should not be an exception in this common trend.

CONCLUSION

Facing various challenges, Vietnamese legal education has failed in preparing students to practice law and this situation has consequently called for reform. As discussed in the paper, the demand for legal education reform is widely recognized and agreed among stakeholders in Vietnam. This reform is necessary to strengthen the legal profession, promote a rule-of-law society, and provide legally-qualified human resources for the national social-economic development.

Possibilities for Vietnamese legal education reform have also been discussed in this paper. While a graduate-level legal education has been a potential reform in other countries, many challenges still remain. Vietnam should, therefore, comprehensively

⁹⁰ Hyams, above n 77, 25.

⁹¹ See, e.g., Redlich Allen, 'Perceptions of a Clinical Program' (1971) 44 *Southern California Law Review* 574.

examine and address these challenges if a similar strategy is considered. In addition, curriculum and teaching methodology reform should be discussed and implemented alongside other considerations such as law schools' autonomy. In many cases, curriculum and teaching methodology reform will not be effective in Vietnam without considering the issue of law schools' self-determination.

Finally, CLE was discussed as the most promising and appropriate option for Vietnamese legal education reform. With its strengths and benefits, CLE can help effectively address various challenges facing the Vietnamese system. This can be summarized as follow: (1) CLE helps address the problem of 'lack of professional skills'; (2) CLE is a better approach for teaching professional responsibility and legal ethics; (3) CLE helps prepare students to be justice-ready; (4) CLE can strengthen students' thinking ability; and (5) CLE helps bridge the gap between legal education and the profession.

As CLE has developed and gone global, there are reasons to believe that it will be the future of Vietnamese legal education. However, given the differences in political, legal and social systems between Vietnam and other countries, various issues need to be further examined in order for CLE to be successfully adopted and developed in Vietnam. This paper, therefore, aims to establish a foundation for future research and discussion on legal education reform and the adoption of CLE in Vietnam.

Clinical Legal Education in Asia - Accessing Justice for the Underprivileged, edited by Shuvro Sarker (Palgrave Macmillan), 2015, 288pp, £65 (hardback), ISBN 978-1-137-51752-4

Asia has slowly but surely been emerging as an exciting addition to the clinical legal education (CLE) family. This text is therefore a timely publication, drawing attention to the development and current state of CLE in the East. The book aims to provide *“the history, present status, and possible future models of clinical legal education”* in Asia. To that end it comprises 12 chapters organised by country, from Turkey travelling to Japan and covering all regions in between, namely, Israel, Palestine, India, Sri Lanka, China, Thailand, Hong Kong, Singapore, South Korea and Taiwan. Collectively the sections provide a striking overview of CLE with each chapter locating clinic in the context of its regional characteristics.

Editor Shuvro Prosun Sarker, who is fast developing a reputation of being a figurehead for legal education in Asia, has curated an insightful set of essays. The list of contributors is extensive, embracing well known global clinicians, such as Bruce Lasky, and emerging names from the region.

The text has an accessible structure; there is an overarching introduction which briefly outlines the history of CLE and the characteristics of Asian clinical approaches. The extensive list of conferences held since 2005, listed in Chapter 1, is probably only of interest to diehards but it does demonstrate how quickly the power of CLE can spread and take hold. Each of the following 12 chapters focuses

on a particular country so one can dip in and out to suit one's interests. Content wise, the book guides the reader through some of the most developed CLE regions (eg India) to newcomers such as China (which developed CLE programmes in 2000) to those still struggling to gain a foothold on the clinical ladder (eg the Maldives). Over approximately 20 pages each, the respective chapters provide a sound synopsis of how CLE operates in a particular jurisdiction. This summary is supplemented by helpful references to additional sources for readers wishing to delve further into the scholarship.

Sarker identifies that CLE in Asia is characterised by empowerment, justice and skills, topics which permeate the whole book. The text also addresses the familiar issues of social justice, clinic as a tool for bridging the gap between legal education and practice, and a variety of pedagogical models, which readers from across the globe will be able to relate to. There are a range of themes which emerge from the text, all of which provide food for thought. The importance of sustainability is noted; the influence of socio-political and economic factors on clinical success and design is also apparent. Collaboration has clearly played a crucial role in establishing and maintaining the respective projects featured in the text. This latter point provides an opportune reminder, particularly to UK clinicians and indeed governments, as we see the erosion of third sector agencies in these continuing times of austerity.

It was particularly interesting to learn about the endeavours of clinical projects in rural areas and the challenges this can bring. That has not stifled creativity

however, with countries offering assistance in the areas such as farmer's justice (China). The breadth of CLE projects is also impressive addressing the rights of the disadvantaged, women's rights and labour rights (China) people living with HIV (Vietnam) and transgender rights (Thailand). CLE in Asia is in its infancy but this has benefit of fresh perspective, youthful enthusiasm and innovation, as is evidenced in some of the clinical projects explored in this book. Despite being in its formative years, experienced clinicians will enjoy reading about, and indeed can learn from, the myriad of models employed by our Asian clinical cousins. The range of case studies, statistical data and student feedback which feature in the book are equally informative.

Whilst the story of CLE in Asia is largely positive, the book does not gloss over the barriers faced in establishing and embedding the pedagogy. Despite best efforts, CLE has failed to gain any traction in the Maldives. Whilst it may seem incongruous for this chapter to be included alongside its more successful neighbours, it provides helpful insights into what obstacles exist and how these pitfalls might be avoided in future projects.

In terms of target audience the book will naturally be of particular interest to clinicians. However its appeal will also extend to legal educators more generally, since each chapter positions CLE within the broader legal and educational framework of the respective countries. It will be an invaluable reference point for Asian based academics seeking to engage with CLE or establish a clinic in the area, or global practitioners looking to work in the locality.

In some respects our Asian counterparts are more radical in their adoption of CLE programmes, with several universities imposing mandatory pro bono work (eg Taiwan and Singapore). For this reason the text has the potential to reinvigorate established clinicians providing renewed impetus, and inspire colleagues new to the field.

The price of the book may be slightly prohibitive for some clinics and small law school libraries operating on a tight budget and it is hoped that a paperback will soon make an appearance to help disseminate more widely the great practice that is emerging from Asia. Failing that, an ebook is available.

The book has received positive reviews from leading voices who have worked extensively in the realm of Asian CLE. Frank Bloch proclaims that the book *“offers important insights into the evolution of clinical programs throughout the region. Its various chapters demonstrate a shared commitment to the social justice mission of clinical legal education that is emblematic of a vibrant global clinical movement. It is an important addition to the growing literature on the spread of clinical legal education around the world.”* [backcover comment]

This is indeed *“an opportunity to reflect on the curious lineage within which this branch of legal education has developed.”* However, as comprehensive as this text is, an additional final chapter drawing together all of the themes and future direction of travel would have resulted in a less abrupt ending to the travels through the Asian clinical world. Nonetheless, as contributors Marsh and Ramsden proclaim, this is indeed a *“dynamic corner of the globe”* and this book is a delight to read. I look

forward to watching with interest how Asian continues to build its CLE projects – as this book evidences, it has certainly laid strong foundations.

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