



**MONASH** University

**CLINIC AS A MEANS TO REFORM THE VIETNAMESE LEGAL  
EDUCATION SYSTEM: THE CURRENT SITUATION AND  
FUTURE POSSIBILITIES**

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## Table of Contents

Table of Contents		<b>i</b>
Abbreviations		<b>v</b>
Tables and Figures		<b>vi</b>
Copyright notice		<b>vii</b>
Abstract		<b>viii</b>
Declaration		<b>x</b>
Publications during enrolment		<b>xi</b>
Acknowledgements		<b>xii</b>
<b>Chapter One CLINICAL LEGAL EDUCATION AS A MEANS TO REFORM LEGAL EDUCATION: THE THEORY BACKGROUND, RESEARCH CONTEXT AND GENERAL OVERVIEW OF THE THESIS</b>		<b>1</b>
1.1 Introduction		<b>1</b>
1.2 Objectives of the research		<b>2</b>
1.3 Background of research problem and theory		<b>3</b>
1.4 Research questions, hypothesis and limitations on scope of research		<b>7</b>
1.4.1 Research questions and hypothesis	7	
1.4.2 Subsidiary questions	7	
1.4.3 Limitations on scope of research	7	
1.5 Research methodology		<b>9</b>
1.5.1 Literature review	9	
1.5.2 Empirical research	10	
1.6 Structure of the thesis		<b>10</b>
<b>Chapter Two CLINICAL LEGAL EDUCATION AS A MEANS FOR LEGAL EDUCATION REFORM IN THE LITERATURE</b>		<b>13</b>
2.1 Introduction		<b>13</b>
2.2 Global legal education: challenges and the demand for reform		<b>14</b>
2.2.1 Challenges facing global legal education	14	
2.2.2 Demand for legal education reform	20	
2.3 Legal education reform: a global perspective		<b>23</b>
2.3.1 Moving towards graduate-level legal education	24	
2.3.2 Curriculum reform	25	
2.3.3 Moving towards a clinical approach in legal education	28	
2.4 Clinical legal education as a means to reform legal education		<b>29</b>
2.4.1 The global movement towards clinical legal education	29	
2.4.2 Forms of clinical legal education	39	
2.4.3 Major debate around the world about clinical methodology in legal education	53	
2.5 Conclusion		<b>63</b>
<b>Chapter Three RESEARCH METHODOLOGY</b>		<b>66</b>
3.1 Introduction		<b>66</b>
3.2 Literature review		<b>67</b>
3.2.1 Why a literature review?	67	
3.2.2 What to review?	68	
3.3 Empirical research		<b>69</b>
3.3.1 Why Empirical research?	69	

3.3.2 Data collection	70	
3.3.3 Data analysis	82	
3.4 Conclusion		<b>83</b>
<b>Chapter Four LEGAL EDUCATION IN VIETNAM: THE HISTORY, CURRENT STATE AND CHALLENGES</b>		<b>84</b>
4.1 Introduction		<b>84</b>
4.2 A brief history of Vietnamese legal education		<b>86</b>
4.2.1 Legal education in North Vietnam	86	
4.2.2 Legal education in South Vietnam	87	
4.2.3 Legal education in Central Vietnam	88	
4.3 The current state of the Vietnamese legal education system		<b>89</b>
4.3.1 Legal education institutions	89	
4.3.2 Teaching curriculum and training structure	100	
4.3.3 The Objectives of Vietnamese legal education	105	
4.4 The legal profession, the Judicial Academy, the two-stage legal education system and the training of qualified lawyers in Vietnam		<b>107</b>
4.4.1 The Vietnamese legal profession	107	
4.4.2 The JA – a national judicial training school in Vietnam	112	
4.4.3 Further training of a qualified lawyer in Vietnam	118	
4.5 The challenges of Vietnamese legal education		<b>121</b>
4.5.1 Law graduates lack professional knowledge and skills	121	
4.5.2 Vietnamese legal education is disconnected from the legal profession	123	
4.5.3 Vietnamese law schools lack autonomy and flexibility	126	
4.5.4 Law graduates lack the capacity to think independently, creatively and critically	128	
4.5.5 lack of training in legal ethics and professional responsibility	131	
4.6 Conclusion		<b>133</b>
<b>Chapter Five REFORMING THE VIETNAMESE LEGAL EDUCATION SYSTEM: WHAT MAKES CLINICAL LEGAL EDUCATION A PROMISING OPTION?</b>		<b>136</b>
5.1 Introduction		<b>136</b>
5.2 Official recognition of the need for the reform of the Vietnamese legal education system		<b>137</b>
5.3 Possibilities for the reform of Vietnamese legal education		<b>141</b>
5.3.1 Moving to graduate-level Vietnamese legal education?	141	
5.3.2 Reforming the law curriculum in Vietnam: what to expect?	146	
5.3.3 Reforming teaching methodologies: more interactive methods?	151	
5.3.4 Incorporating professional training into law schools' curricula	151	
5.3.5 Adopting and incorporating CLE into law curricula	157	
5.4 What makes CLE a promising and effective option for Vietnamese legal education reform?		<b>158</b>
5.4.1 CLE can help address the problem of 'lack of professional knowledge and skills'	159	
5.4.2 CLE as a better approach for teaching professional responsibility and legal ethics	161	
5.4.3 Can CLE better prepare students to be 'justice ready'?	164	
5.4.4 CLE can help strengthen students' ability to think like a lawyer	166	
5.4.5 CLE can help bridge the gaps between legal education and the legal	169	

<i>profession</i>		
5.5 Conclusion		<b>171</b>
<b>Chapter Six CLINICAL LEGAL EDUCATION AS A MEANS TO REFORM THE VIETNAMESE LEGAL EDUCATION SYSTEM: THE CURRENT SITUATION</b>		<b>173</b>
6.1 Introduction		<b>173</b>
6.2 The historical development of clinical legal education in Vietnam		<b>174</b>
6.2.1 <i>The introduction of CLE into Vietnam</i>	174	
6.2.2 <i>The UNDP Clinical Project – an important milestone of Vietnamese CLE</i>	178	
6.3 The current state of CLE in Vietnam		<b>182</b>
6.3.1 <i>Forms and models of CLE</i>	182	
6.3.2 <i>The position of clinical programs in law schools' curricula</i>	199	
6.3.3 <i>Views on CLE supervision and the status of clinicians in Vietnamese law schools</i>	207	
6.3.4 <i>Financing Vietnamese clinical programs</i>	209	
6.4 Conclusion		<b>212</b>
<b>Chapter Seven THE FUTURE POSSIBILITIES OF CLINICAL LEGAL EDUCATION IN VIETNAM</b>		<b>213</b>
7.1 Introduction		<b>213</b>
7.2 Clinical model: what will work best in the Vietnamese setting?		<b>213</b>
7.2.1 <i>Is community legal education the most suitable option in Vietnam?</i>	214	
7.2.2 <i>Could the clinical approach be employed in teaching doctrinal law units?</i>	216	
7.2.3 <i>Measures for improving in-house legal consultancy programs and transforming them into the live-client in-house clinic model</i>	217	
7.2.4 <i>Redesigning externship programs to achieve better learning outcomes</i>	218	
7.3 The position of CLE in Vietnamese law school curricula: voluntary, elective or mandatory?		<b>221</b>
7.4 Supervision in clinical programs: possibilities for improvement		<b>225</b>
7.4.1 <i>Clinicians need to be recognised as tenured teachers in law schools</i>	225	
7.4.2 <i>Doctrinal law teachers' involvement in clinical supervision</i>	226	
7.4.3 <i>The involvement of practising lawyers in clinical supervision</i>	227	
7.4.4 <i>Law teachers should be permitted to practise law and engage in litigation</i>	238	
7.5 Financing CLE: the roles of international organisations, law schools, the Vietnam Bar Federation and local bar associations, the central Government and relevant national agencies		<b>232</b>
7.5.1 <i>International sources of funding</i>	235	
7.5.2 <i>Funding from the Vietnamese legal aid budget</i>	236	
7.5.3 <i>Law schools' budgets</i>	240	
7.5.4 <i>The role of the profession and law school alumni</i>	241	
7.6 Conclusion		<b>243</b>
<b>Chapter Eight SUMMARY OF THESIS CONTRIBUTIONS, RECOMMENDATIONS AND CONCLUSIONS</b>		<b>244</b>
8.1 Introduction		<b>244</b>
8.2 Summary of research findings and thesis contributions		<b>244</b>
8.2.1 <i>Findings about the legal education and the legal profession in Vietnam</i>	244	
8.2.2 <i>Findings about the demand and approaches for Vietnamese legal education reform</i>	246	

8.2.3 Findings about the current situation of CLE in Vietnam	247	
8.2.4 Findings about the conditions supporting CLE in Vietnam and the future possibilities of the Vietnamese clinical movement	248	
8.3. Recommendations		<b>249</b>
8.3.1 Raising the understanding and awareness of relevant stakeholders	250	
8.3.2 Promoting the establishment and development of Vietnamese CLE Association	250	
8.3.3 Promoting and developing global and regional collaboration in CLE	251	
8.3.4 The need for clear and locally acceptable definition of clinically-relevant concepts	251	
8.3.5 Diversifying financial resources to establish, maintain and strengthen CLE	252	
8.3.6 Strengthening students' supervision in a clinical setting	252	
8.3.7 The establishment of an Association of Vietnamese Law Schools	253	
8.3.8 Fostering collaboration between law schools and the profession in Vietnam	253	
8.3.9 The Vietnamese central Government and relevant national agencies need to support and assist the development and expansion of CLE among Vietnamese law schools	254	
8.3.10 CLE needs to be integrated into the law curriculum	254	
8.4 Limitation of the research		<b>255</b>
8.5 Conclusion		<b>256</b>
8.5.1 The future of Vietnamese legal education	256	
8.5.2 The future possibilities of CLE in Vietnam	258	
Bibliography		<b>261</b>
Appendices		<b>285</b>
Appendix A Letter of Invitation to Participate in Empirical Research Interviews		<b>286</b>
Appendix B Letter of Permission for Empirical Research Interviews		<b>287</b>
Appendix C Explanatory Statement for Empirical Research		<b>288</b>
Appendix D Consent Form for Participating in Empirical Research Interviews		<b>291</b>
Appendix E Questions for Empirical Research Interviews		<b>292</b>
Appendix F Questions for Follow-up Focus Group Discussion Seminars		<b>300</b>

## Abbreviations

<b>Abbreviation</b>	<b>Name</b>
ABA CEELI	American Bar Association Central European and Eurasian Law Initiative
BABSEA CLE	Bridges Across Borders Southeast Asia Clinical Legal Education Initiatives
CA	Court Academy
CCCLE	Committee on Chinese Clinical Legal Education
CIDA	Canadian International Development Agency
CLE	Clinical legal education
COLPI	the Constitutional and Legal Policy Institute
CPs	Core partners
CUFL	Cantho University Faculty of Law
DRV	Democratic Republic of Vietnam
HLU	Hanoi Law University
HCMCLU	Ho Chi Minh City Law University
HCMCNU SEL	Ho Chi Minh City National University School of Economics and Law
HNUFL	Hanoi National University Faculty of Law
HPU	Hanoi Procuratorate University
HUSL	Hue University School of Law
JA	Judicial Academy
JD	Juris Doctor
JM	Juris Master
LERES	Centre for Legal Research and Service
LLB	Bachelor of Laws
LTCC	Legal Training and Consultancy Centre
MOET	Ministry of Education and Training
MOJ	Ministry of Justice
MOU	Memorandum of Understanding
MUHREC	Monash University Human Research Ethics Committee
NEUFL	National Economic University Faculty of Law
NHRC	Norwegian Human Rights Centre
PILI	Public Interest Law Institute
RV	Republic of Vietnam
TUUFLL	Trade Union University Faculty of Law
UNDP	United Nations Development Program
US	United States
USAID	United States Agency for International Development
VPF	Vietnam Bar Federation
VER	Vietnam Empirical Research
VLA	Vietnamese Lawyers Association
VUFL	Vinh University Faculty of Law
WTO	World Trade Organization

## Tables and Figures

#		Chapter	Page
<b>Tables</b>			
Table 1	Vietnamese law schools visited for empirical research	3	71
Table 2	Law firms and judicial agencies visited for empirical research	3	72
Table 3	Types of research participants and question themes	3	76
Table 4	Vietnamese law schools as of April 2017	4	95
Table 5	Vietnamese legal professional training schools	4	117
Table 6	A summary of possible options for Vietnamese legal education reform	5	141
Table 7	Steps to prepare and deliver community legal education programs by Vietnamese law schools	6	184
Table 8	Summary of clinical legal education programs offered as accredited (for credit) units by Vietnamese law schools	6	204
<b>Figures</b>			
Figure 1	The organisational structure of Hue University School of Law	4	92
Figure 2	The organisational structure of Cantho University Faculty of Law	4	92
Figure 3	The organisational structure of Ho Chi Minh City Law University	4	93
Figure 4	Geography of Vietnamese legal education institutions: North region	4	98
Figure 5	Geography of Vietnamese legal education institutions: Central and Highland regions	4	99
Figure 6	Geography of Vietnamese legal education institutions: South and Mekong Delta regions	4	100
Figure 7	The training process of a qualified lawyer in Vietnam	4	120

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## **Abstract**

This thesis examines clinical legal education (CLE) as one of the promising approaches for reform of the Vietnamese legal education system. The thesis investigates the primary question of what the future of Vietnamese legal education should be: traditional, clinical or a combination of both? In the context of the current, and arguably ineffective, Vietnamese legal education system, and in the light of the global clinical movement, it is hypothesised that there is an urgent need for reform and that CLE offers an appropriate approach to this reform. The research question and hypothesis were examined by reviewing the literature and conducting empirical research in Vietnam.

The research findings are summarised as follows:

- Vietnamese legal education remains a new system with approximately 40 years of history. Currently, more than 40 law schools produce approximately 20000 law graduates every year. These graduates take on various positions in the national judicial system and the legal profession. Nevertheless, the current Vietnamese legal education system has failed to deliver quality education to students and has failed to prepare them effectively for their future careers. This reality requires urgent reform.
- The demand for reform of Vietnamese legal education has been widely recognised by different stakeholders, including government and relevant national agencies, law school leaders, law teachers, law students, practising lawyers and judicial officials.
- Approaches to the reform of Vietnamese legal education include moving towards graduate-level legal education, curriculum reform, teaching methodology reform, incorporating professional training into law school curricula and the adoption of CLE.
- CLE has been introduced into Vietnam by international organisations and, has shown itself to be a promising option for the reform of Vietnamese legal education. However, CLE is still at an early stage of development in Vietnam.
- The research has found that it is important to identify a clinical model that looks forward in the current Vietnamese setting. In this regard, community legal

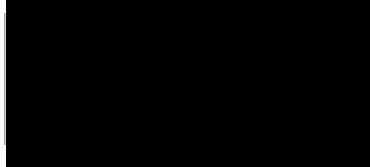
education seems to be a satisfactory immediate option for Vietnamese law school clinics. Other approaches include employing clinical methodologies in teaching doctrinal law subjects and redesigning the externship model.

- However, Vietnamese law schools should also improve the effectiveness of the live-client in-house clinical model and attempt to integrate CLE into law curricula. Such an emphasis will help address the concerns raised by different participants in the empirical research about the development and sustainability of Vietnamese CLE.
- Attention must also be given to strengthening the training of clinical supervisors, granting them academic tenure and allowing them to practise law. In addition, innovative methods to secure law schools' general and CLE funding are needed, most likely involving collaboration between law schools and the profession.
- The thesis concludes that while traditional curricula and teaching methodologies will remain pervasive, the future of Vietnamese legal education lies in a combination of traditional and clinical approaches, the latter can play a powerful role in strengthening and fostering Vietnamese legal education.

## **Declaration**

I affirm that this thesis contains no material which has been accepted for the award of any other degree or diploma at any university or equivalent institution. To the best of my knowledge and belief, this thesis contains no material previously published or written by any other person, except where due reference is made in the text of the thesis.

Signature:



Print Name: Ho Nhan Ai

Date: 27<sup>th</sup> March 2018

## **Publications during enrolment**

1. Ho, N. Ai 'Clinical Legal Education as a Model of Innovative Legal Education: Some Considerations for Its Adoption in Vietnam' (Paper published in the proceedings of and presented at the international workshop *Legal Education in The Context of Globalization*, Hanoi Law University - Vietnam, 11/2014).
2. Ho, Ai, 'Reforming the Vietnamese Legal Education System: Possibilities and Perspective' (2016) 23(2) International Journal of Clinical Legal Education 48.
3. Ho, Ai, 'Legal Education in Vietnam: The History, Current Situation and Challenges' (2017) 26(1) Legal Education Review 69.

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## CHAPTER ONE

### CLINICAL LEGAL EDUCATION AS A MEANS TO REFORM LEGAL EDUCATION: THE THEORY BACKGROUND, RESEARCH CONTEXT AND GENERAL OVERVIEW OF THE THESIS

#### 1.1 Introduction

Legal education plays a significant role in fostering the social and economic development of a nation and in bringing justice to people in society. It can be seen as the backbone of a country's judicial system and the legal profession. A good legal education system also helps ensure the smooth operation of the whole legal system and strengthens a rule-of-law<sup>1</sup> society. Globally, countries have been reviewing and reforming their legal education systems, aiming to produce generations of lawyers who are not only knowledgeable and ethical but also willing to stand up for social justice and undertake pro bono work.<sup>2</sup> Legal education reform also assists in producing 'global lawyers'<sup>3</sup> to deal with various transnational matters, especially in this age of globalisation.

Vietnam is a civil law country where legal education is heavily affected by the pressure of teaching legal theory, principles and basic codes of law. Due to the requirement to teach students a large body of legal doctrine and basic codes, there is limited opportunity for professional training. Similar to many other countries, legal education In Vietnam is an important instrument enabling it to build and strengthen human resources for the national judicial system and to serve national development. In Vietnam, a good legal

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<sup>1</sup> In one sense, the 'rule of law' can be defined as a system that enables a weaker party 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 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.

<sup>2</sup> See generally, Frank S Bloch, *The Global Clinical Legal Education Movement: Educating Lawyers for Social Justice* (Oxford University, 2011); Shuvro Prosun Sarker (ed), *Legal Education in Asia* (Eleven International Publishing, 2013); David M Moss and Debra Moss Crutis (eds), *Reforming Legal Education: Law Schools at the Crossroads* (Information Age Publishing, 2012).

<sup>3</sup> Global lawyers, as defined by Wenzler and Kwietniewska, are legal practitioners who are knowledgeable in not only the law of one country but also foreign law and international law. See Hariolf Wenzler and Kasia Kwietniewska, 'Educating the global lawyer: the German experience' (2012) 61 *Journal of Legal Education* 462, 462-66.

education system will also promote the effective operation of the legal profession and this will in turn help promote a rule-of-law society which the Vietnamese central government seeks to establish.

In this context, it is pertinent and significant, therefore, to investigate the state of and the challenges for Vietnamese legal education and explore possibilities for future reform. This research will provide information and a foundation for decision-makers interested in legal education, especially the assessment of Vietnamese legal education, its challenges and ways for improvement. In particular, the study will look at clinical legal education (CLE) as one of the most attractive of potential options for Vietnamese legal education reform.

## **1.2 Objectives of the Research**

The central objective of this thesis is to examine the current status of CLE and to discuss the future possibilities of CLE as a means to reform Vietnamese legal education. The thesis investigates the potential contributions of CLE to Vietnamese legal education reform by focusing on understanding how CLE can potentially help address the various challenges facing the current system. Another objective of the research is to look to the future of legal education and CLE in Vietnam. Given that there is a growing trend to use CLE as a teaching methodology in legal education around the world, the thesis will explore whether or not CLE should be part of the future of Vietnamese legal education. In addition, the thesis will investigate approaches to successfully incorporate CLE into law schools' curricula in Vietnam. These objectives will be examined by looking at global experiences and conducting empirical research with different legal education stakeholders in Vietnam.

The research objectives are specified as follows:

*First*, the thesis investigates the state of and the challenges for the Vietnamese legal education system and discusses various possibilities for reform. *Secondly*, it attempts to explore the potential benefits and values CLE could bring to reform legal education and help effectively prepare law graduates for the profession. *Thirdly*, the thesis assesses the

current situation and discusses the future of CLE in Vietnam, including a proposal for appropriate clinical models for Vietnamese law schools. *Fourthly*, it studies various influential factors affecting the successful adoption and maintenance of CLE in Vietnam. *Finally*, the thesis examines and suggests ways for Vietnam to successfully adopt and develop CLE as a means for legal education reform.

### 1.3 Background of Research Problem and Theory

Clinical legal education has been initiated and developed as an innovative teaching pedagogy in response to the increasing demands from the legal profession and students for professional training. As a complement to traditional theoretical legal education, CLE provides students with necessary professional knowledge and skills in order to function effectively as lawyers.<sup>4</sup> In a clinical setting, students are given opportunities to practise law by working on real or simulated cases under the close supervision of qualified lawyers. This approach has proven to be an effective methodology to strengthen law students' professional skills and, at the same time, help them mature ethically.<sup>5</sup> Particularly in the live client in-house clinical model, students are given opportunities to practise professional skills and deal with ethical issues when they work with real clients under the supervision of qualified lawyers.<sup>6</sup> This is one of the reasons why CLE is seen by countries around the world as a promising approach for legal education reform.

Globally, CLE was first officially adopted as a model for legal education in the United States in the 1960s<sup>7</sup> before spreading internationally into the global movement<sup>8</sup> it is today. Many law schools have included CLE as a formal component of their curricula to teach students professional knowledge and skills. In the United States, for example, CLE

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<sup>4</sup> See generally, Adrian Evans et al, *Australian Clinical Legal Education: Designing and Operating a Best Practice Clinical Program in an Australian Law School* (ANU Press, 2017); Bloch, above n 2.

<sup>5</sup> Bloch, above n 2.

<sup>6</sup> Evans et al, above n 4.

<sup>7</sup> Bloch, above n 2, 3–5; see also Margaret Barry, Jon C Dubin and Peter A Joy, 'Clinical Education for This Millennium: The Third Wave' (2001) 7 *Clinical Law Review* 1, 9–12; Jeff Giddings, *Promoting Social Justice Through Clinical Legal Education* (Justice Press, 2013) 5–9; Tarr W Nina, 'Current Issues in Clinical Legal Education' (1993) 37 *Howard Law Journal* 31, 32.

<sup>8</sup> See, eg, Frank S Bloch, 'Access to Justice and The Global Clinical Movement' (2008) 28 *Washington University Journal of Law & Policy* 111, 112–21; see also Richard J Wilson, *The Global Evolution of Clinical Legal Education: More Than a Method* (Cambridge University Press, 2017) 149–52.



or other practicums has become an integral part of legal education<sup>9</sup> and is generally a requirement for law students in order to graduate.<sup>10</sup> Since 1973,<sup>11</sup> some Australian law schools<sup>12</sup> have developed various clinical courses within their curricula offered to students on an elective basis.<sup>13</sup> In South Africa, all law schools have established a clinic to teach students various professional skills necessary for the legal profession.<sup>14</sup> In other countries, CLE has been introduced, accepted, developed, taken root and become an important component of legal education.<sup>15</sup>

In contrast, Vietnamese legal education is struggling with the traditional pedagogy and curriculum of a developing country. Whether existing in large or smaller educational

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<sup>9</sup> See, eg, Richard J Wilson, 'Training For Justice: The Global Reach of Clinical Legal Education' (2004) 22 *Penn State International Law Review* 421, 421.

<sup>10</sup> See, eg, Paul Bergman, 'Reflections on US Clinical Education' (2003) 10 *International Journal Of The Legal Profession* 109, 109; for the case of Maryland University, see *The Cardin Requirement* of Maryland University Law School (13 April 2015) <<http://www.law.umaryland.edu/publicservice/cardin.html>>.

<sup>11</sup> In Australia, Monash University was the first to establish a clinical program in 1973 (Springvale Legal Service, later renamed Springvale Monash Legal Service). Together with the La Trobe University clinical program established in 1974 and the New South Wales University clinical program established in 1981, it constitutes the first wave of the Australian clinical movement. See, eg, Jeff Giddings, 'Clinical Legal Education in Australia: A Historical Perspective' (2003) 3(1) *International Journal of Clinical Legal Education* 7, 7–14.

<sup>12</sup> The academic year 2013–14 witnessed 25 Australian law schools offering clinical legal education courses to teach students professional knowledge and skills. See, eg, Anna Cody, *Clinical Legal Education Guide*, Faculty of Law, the University of New South Wales (2013) <[http://www.klc.unsw.edu.au/sites/klc.unsw.edu.au/files/55386\\_clinical\\_legal\\_education\\_guide\\_web.ppt](http://www.klc.unsw.edu.au/sites/klc.unsw.edu.au/files/55386_clinical_legal_education_guide_web.ppt)>.

<sup>13</sup> At Monash University, for example, some clinical courses are offered, on an elective basis, to law students at both undergraduate and graduate levels, such as professional practice unit (12 points); professional practice unit (focus on Family Law Assistance Program: 12 points); and clinical externship (6 points). Students can earn up to 12 credit points for each clinical unit they take, see <<http://www.law.monash.edu.au/about-us/legal/cle/undergraduate-units.html>>.

<sup>14</sup> See, eg, Peggy Maisel, 'Expanding and Sustaining Clinical Legal Education in Developing Countries: What We Can Learn From South Africa' (2007) 30(2) *Fordham International Law Journal* 374, 387–88.

<sup>15</sup> Bloch, above n 2 (identifying that in addition to the United States, Australia, South Africa, Canada and Britain, other countries have also been in the process of adopting and developing clinical pedagogy in teaching law. These countries include, but are not limited to India, China, Japan, Spain and many countries in Africa, South East Asia, Latin America and Central and Eastern Europe); see also Shuvro Prosun Sarker (ed), *Clinical Legal Education in Asia: Accessing Justice for the Underprivileged* (Palgrave Macmillan US, 2015) (describing the history, present situation and future possibilities of clinical legal education in 12 Asian countries, with particular focus on the Asian character of clinical approaches); Wilson, above n 8 (identifying that CLE has gone global as an important teaching methodology. Almost all the regions around the world have witnessed the presence of CLE, notably Latin America, Central and Eastern Europe, Africa, East Asia, Central, Southeast and South Asia, the Pacific Island Nations, Middle East, and Continental Western).

institutions,<sup>16</sup> legal education in Vietnam still remains problematic and ineffective.<sup>17</sup> It emphasises the teaching of various legal doctrines, principles and basic codes with a lecture-based teaching methodology dominating, and it lacks professional training. While professional skills such as client interviewing, factual investigation, communication, legal writing and research and legal consultation are commonly taught at many law schools in other countries such as the United States,<sup>18</sup> Australia<sup>19</sup> and Canada,<sup>20</sup> they are not included in most Vietnamese law schools' curricula. As Sidel and Pham have pointed out, the current Vietnamese system is too theoretical and does not equip law students with the practical skills necessary to function effectively as lawyers.<sup>21</sup>

In summary, the challenges facing the Vietnamese legal education system can be identified as follows:

(1) Law graduates lack professional knowledge and skills necessary for functioning

<sup>16</sup> In Vietnam, legal education institutions are relatively diverse in size, name and structure. They can be classified into four categories, namely *Law Universities*, *Schools of Law*, *Faculties of Law*, and *Institutes of State and Law*. For the purpose of, and within the scope of, this research project, these legal education institutions are hereinafter referred to as *law schools*. See below Chapter Four for more details of the current Vietnamese legal education system.

<sup>17</sup> See, eg, Lien Thi Bich Bui, 'Legal Education in Transitional Vietnam' in John Gillespie and Pip Nicholson (eds), *Asian Socialism and Legal Change: The Dynamics of Vietnamese and Chinese Reform* (ANU Press, 2005) 135–37; Hanh Hong Nguyen, 'Legal Education in Vietnam' (2005) 19 *Journal on State and Law* 24, 28; see also Central Committee of the Vietnamese Communist Party, *Resolution 49/NQ-TW on The Strategy of Judicial Reform to the Year 2020* (1 May 2015) <[http://www.moj.gov.vn/ct/thongtinchienluoc/Lists/VanBanThongTin/View\\_Detail.aspx?ItemID=12&](http://www.moj.gov.vn/ct/thongtinchienluoc/Lists/VanBanThongTin/View_Detail.aspx?ItemID=12&)>.

<sup>18</sup> For the examples of American law schools see, eg, Lyman Johnson, Robert Danforth and David Millon, 'Washington and Lee University School of Law: Reforming the Third Year of Law School' in Moss and Crutis, above n 2, 14–24; Hunter Michael Schwartz and Jeremiah A Ho, 'Curriculum Reforms at Washburn University School of Law' in Moss and Crutis, above n 2, 40; Rachel A Van Cleave, 'Promoting Experiential Learning at Golden Gate University School of Law Through Curriculum Reform' in Moss and Crutis, above n 2, 115–28.

<sup>19</sup> In Australia, courses teaching professional skills are offered by almost all law schools. See examples from Monash University Faculty of Law <<http://www.monash.edu.au/pubs/2015handbooks/aos/law-electives/>>; the University of New South Wales Faculty of Law <<http://www.law.unsw.edu.au/courses/undergraduate/5>>; and Melbourne University Faculty of Law <<http://www.law.unimelb.edu.au/index.cfm?objectid=1B99F958-B8B2-11E0-A3F9005056A2652C>>.

<sup>20</sup> In Canada, the teaching of professional skills is also commonly seen at many law schools such as: Schulich School of Law, Dalhousie University <<http://www.dal.ca/faculty/law/current-students/jd-students/course-information.html>>; and Toronto University School of Law <<http://www.law.utoronto.ca/academic-programs/course-calendar>>.

<sup>21</sup> See, eg, UNDP Vietnam, *Terms of Reference, National Consultant for UNDP Resource Paper on Law Clinics*, quoted in Mark Sidel and Nghia Duy Pham, *Reforming and Strengthening Legal Education in Vietnam* (UNDP Vietnam, 2010) 1; See also Central Committee of the Vietnamese Communist Party, *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* (14 June 2013) <<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>>.

effectively as lawyers.

(2) Legal education is disconnected from the legal profession.

(3) Law graduates have limited ability to think 'like a lawyer'.

(4) Law students lack training in legal ethics and professional responsibility.

(5) Law schools lack autonomy and flexibility in delivering legal education.

These problems, as well as their negative impacts on Vietnamese legal education, are discussed and analysed in detail in section 4.5 of Chapter Four.

There has been growing dissatisfaction among the legal profession, public agencies and private companies in Vietnam about the poor quality of the current legal education system. Many scholars believe that Vietnamese law graduates are not properly prepared for the profession and in most cases, they have to be given further training before they can start work.<sup>22</sup> There is consequently common agreement among stakeholders in Vietnam that the legal education system needs to be reformed.<sup>23</sup> Calls for the reform of Vietnamese legal education can be seen as a response to the internal demands of building a rule-of-law society, the provision of legally qualified human resources for national socio-economic development and the need to strengthen the capacity of the legal profession. These issues are investigated further in Chapter Five when the thesis addresses the demand and possibilities for Vietnamese legal education reform.

Yet as reform in Vietnamese legal education proceeds, the argument in this thesis is that CLE should be considered as an important option for the better training of a professional cadre of lawyers. Many countries around the world have adopted CLE and have been successful in using a clinical approach in their legal education systems.<sup>24</sup> There are reasons, therefore, to believe that Vietnam will succeed in employing CLE to reform and strengthen its legal education system.

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<sup>22</sup> Sidel and Pham, above n 21, 7; See also Nguyen Van Tuan, 'Organization and Operation of Lawyers: Reality and Orientation for Renewal' (1997) 2 *Jurisprudence Journal* 38, 41; Khang, G, 'Lawyer Training: Passing Examination with Three Marks for Two Subjects?', Vietnamnet, (3 August 2006) <[www.vnn.vn/xahoi/lao dong/2006/08/598255/](http://www.vnn.vn/xahoi/lao dong/2006/08/598255/)> cited in 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) 306.

<sup>23</sup> Bui, above n 22, 306–14; Sidel and Pham, above n 21, 1–7; Central Committee of the Vietnamese Communist Party, above n 17; Central Committee of the Vietnamese Communist Party, above n 21.

<sup>24</sup> Bloch, above n 2; Giddings, above n 7; Sarker, above n 15; Wilson, above n 8.

## **1.4 Research Questions, Hypothesis and Limitations on Scope of Research**

### **1.4.1 Research Questions and Hypothesis**

This thesis interrogates the principal research question of ***what the future of Vietnamese legal education should be: traditional, clinical or a combination?*** In the light of the current ineffective Vietnamese legal education system, the urgent need for reform and the global clinical movement, it is hypothesised that ***clinical legal education*** (in combinations) ***offers an appropriate approach to this reform.***

### **1.4.2 Subsidiary Questions**

In order to answer the principal research question and to examine the research hypothesis, the thesis investigates various relevant subsidiary questions:

- (1) What is the current state of the Vietnamese legal education system?
- (2) What are the possibilities for reforming the Vietnamese legal education system?
- (3) Why should CLE be an option for the reform of the Vietnamese legal education system?
- (4) Is CLE really needed in the Vietnamese legal education system?
- (5) Is CLE compatible with the social context, and the political and legal systems of Vietnam? And, if we suppose that it is compatible, which CLE model can potentially perform best in the Vietnamese setting?
- (6) What is the current state of global CLE and what should Vietnam learn from the global CLE experience in the adoption, maintenance and development of a clinical approach to legal education?
- (7) What measures should be taken in order to successfully adopt, develop and maintain CLE in Vietnam?

### **1.4.3 Limitations on Scope of Research**

The Vietnamese legal education system is diverse in terms of its levels of study and forms of training. Currently, the system offers three levels of legal education, namely the bachelor's degree (commonly four years), the master's degree (two years) and the

doctoral degree (three to four years). With the bachelor's degree, legal education can be delivered in various forms, including full-time on-campus,<sup>25</sup> part-time in-service,<sup>26</sup> second-degree<sup>27</sup> and distance learning.<sup>28</sup> In this research, the focus is only on *Vietnamese legal education at undergraduate level* delivered full-time on-campus (hereinafter referred to as undergraduate legal education or legal education).

These are several reasons for this focus. First, full-time on-campus undergraduate level legal education is the most significant form of legal education in Vietnam. It is the 'standard route' of legal education, as accepted by the judiciary and the legal profession of the country. Accordingly, the reform of full-time on-campus undergraduate legal education will have the most significant downstream impact on the law and on judicial reform in Vietnam and been important influence on the effective operation of the whole legal and judicial system. In turn, this will assist the implementation of many other national priorities in Vietnam such as social-economic development, the development of a rule-of-law society and the improvement of the legal profession's capacity.

Secondly, given that existing Vietnamese legislation requires a Bachelor of Laws degree as a precondition for admission to the bar,<sup>29</sup> undergraduate legal education full-time on-campus serves as the primary pathway to the Vietnamese legal profession. A focus in this thesis on undergraduate legal education will, therefore, enable the research to connect to

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<sup>25</sup> Full-time on-campus is the most common form of legal education in Vietnam. This form of training is similar to the Bachelor of Laws degree (LLB) in other countries, where students study full time on campus.

<sup>26</sup> Part-time in-service legal education is designed for people who are working. This form of training is typically delivered at night or during weekends. Generally, the curriculum and the training structure of the part-time in-service basis legal education are similar to those of the full-time on-campus education.

<sup>27</sup> Second-degree legal education is designed for people who have already graduated from a university and who hold a non-law bachelor's degree. To some extent, this 2.5-year form of training is relatively similar to the Juris Doctor degree in the United States and other countries.

<sup>28</sup> Distance learning legal education is premised on self-study by the students. In Vietnam, enrolment in a distance-learning law degree will allow students a maximum eight years to complete their study. Within this time, law teachers will provide in-person or distance instruction and explanation to support students' self-study. Upon successful completion of their study within that time frame, students will be awarded a Bachelor of Laws degree.

<sup>29</sup> Under the existing Vietnamese system, in order to obtain admission to the Vietnamese Bar Federation, various criteria have to be met: 'Having Vietnamese citizenship; demonstrating loyalty to the motherland and the Constitution of the Socialist Republic of Vietnam; observing the Constitution and law; having good moralities; holding a Bachelor of Laws degree; having been trained in legal profession; having gone through the probation of legal profession; having good health for working in the legal profession'. See the *2006 Lawyer Act* of Vietnam (adopted in 2006 by the National Assembly and came into force in 2007) s 10, <[http://moj.gov.vn/vbpq/Lists/Vn%20bn%20php%20lut/View\\_Detail.aspx?ItemID=15094](http://moj.gov.vn/vbpq/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=15094)>; see also below section 4.4 of Chapter Four for more details of the process for training a qualified lawyer in Vietnam.

the current legal profession and identify any remaining deficiencies in the Vietnamese system. The examination of these deficiencies establishes a significant foundation for the future possibilities for reforming Vietnamese legal education – the principal objective of this thesis.

Thirdly, current undergraduate legal education has been identified as problematic.<sup>30</sup> One of the most challenging problems is the lack of professional training that has been frequently cited as a reason for law graduates' lack of readiness for the profession. Since CLE is an innovative methodology for effectively teaching students about practical legal knowledge and professional skills, attention in this thesis to undergraduate legal education has the potential to fill in the professional training gaps in Vietnamese legal education.

Finally, in this thesis, the central hypothesis and related research questions are examined primarily by conducting empirical research through interviews and focus group discussions of teachers and others concerned with undergraduate legal education. Constraints of time and resources did not permit examination of other forms of Vietnamese legal education.

## **1.5 Research Methodology**

The hypothesis of this thesis was examined and investigated through reviewing the existing literature and conducting empirical research. The overall research methodology of this thesis is as follows:

### **1.5.1 Literature Review**

The thesis draws extensively on the international literature on legal education, the global clinical movement and how CLE helps to reform legal education. The preliminary review of literature established the background and basic theory for the study. Importantly, the literature review also assisted in planning for empirical research and in designing

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<sup>30</sup> See below section 4.5 of Chapter Four for a discussion of the various challenges for Vietnamese legal education.

questions for interviews and focus group discussions undertaken at the later stages of the research process.

In particular, various literature themes reviewed included, but were not limited to, legal education and legal education reform around the world; the current state of and the challenges for Vietnamese legal education and demand for reform; CLE at a regional and universal level; major global debates about clinical methodology in legal education; the arrival and current state of CLE in Vietnam; possibilities for reforming legal education around the world; CLE as an appropriate option for the reform of Vietnamese legal education; and the global experience and lessons in adopting and incorporating CLE into law curricula.

### **1.5.2 Empirical Research**

Empirical research constitutes a significant component of the research methodology. Detailed, semi-structured interviews were conducted with various legal education stakeholders in Vietnam. These people included Vietnamese law school leaders and managers, law teachers, law students, practising lawyers and relevant judicial officials. In addition, focus-group discussions were conducted in Vietnam in order to obtain in-depth and comprehensive opinions on relevant topics.

## **1.6 Structure of the Thesis**

The thesis is constructed in eight chapters, as follows:

*Chapter One – Clinical Legal Education as a Means to Reform Legal Education: the Theory Background, Research Context, and General Overview of the thesis*

This chapter acts as an introduction to the thesis and an overview of the issues presented and discussed throughout. The chapter addresses issues such as research problems and context, theoretical background, research hypothesis and related questions, subsidiary research questions, scope of study, research methodologies and structure of the thesis.

## *Chapter Two — Clinical Legal Education as a Means for Legal Education Reform in the Literature*

This chapter reviews the themes of international literature relevant to the research topic.

## *Chapter Three — Research Methodology*

This chapter presents and describes in detail the methodologies employed to explore the research questions and to examine hypotheses.

## *Chapter Four — Vietnamese Legal Education: the History, Current State and Challenges*

The chapter discusses the history and current situation of, and the challenges for, the overall Vietnamese legal education system. Using the literature and the empirical research findings, the chapter aims to provide a comprehensive picture of Vietnamese legal education, the legal profession and the considerable limitations of the current system. The chapter deals with the history of Vietnamese legal education, the current status and structure of the legal education system, the legal profession, the Judicial Academy (JA) and the training of qualified lawyers in Vietnam and, finally, the principal challenges facing Vietnamese legal education.

## *Chapter Five — Reforming the Vietnamese Legal Education System: What Makes CLE a Promising Option?*

This chapter draws on the empirical research to examine the demand for reform in Vietnamese legal education and the various options for such reform, including CLE.

## *Chapter Six — Clinical Legal Education as a Means to Reform Vietnamese Legal Education: the Current Situation*

This chapter uses the empirical research to examine the current state of CLE in Vietnam in the light of calls for legal education reform. Issues covered in this chapter include the historical development of CLE in Vietnam, forms and models of CLE as trialled in Vietnam,



the current position of CLE in law schools' curricula, issues of student supervision within CLE and the status of clinicians<sup>31</sup> in Vietnamese law schools, and, finally, the financing of Vietnamese clinical programs.

#### *Chapter Seven – The Future Possibilities of CLE in Vietnam*

This chapter discusses future possibilities for CLE in Vietnam, in the light of the analyses in prior chapters, the literature and the empirical research. The chapter discusses issues such as which clinical models will work best in the Vietnamese setting; CLE in Vietnamese law school curricula; voluntary, elective or mandatory CLE?; possibilities for improving supervision in clinical programs; and the roles of international organisations, law schools, the Vietnam Bar Federation, local Bar Associations, the central government and relevant national agencies in funding CLE.

#### *Chapter Eight – Summary of Thesis Contributions, Recommendations and Conclusion*

This chapter provides a summary of the research results and thesis contributions and proposes recommendations for the future development and sustainability of CLE, in an effort to strengthen the overall legal education system in Vietnam.

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<sup>31</sup> In this thesis, clinicians (also known as clinical teachers) are law teachers who teach and supervise clinical students in various CLE programs. The term clinician is used to differentiate a clinical teacher from a doctrinal law teacher (one who teaches and conducts research in a certain area of substantive law).

## **CHAPTER TWO**

### **CLINICAL LEGAL EDUCATION AS A MEANS FOR LEGAL EDUCATION REFORM IN THE LITERATURE**

#### **2.1 Introduction**

Global legal education has experienced challenges in preparing students for the profession and this situation has led to many calls for reform. While various approaches have been employed to reform legal education in order to increase law graduates' readiness for employment, clinical legal education (CLE) appears to be one of the most promising options. As CLE develops, takes root and becomes a global movement,<sup>32</sup> the global literature strongly indicates that it has proven to be an effective methodology in teaching law. This is why many legal education systems around the world are incorporating a clinical approach.

This chapter reviews the literature about challenges facing legal education around the world, the possibilities for legal education reform and CLE as a means for this reform. These issues are analysed and discussed in the context of the global clinical movement and the observations of many scholars who have examined the field internationally and regionally.

In general, the review of literature in this chapter is important in establishing a global background for the research. Challenges facing global legal education have created barriers for law schools to efficiently prepare their students for the profession. Accordingly, the demand for legal education reform is not unique to any individual country, but is a common concern around the world.

In addition, this chapter also aims to establish a basic conceptual and theoretical framework to support the discussions and arguments in later parts of the thesis. CLE is seen in the existing literature as one of the most promising approaches for legal education

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<sup>32</sup> Bloch, above n 2.

reform and this has been demonstrated in the legal education practice of many countries.

## **2.2 Global Legal Education: Challenges and the Demand for Reform**

### ***2.2.1 Challenges Facing Global Legal Education***

One of the issues discussed in the existing literature is the purpose of legal education. To some extent, understanding the purposes of legal education may assist in further clarifying the challenges facing law schools in preparing their law graduates for the profession. Quite often, legal education is missioned to 'produce' lawyers. Sullivan et al, for example, maintain that a given law school can have multiple purposes but the principal one is to teach students how to practise law and prepare them effectively for the legal profession.<sup>33</sup> Similarly, Reynolds believes there are two important considerations in the training of a law student: '[s]he should acquire an understanding of basic legal concepts that are used in every area of the law, and she should develop the professional skills needed to represent a client'.<sup>34</sup> To put it another way, a law graduate is expected to have not only knowledge of law but also the necessary skills to apply that knowledge to address legal problems in reality. Aiken even argues that the mission of legal education is to prepare law students to be not only 'practice-ready' but also 'justice-ready'.<sup>35</sup> In her view, social justice education is also a mission of law schools and it should become a component of the legal education process.

From a Nigerian legal education perspective, Oke-Samuel suggests that a law graduate must have capacity to '[u]se law as a tool for the resolution of various social, economic and political conflicts in society'.<sup>36</sup> Accordingly, he argues that 'the training in law is specifically aimed at producing lawyers whose level of education would equip them properly to serve as legal advisers' in both the public and private sectors.<sup>37</sup> Since the activities of governments, companies and individuals are expected to be carried out

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<sup>33</sup> See William M Sullivan, et al, *Educating Lawyers: Preparation for The Profession of Law* (Summary) (Carnegie Foundation, 2007) 3–5.

<sup>34</sup> See William L Reynolds, 'Back to the Future in Law Schools' (2011) 70 *Maryland Law Review* 451, 453.

<sup>35</sup> See Jane H Aiken, 'The Clinical Mission of Justice Readiness' (2012) 32(2) *Boston College Journal of Law and Social Justice* 231, 231.

<sup>36</sup> See Olugbenga Oke-Samuel, 'Clinical Legal Education In Nigeria Developments and Challenges' (2008) 17 *Griffith Law Review* 139, 140.

<sup>37</sup> *Ibid.* 3

within a legal framework, Oke-Samuel suggests the output or end result of the law degree should meet the needs of such agencies, institutions or individuals.<sup>38</sup>

#### *2.2.1.1 Legal Education Focuses on Theoretical Education and Lacks Professional Training*

In particular, global legal education has been criticised for not adequately preparing law students for their future employment. In the United States, for example, the MacCrate Report identified that the legal profession requires a composite of certain skills and professional values, many of which are inadequately taught by the institutions responsible for the production of lawyers.<sup>39</sup> Sullivan et al suggest that law school provides the beginning, not the full development, of students' professional competence and identity but what most students receive as a 'beginning', is insufficient.<sup>40</sup> In the view of Munro, although American legal education is 'widely admired around the world'<sup>41</sup>, it is an ineffective system with many challenges.<sup>42</sup> He believes American legal education is:

A system ignoring the constituencies a law school serves, not knowing what lawyers do, what law students need to learn, how law students learn best, what teaching methods are most effective, how to determine whether students have learned, what responsibilities the law school has to the profession and society, and how the school knows it is discharging these responsibilities.<sup>43</sup>

A similar challenge is seen in other countries. For example, as Oke-Samuel has pointed out, lawyers produced by the Nigerian legal education system are:

... ill-equipped to cope with the challenges of dismantling the vestiges of colonialism and militarism. These include authoritarianism, violation and abuse of court orders and processes; abuse and violation of human and people's rights; and denial of access to justice.<sup>44</sup>

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<sup>38</sup> Ibid.

<sup>39</sup> See generally, American Bar Association Section of Legal Education and Admission to the Bar, *Legal Education and Professional Development – An Education Continuum* (Report of the Task Force on Law Schools and the Profession: Narrowing the Gap) (often known as the 'MacCrate Report') 1992.

<sup>40</sup> Sullivan et al, above n 33, 8.

<sup>41</sup> See Gregory S Munro, Outcomes Assessment for Law Schools 46, n 113 (2000), cited in Roy Stuckey et al, *Best Practices for Legal Education: A Vision and a Roadmap* (Clinical Legal Education Association, 2007) 2.

<sup>42</sup> Ibid.

<sup>43</sup> Ibid.

<sup>44</sup> Oke-Samuel, above n 36, 141.

Hong Kong is another jurisdiction that experiences the challenge of an imbalance between theoretical legal education and professional training. As Redmond and Roper have pointed out, Hong Kong legal education still witnesses the domination of a black-letter approach in a passive learning environment.<sup>45</sup> This may be one of the reasons why the Hong Kong legal education system fails to meet the needs of society and the need to produce law graduates to meet the challenges of Hong Kong's legal system.<sup>46</sup> Accordingly, Redmond and Roper called for reform in order to make fundamental changes to curriculum design as well as teaching, learning and assessment methods.<sup>47</sup>

With regard to professional training in the United States, Sullivan et al have pointed out that unlike other professional education, most notably medical school, legal education typically pays relatively little attention to direct training in professional practice.<sup>48</sup> Stuckey et al is of the opinion that 'law schools are not fully committed to preparing students for practice'.<sup>49</sup> Sandefur and Selbin share this view, arguing that 'law schools teach students to think like lawyers but not to act like them'.<sup>50</sup> In common with this view, Barry, Dubin and Joy believe that 'lack of professional training' is a big gap in global legal education and that the teaching of law should be delivered similarly to that of other professions such as physicians or architects.<sup>51</sup> Similarly, Amsterdam also argues that limited professional training is a major challenge of legal education:

... traditional legal education failed to develop in students ways of thinking within and about the role of lawyers — methods of critical analysis, planning and decision making which are not themselves practical skills but rather the conceptual foundations of practical skills and for much else.<sup>52</sup>

From the perspective of Iranian legal education, Araghi and Raeisi believe that the Iranian

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<sup>45</sup> See Paul Redmond and Christopher Roper, *Legal Education and Training in Hong Kong: Preliminary Review — Report of the Consultants* (August 2001), cited in Luke Marsch, Michael Ramsden and Christopher Young, 'Legal Reform in Hong Kong: A History of Reform', in Sarker, above n 2, 65.

<sup>46</sup> Ibid.

<sup>47</sup> Ibid.

<sup>48</sup> Sullivan et al, above n 33, 6.

<sup>49</sup> Stuckey et al, above n 41, 16–37.

<sup>50</sup> See Rebecca Sandefur and Jeffrey Selbin, 'The Clinic Effect' (2009) 16(1) *Clinical Law Review* 57, 58.

<sup>51</sup> Barry, Dubin and Joy, above n 7, 34.

<sup>52</sup> See Anthony G Amsterdam, 'Clinical Legal Education — A 21<sup>st</sup> Century Perspective' (1984) 34 *Journal of Legal Education* 612, 612.

system places an ‘unusual emphasis’ on theoretical courses.<sup>53</sup> This is often carried out at the cost of professional training in delivering legal education. Quite often, Iranian law students have relatively limited opportunities to be exposed to the real world of law and for experiential learning due to the disconnection between law schools and the bar, the Parliament and the judiciary.<sup>54</sup> These two authors have concluded that ‘lack of professional training and legal professional ethics is one of the most serious challenges that need improvement’<sup>55</sup> in the Iranian legal education system.

In a civil law country like China, similar challenges are also identified in the legal education system. Ling believes that the current Chinese system focuses on knowledge-centered education rather than on skill-oriented education.<sup>56</sup> This is not appropriate in the context of the demand for more practice-ready law graduates. Erie agrees with Ling on this issue, arguing that Chinese undergraduate legal education has paid little attention to professional skills training, and has emphasised instead the teaching of legal codes, principles and philosophy.<sup>57</sup>

The emphasis on legal theories, principles and codes is also found in other countries’ legal education systems. As Irish points out, almost all the civil law legal education systems experience a similar problem.<sup>58</sup> In Japan, for example, the teaching of six basic codes (the *Constitution*, the *Civil Code*, the *Criminal Code*, the *Commercial Code*, the *Code of Civil Procedure* and the *Code of Criminal Procedure*) is required in a highly theoretical and doctrinal legal education system.<sup>59</sup> Since these codes constitute a major proportion of the bar examination, both Japanese law teachers and students have to spend a lot of their time and effort on teaching and studying them. In Taiwan, Lo argues ‘the lecture method

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<sup>53</sup> See Setareh Saedi Araghi and Sadaf Raeisi, ‘Legal Education in Iran: From Theoretical Aspects to Practicality’, in Sarker, above n 2, 91.

<sup>54</sup> Ibid 95.

<sup>55</sup> Ibid 94.

<sup>56</sup> See Mao Ling, ‘Clinical Legal Education and the Reform of the Higher Legal Education System in China’ (2006) 30 *Fordham International Law Journal* 421, 429.

<sup>57</sup> See Matthew S Erie, ‘Legal Education Reform in China Through U.S.-Inspired Transplants’ (2009) 59 *Journal of Legal Education* 60, 68 cited in Cecily E Baskir, ‘Crossing Borders: Creating an American Law Clinic in China’ (2012) 19 *Clinical Law Review* 163, 168.

<sup>58</sup> See Charles R Irish, ‘Reflections of an Observer: The International Conference on Legal Education Reform’ (2007) 24 *Wisconsin International Law Journal* 5, 7.

<sup>59</sup> See, eg, Matsui Shigenori, ‘Turbulence Ahead: The Future of Law Schools in Japan’ (2012) 62 *Journal of Legal Education* 3, 4.

of teaching fails to develop students' independent thinking or analytical skills'.<sup>60</sup> In his view, this has led to a situation where Taiwanese law graduates are weak in competing with foreign law graduates for employment, both domestically and internationally.<sup>61</sup> A similar challenge is seen in other jurisdictions such as Germany, Vietnam and South Korea, where law schools place a heavy emphasis on the teaching of legal theories and principles at the expense of professional skills.<sup>62</sup>

#### *2.2.1.2 Problems with Teaching Methodologies*

Teaching methodology is also identified as problematic in many legal education systems around the world. Ling suggests that the Chinese knowledge-centred model of legal education has prevented law teachers from using skills-oriented teaching methodology.<sup>63</sup> In fact, Chinese law teachers are under pressure to deliver a relatively large volume of legal knowledge. They therefore have limited time to teach students professional skills. Also, in China, similar to many other civil law jurisdictions, legal education is teacher-focused rather than student-focused. Baskir has pointed out that a common teaching style in China is known as 'one-way-communication', where teachers give lectures while students passively listen and take notes.<sup>64</sup> German legal education also experiences a similar problem. In Geck's view, the German system is 'putting too much weight on passive learning and too little on independent decision-making'.<sup>65</sup> Quite often in Germany, law students tend to spend most of their time in classes listening to lectures and taking notes. Obviously, this one-way-communication education style is not appropriate to effectively teach students to think like lawyers and efficiently prepare them for the profession.

A similar situation is also seen in some common law jurisdictions. In Australia, for

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<sup>60</sup> See Chang-Fa Lo, 'Driving an Ox Cart to Catch up with the Space Shuttle: The Need for and Prospects of Legal Education Reform in Taiwan' (2007) 24 *Wisconsin International Law Journal* 41, 83.

<sup>61</sup> *Ibid.*

<sup>62</sup> See, eg, Wilhelm Karl Geck, 'The Reform of Legal Education in the Federal Republic of Germany' (1977) 25 *The American Journal of Comparative Law* 86, 89–92; Bui, above n 22, 306–14; Rosa Kim, 'The 'Americanization' of Legal Education in South Korea: Challenges and Opportunities' (2012) 38(1) *Brooklyn Journal of International Law* 49.

<sup>63</sup> Ling, above n 56, 429.

<sup>64</sup> Baskir, above n 57, 167–71.

<sup>65</sup> Geck, above n 62, 89.

example, the 1964 *Martin Report on the Future of Tertiary Education* regarded traditional Australian legal education as an over self-regulated profession which was not producing 'the "volume and form" of lawyers necessary for national economic growth'.<sup>66</sup> Similarly, the 1987 Pearce Report<sup>67</sup> criticised legal education for placing insufficient emphasis on the practical aspects of law; and the 2003 Australian University Teaching Committee report by Johnstone and Vignaendra,<sup>68</sup> criticised the primary focus on knowledge areas to the detriment of instruction and training in legal skills.

Keyes has pointed out that the problem of traditional Australian legal education is its teacher-focused, rather than student-focused, nature which emphasises the 'transmission of content knowledge and lack of attention to generic and legal professional skills'.<sup>69</sup> Similarly, Oke-Samuel argues that 'both the academic and vocational stages of Nigerian legal education are conducted by lecture and note-taking, with little or no room for interactive teaching methodologies'.<sup>70</sup> This problem is also found in Iraq where the 'lecture' is almost the exclusive method of instruction at law schools.<sup>71</sup>

Consequently, law graduates in many countries lack practical professional skills necessary to function effectively as lawyers. In many cases, they may know 'how to think like a lawyer' but do not know 'how to act like a lawyer'. Sullivan et al even argue that the current American legal education system might 'prolong and reinforce the habits of thinking like a student rather than a practicing lawyer'.<sup>72</sup> From the perspective of still powerful trends towards globalisation, Lo argues that the requirement for 'global lawyers' has not been met. In his view, under the continuing pressure of professional competition and globalisation, lawyers are expected to have not only a broad base of knowledge but also the ability to think creatively, independently and critically in order to

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<sup>66</sup> See C Parker and A Goldsmith, "'Failed Sociologists" in the Market Place: Law Schools in Australia' (1998) 25(1) *Journal of Law and Society* 33, 39.

<sup>67</sup> See, eg, Dennis Pearce, Enid Campbell and Don Harding, *Australian Law Schools: A discipline assessment for the Commonwealth Tertiary Education Commission* (AGPS, 1987) (known as the 'Pearce Report').

<sup>68</sup> Australian Universities Teaching Committee, *Learning outcomes and curriculum development in law a report commissioned by the Australian Universities Teaching Committee* (2003) <<https://trove.nla.gov.au/work/10560347?q&versionId=20331979>>.

<sup>69</sup> See Mary Keyes and Richard Johnstone, 'Changing Legal Education: Rhetorix, Reality and Prospects for the Future' (2004) 26 *Sydney Law Review* 537, 539.

<sup>70</sup> Oke-Samuel, above n 36, 141.

<sup>71</sup> See, eg, Haider Ala Hamoudi, 'Toward A Rule Of Law Society In Iraq: Introducing Clinical Legal Education Into Iraqi Law Schools' (2005) 23 *Berkely Journal Of International Law* 112, 118.

<sup>72</sup> Sullivan et al, above n 33, 6.



cope with the complexity of legal problems.<sup>73</sup> However, global legal education seems to be a long way from realising the training of lawyers who are competent to address transnational and global issues.<sup>74</sup>

### **2.2.2 Demand for Legal Education Reform**

In response to the challenges facing global legal education, there is an increasing demand around the world for reform. Globally, legal education reform began quite early in countries such as the United States<sup>75</sup> and Australia<sup>76</sup> and remains an on-going process. In the United States, for example, as Boyer and Cramton have pointed out, the demand for legal education reform was first discussed and recognised during the 19<sup>th</sup> century.<sup>77</sup> One of the most well-known reforms during this time was the application of the case law method of teaching law introduced by Christopher Columbus Langdell at Harvard in 1890.

As Sullivan et al suggest, the calls for more attention to skills training, experiential learning and the development of practice-related competencies in the United States have been heard and many law schools have expanded practice-preparation opportunities for students.<sup>78</sup> Yet there is a need to do much more, even in the United States. The balance between doctrinal instruction and focused preparation for the delivery of legal services needs to shift still further toward developing the competencies and professionalism required of people who will deliver services to clients.<sup>79</sup>

From the perspective of the United States, as Sullivan et al have pointed out, legal education urgently needs to 'bridge the gap between analytical and practical knowledge,

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<sup>73</sup> Lo, above n 60, 76.

<sup>74</sup> Bloch, above n 2.

<sup>75</sup> See, eg, Barry B Boyer and Roger C Cramton, 'American Legal Education: An Agenda for Research and Reform' (1974) 59 *Cornell Law Review* 221, 223–27; Jerome N Frank, 'Why Not a Clinical Lawyer-School?' (1933) 81 *University of Pennsylvania Law Review* 907, 909–13.

<sup>76</sup> See, eg, Nickolas J James, 'A Brief History of Critique in Australian Legal Education' (2000) 24(3) *Melbourne University Law Review* 965, 966–71; see also Vivienne Brand, 'Decline in the Reform of Law Teaching?: The Impact of Policy Reforms in Tertiary Education' (1999) 10 *Legal Education Review* 109, 110–13; Michael Chesterman and David Weisbrot, 'Legal Scholarship in Australia' (1987) 50 *The Modern Law Review* 709, 710–13.

<sup>77</sup> Boyer and Cramton, above n 75, 223–7.

<sup>78</sup> Sullivan et al, above n 33, 8–10.

<sup>79</sup> Ibid.

and a demand for more robust professional integrity'.<sup>80</sup> In teaching students, they say that law schools should seek to unite the two sides of legal knowledge: formal knowledge and experience of practice.<sup>81</sup> Similarly in Israel, the balance between theoretical instruction and practical education has been one of the significant concerns in legal education reform.<sup>82</sup> In Efron's view, this concern also has considerable impacts on the adoption of CLE at law schools in Israel.<sup>83</sup> In Iran, Araghi and Raeisi have argued that the reform of the Iranian legal education system is inevitable in order to better prepare students for the profession.<sup>84</sup> Some areas of reform to be considered include, but are not limited to, curriculum development, experiential learning, classroom management, coursework load, and an interdisciplinary approach.<sup>85</sup>

In a common law country such as Australia, legal education reform has been widely discussed among legal academics and the profession. In Australia, for example, the reform of legal education is driven by various factors such as the demands of students and the legal profession.<sup>86</sup> As James has identified, the first Australian law school was established at the University of Sydney in 1855, followed by the University of Melbourne law school in 1857 and the University of Adelaide law school in 1883. By 1936, each of the State capitals had a university law faculty.<sup>87</sup> The history of Australian law schools has revealed that legal education reform started in the late 19<sup>th</sup> century and has been an ongoing process.<sup>88</sup> In this reform process, the continuing tension between professional and academic requirements in legal education has been constant.<sup>89</sup>

Many other countries, including both developed and developing economies such as Canada, South Africa, Nigeria, China, Taiwan, Russia, Japan, South Korea, Indonesia,

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<sup>80</sup> Ibid.

<sup>81</sup> Ibid.

<sup>82</sup> See, eg, Yael Efron and Noam Ebner, 'Legal Education in Israel: Development and Challenges' in Sarker, above n 2, 108–15.

<sup>83</sup> Ibid; see also Yael Efron, 'Clinical Legal Education in Israel' in Sarker, above n 15, 91–106.

<sup>84</sup> Araghi and Raeisi, above n 53, 97.

<sup>85</sup> Ibid 97–8.

<sup>86</sup> See generally, Keyes and Johnstone, above n 69; Robert French, 'Legal Education in Australia — A Never Ending Story', paper presented at Australasian Law Teachers' Association Conference, 4 July 2011, Brisbane; see also Eugene Clark, 'Australian legal education a decade after the Pearce Report: A review of McInnis, C. and Maginso, S. Australian law schools after the 1987 Pearce Report' (1997) 8(2) *Legal Education Review*, article 5.

<sup>87</sup> James, above n 76.

<sup>88</sup> French, above n 86; Eugene Clark, above n 86.

<sup>89</sup> Brand, above n 76.

Pakistan, Cambodia, India and many from Latin and South America, have also been concerned about legal education reform.<sup>90</sup>

In Africa, the need to reform legal education was recognised by South Africa in the post-Apartheid era.<sup>91</sup> In Maisel's view, building a democratic society and strengthening human rights were seen as the most important driving forces for legal education reform in South Africa.<sup>92</sup> In Nigeria, the demand for legal education reform has also been widely recognised:

... in particular a need to devise a new method of training in order to produce a new generation of lawyers, with a level of practical experience that will enable them to be responsive to the needs of the people and the society.<sup>93</sup>

In Asia, legal education reform has been called for and undertaken in many countries. In China, for example, Ling suggests that only reform can help address the problems facing the Chinese legal education system.<sup>94</sup> Reforming legal education has also been seen as an important condition for fostering a 'rule-of-law' society which has become a government objective since Deng Xiaoping's leadership in the 1950s.<sup>95</sup> Additionally, as China becomes a leading world economy and trade partner of many major countries, the demand for international and global lawyers has forced the country to reform its legal education system.<sup>96</sup>

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<sup>90</sup> See generally, Maisel, above n 14; Oke-Samuel, above n 36; Baskir, above n 57; Shigenori, above n 59; Ajani Gianmaria, 'Legal Education in Russia: Present and Future – An Analysis of The State Education Standards for Higher Professional Instruction and Comparison with the European Legal Education Reform Experience' (1997) 4 *Review of Central and East European Law* 267, 267–99; Rosa Kim, 'Legal Education Reform in South Korea: Challenges of Transition' in Sarker, above n 2, 202–9; Jemma Parsons and Jamhari Makruf, 'Islamic Legal education in Indonesia: Tradition in Transition' in Stacey Steele and Kathryn Taylor (eds), *Legal Education in Asia – Globalization, Change and Contexts* (Routledge, 2010) 299–13; Osama Siddique, 'Legal Education in Pakistan: The Domination of Practitioners and the "Critically Endangered" Academic' (2014) 63 *Journal of Legal Education* 499, 506–11; Teilee Kuong, 'Legal Education in Cambodia: Shunning the Course of History' in Stacey Steele and Kathryn Taylor (eds), *Legal Education in Asia – Globalization, Change and Contexts* (Routledge, 2010) 279–90; Jane E Schukoske, 'Legal Education Reform in India: Dialogue Among Indian Law Teachers' (2009) 1 *Jindal Global Law Review* 251, 264–79; Juny Montoya, 'The Current State of Legal Education Reform in Latin America: A Critical Appraisal' (2010) 59 *Journal Legal Education* 545, 549–56; Thomas Chih-hsiung Chen, 'Legal Education Reform in Taiwan: Are Japan and Korea the Models?' (2012) 62 *Journal of Legal Education*, 32, 48–64.

<sup>91</sup> Maisel, above n 14, 379–87.

<sup>92</sup> Ibid.

<sup>93</sup> Oke-Samuel, above n 34, 141–2.

<sup>94</sup> Ling, above n 56, 429.

<sup>95</sup> See, eg, Pei Minxin, 'The Emergence of China Throughout Asia: Security and Economic Consequences for the US' (Statement to the Senate Foreign Relations Committee, 7 June 2005).

<sup>96</sup> Ibid.

Japan, South Korea and Taiwan are experiencing common problems in legal education such as a low pass rate in the bar examination, lack of professional training and heavy emphasis on the teaching of legal theory and knowledge.<sup>97</sup> Accordingly, there has been an increasing demand for legal education reform in these countries. For example, Lo suggests five principal reasons for the reform of Taiwanese legal education: the changing world; the changing role of the state; changing society and changing people; rapid development and advancing technology; and fiercely competing countries.<sup>98</sup> He believes that legal education reform will help Taiwanese law schools to produce global lawyers to compete with their international counterparts in the global professional market. In Japan, Shigenori identifies various limitations remaining in both law schools' education and professional training schools.<sup>99</sup> These, combined with problems associated with the Japanese national bar exam, have made reform of the national legal education system an urgent issue.<sup>100</sup>

In summary, the demand for legal education reform has been widely recognised and called for by various scholars in many countries around the world. The need has been reflected in the overwhelming global literature about this topic. The international push for legal education reform offers opportunities for a country like Vietnam to consider an appropriate approach for local reform. The following section of this chapter will look at various possibilities for legal education reform from the global perspective.

## **2.3 Legal Education Reform: a Global Perspective**

Legal education reform is not a unique issue for any individual country. It is in fact a common concern of both developed and developing countries. Globally, different approaches have been employed to reform law school education, particularly legal education at undergraduate level. The most important driving force for this reform appears to be the need to better prepare law graduates for the profession.

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<sup>97</sup> Chen, above n 90, 35–41.

<sup>98</sup> Lo, above n 60, 69–74.

<sup>99</sup> Shigenori, above n 59, 4–7 (identifying different challenges of Japanese traditional legal education: the system does not prepare students effectively for the bar examination; the system only produces a small number of lawyers every year; legal education focuses heavily on theoretical education).

<sup>100</sup> Ibid.

### 2.3.1 Moving Towards Graduate-level Legal Education

Perhaps one of the most prominent reforms has been the adoption of graduate legal education, along the lines of the United States' experience. Australia, Japan, South Korea and China offer some examples of this trend. John even argues that the widespread adoption of the JD degree over the LLB is the evidence of 'an inexorable move in the world toward the Americanisation of legal education'.<sup>101</sup>

In Australia, for example, in addition to the LLB degree, the Juris Doctor (JD) has been introduced by some law schools as a graduate law degree.<sup>102</sup> Cooper et al have identified four main reasons for this trend: the demand for better law graduates; the increased interest in postgraduate study by mature-aged students; the perception that full fee-paying JD students help fill funding shortfalls of law schools; and the international recognition of the JD degree.<sup>103</sup> The introduction of the JD degree has been seen in some quarters to be an important reform of Australian legal education as it can increase opportunities for entry to the legal profession.<sup>104</sup>

Japan<sup>105</sup> and South Korea<sup>106</sup> are another two examples of this trend. In these two countries, adopting a graduate legal education program has been a major reform strategy for the last two decades, to improve graduates' practice-readiness.<sup>107</sup> Japan and South Korea adopted the JD degree in 2004 and 2007 respectively, following the United States' experience. As Ginsburg argues, the introduction of graduate legal education into Japan and South Korea is considered a 'rare development outside the Anglo-American tradition'<sup>108</sup> but clearly an example of 'graduate legal education importing from

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<sup>101</sup> See Flood John, *Legal Education in the Global Context – Challenges from Globalization, Technology and Changes in Government Regulation* (University of Westminster School of Law Research Paper No 11-16, 1, 8 August 2011).

<sup>102</sup> See, eg, 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, 32.

<sup>103</sup> Ibid 24–5.

<sup>104</sup> Under the existing Australian legal system, either an LLB degree or JD degree is acceptable for admission to the legal profession. They are treated equally in terms of admission to the bar.

<sup>105</sup> See, eg, Shigenori, above n 59, 7–11.

<sup>106</sup> See, eg, Kim, above n 62, 15–21.

<sup>107</sup> See, eg, Irish, above n 58, 6.

<sup>108</sup> See Tom Ginsburg, 'Transforming Legal Education in Japan and Korea' (2004) 22 *Penn State International Law Review* 433, 434.

outside'.<sup>109</sup>

In China, as Erie suggests for similar reasons, the Juris Master (JM) degree was introduced by some law schools in the 1990s.<sup>110</sup> In fact, the JM degree was based on the format of the JD degree in the United States. According to John, the JM degree came from the idea to 'modernize legal education along United States lines both in content and form'.<sup>111</sup> Considered as one of the most significant legal education reforms in China, the JM degree was initiated and developed by the Ministry of Justice and the Ministry of Education. The principal objective of this JM degree is to link legal education with the legal profession, provide law students with more professional skills training and help them prepare for their future of practising law.<sup>112</sup>

In Taiwan, Lo has pointed out various legal education challenges in common with those in Japan and South Korea.<sup>113</sup> In his view, under the pressure of globalisation and international competition, the Taiwanese legal education system needs to be reformed for the better training of lawyers. This view is shared by Chen, arguing (in the light of legal education reform) that the JD degree is an appropriate option and Taiwan may become the next jurisdiction to join this group of countries in offering graduate-level legal education.<sup>114</sup>

### **2.3.2 Curriculum Reform**

Curriculum reform is another option for legal education reform at many law schools around the world.<sup>115</sup> In fact, curriculum reform is an on-going process in order for law schools to respond to dynamic social changes and the demand for better legal education. Meeting these changes seems to require some rethinking of the basic law curriculum.<sup>116</sup> As Goldring, Sampford and Simmonds have pointed out, during the 1980s Australian law

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<sup>109</sup> Ibid.

<sup>110</sup> Erie, above n 57, 64.

<sup>111</sup> John, above n 101, 23.

<sup>112</sup> Erie, above n 57, 64.

<sup>113</sup> Lo, above n 60, 83.

<sup>114</sup> Chen, above n 90, 32–5.

<sup>115</sup> See, eg, Johnson, Danforth and Millon, above n 18, 11–39; Schwartz and Ho, above n 18, 42–77; Cleave, above n 18, 115–37.

<sup>116</sup> Reynolds, above n 34, 457.

schools started to move away from the traditional 'trade school' approach and toward the classic, liberal model of university education.<sup>117</sup> As Wenzler and Kwietniewska argue, the pressure of the financial crisis, the increasing globalisation of law practice and the pressure of competition have required law schools to put more effort and resources into reviewing and reforming their curricula.<sup>118</sup>

One trend of curriculum reform in legal education is to increase the teaching of non-law courses. Given that legal problems are multidimensional and should consequently be addressed by a multidisciplinary approach, many law schools have included courses from other disciplines such as social work, finance or economics in their curricula. In Australia, for example, Keyes and Johnstone note that many law schools are moving to an interdisciplinary approach by having included in their curricula courses teaching integrated knowledge and skills.<sup>119</sup>

Additionally, many law schools are also teaching their students about international law, international trade law and different areas of foreign law.<sup>120</sup> As Wenzler and Kwietniewska have pointed out, one of the main challenges facing legal practitioners these days is 'the increasingly international and complex context of their work'.<sup>121</sup> Understanding a single, national body of law therefore is no longer sufficient for a lawyer to successfully meet many client demands.<sup>122</sup> This is a profound change in thinking for many legal educators. Consequently, law schools around the world have included in their curricula courses or subjects such as international law, international trade, international commercial transactions, or World Trade Organisation rules. For example, as China becomes a major trade partner, the teaching of foreign law has formed a part of the Chinese legal education system.<sup>123</sup> Similarly, in the United States courses about Chinese law, Japanese law, or the law of EU countries have become more and more common at

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<sup>117</sup> See Jack Goldring, Charles Sampford and Ralph Simmonds (eds), *New Foundations in Legal Education* (1998), cited in Keyes and Johnstone, above n 69, 549.

<sup>118</sup> Wenzler and Kwietniewska, above n 3, 463.

<sup>119</sup> Keyes and Johnstone, above n 69, 550.

<sup>120</sup> Wenzler and Kwietniewska, above n 3, 463–6.

<sup>121</sup> *Ibid.*

<sup>122</sup> *Ibid.* 463.

<sup>123</sup> See, eg, Ha Thi Nguyen, 'Legal Education trends in the Light of Globalisation and Economic Integration' (paper presented at International Workshop *Legal Education in the Context of Globalisation*, Hue University School of Law - December 2015).

many law schools.<sup>124</sup>

The teaching of international law and law of other countries has also been included in Australian legal education. As Clark noted, during the 1990s Australian transnational legal education emerged and focused on issues such as international trade law and Asian law.<sup>125</sup> More recently, most Australian law schools require their students to complete at least one international course such as public international law or international trade law.<sup>126</sup> Others promote the teaching of international law and law of other countries through 'reciprocal teaching and student exchange programs with overseas law schools'.<sup>127</sup> Some have even made 'comparative' and international law their special focuses.<sup>128</sup>

Significantly, the number of courses teaching professional skills has increased among law schools' curricula. In the United States system, for example, as Irish has pointed out, there was a 'shift away from pure legal doctrine and theories in the first half of twentieth century'<sup>129</sup> by introducing more professional skills courses including clinical legal education (CLE).<sup>130</sup> The MacCrate Report also identified that the growth of the skills training curriculum has been the most significant development in the post-World-War-II era of United States' legal education.<sup>131</sup> Stuckey has a similar view on this issue. He notes that in the beginning of the 1950s legal education reformers made various attempts to teach students skills necessary for the profession.<sup>132</sup> These included a combination of practical and clinical courses.<sup>133</sup> In Australia, Keyes and Johnstone have pointed out that

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<sup>124</sup> Ibid.

<sup>125</sup> See Eugene Clark, 'Internationalisation: Its Impacts on Undergraduate, Pre-Admission and Continuing Legal Education' (1995) 13 *Journal of Professional Legal Education* 101.

<sup>126</sup> Keyes and Johnstone, above n 69, 551.

<sup>127</sup> Ibid.

<sup>128</sup> See, eg, Richard Johnstone and Sumitra Vignaendra, *Learning Outcomes and Curriculum Development in Law* (Higher Education Group - Department of Education, Science and Training, 2003), cited in Keyes and Johnstone, above n 69, 551.

<sup>129</sup> Irish, above n 58, 6.

<sup>130</sup> Ibid.

<sup>131</sup> McCrate Report, above n 39, 6 (identifying that 20 years ago, the typical skills training component of a law school curriculum consisted of a first-year moot court program, and perhaps a trial advocacy course. Today, clinical courses, both in a simulated and live-client setting, occupy an important place in the curriculum of virtually all ABA-approved law schools).

<sup>132</sup> See Roy T Stuckey, 'Education for the Practice of Law: The Times They are A-Changin' (1996) 75 *Nebraska Law Review* 648, 653.

<sup>133</sup> Ibid.



many law schools have increased the teaching of legal skills, ethics and theory.<sup>134</sup> This was seen as a positive response to the recommendations of the Pearce Report — ‘the most comprehensive and significant investigation undertaken of Australian legal education’.<sup>135</sup>

As the MacCrate Report has also identified, as recently as 20 years ago, the typical skills training component of a law school curriculum consisted of a first-year moot court program and perhaps a trial advocacy course. Today, clinical courses, both in a simulated and live-client setting, occupy an important place in the curriculum of virtually all ABA-approved United States law schools.<sup>136</sup> The report states:

Many are taught by full-time faculty members who, pursuant to an ABA accreditation standard, are eligible for tenure or some form of equivalent job security. A clinician is present on virtually every ABA site inspection team to help the team evaluate the quality of the law school's skills-training program, with particular emphasis placed on the commitment of resources and the availability of full-time faculty supervision when students are involved in externship forms of clinical programs.<sup>137</sup>

### ***2.3.3 Moving Towards a Clinical Approach in Legal Education***

General curriculum reform is one thing, but the literature suggests that one of the most noticeable and significant legal education reforms since the introduction of case law method by Langdell in 1890, has been the adoption of CLE as a teaching pedagogy by law schools around the world.<sup>138</sup> Globally, because of its strengths, benefits, and contributions to legal education, CLE has been increasingly adopted and incorporated into law school curricula.<sup>139</sup> As Bloch has pointed out, besides the recognised pioneers in the global clinical movement, such as the United States, Australia, Canada, South Africa and the United Kingdom, many other countries have also been in the process of adopting

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<sup>134</sup> Keyes and Johnstone, above n 69, 549.

<sup>135</sup> See, eg, David Barker, ‘The Pearce Report — Does It Still Influence Australian Legal Education?’ (2014) 7 *Journal of the Australasian Law Teachers Association* 77–86 (noting that the Pearce Report, released in 1987, has been considered to be an important document affecting the reform and development of Australian legal education); see also Denis Pearce, Enid Campbell and Don Harding, *Australian Law Schools: A Discipline Assessment for the Commonwealth Tertiary Education Commission* (AGPS, 1987).

<sup>136</sup> MacCrate Report, above n 39, 6.

<sup>137</sup> *Ibid.*

<sup>138</sup> Wilson, above n 9, 421.

<sup>139</sup> See generally, Bloch, above n 2; Sarker, above n 15; Wilson, above n 8.

CLE.<sup>140</sup> They include, but are not limited to, Japan, China, India and those in Latin America, Central and Eastern Europe, Continental Western Europe, Africa, the Middle East, Pacific Island nations, and Southeast Asia.<sup>141</sup> In particular, Asia has recently been seen as a region with a growing interest in adopting CLE for strengthening and innovating legal education.<sup>142</sup> CLE has gradually demonstrated itself to be an innovative and productive approach in teaching students professional skills and legal ethics and in effectively preparing them for the profession.<sup>143</sup>

In summary, legal education reform has been an ongoing concern of many countries around the world. Different approaches have been employed by law schools to strengthen and innovate the teaching of law in response to the demand for practice-ready law graduates. Each of these options has its own strengths and might be suitable to a country at a certain point of time. Therefore, the issue of whether or not CLE is adopted to address the challenges facing legal education will very much depend on the circumstances of each country, based on local political, legal and cultural foundations. The following part of the chapter will further explore CLE as a general approach to legal education reform.

## **2.4 Clinical Legal Education as a Means to Reform Legal Education**

### ***2.4.1 The Global Movement Towards Clinical Legal Education***

Nowadays, clinical programs are offered at many law schools around the world to teach students professional skills and at the same time help promote access to social justice. Bloch believes that CLE has been widely developed and become a 'global movement'.<sup>144</sup>

#### ***2.4.1.1 Early Development of the Global Clinical Movement***

In some countries considered to be the pioneers of the CLE movement, such as the United

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<sup>140</sup> Bloch, above n 2.

<sup>141</sup> Ibid; Sarker, above n 15; Wilson, above n 8.

<sup>142</sup> Sarker, above n 15.

<sup>143</sup> Bloch, above n 2; Sarker, above n 15; Wilson, above n 8; Giddings, above n 7.

<sup>144</sup> Bloch, above n 8, 112.

States,<sup>145</sup> Australia,<sup>146</sup> Canada<sup>147</sup> and South Africa,<sup>148</sup> clinical programs are now important components of legal education.

It is widely agreed that CLE was originated in the United States in order to supplement students' legal education (to provide students with more real world and practical experience) and, at the same time, to bring legal services to underprivileged people.<sup>149</sup> As Giddings et al have noted, various major social issues of the 1960s and 1970s (such as poverty and civil rights, the women's movement and the Vietnam War) had a significant influence on these early CLE programs in the United States.<sup>150</sup> This led to increasing student demand for CLE and the focus on clinical programs in such areas as poverty law, civil rights, women's rights, consumer rights and environmental protection.<sup>151</sup> The early development of CLE in the United States also witnessed the involvement of the Ford Foundation as a major donor to various clinical programs through the Council on Legal Education and Professional Responsibility.<sup>152</sup> Nowadays, CLE is one of the most important achievements of American law schools. It is also a typical characteristic of the American legal education system admired by other countries.<sup>153</sup>

In Australia, James has suggested that 'during the 1990s Australian legal education scholarship generally shifted towards emphasising clinical or skills-based legal education'.<sup>154</sup> As Cody has pointed out, in the academic year 2013-14, 25 Australian law schools offered clinical courses to teach students professional knowledge, skills, and values.<sup>155</sup> Tranter maintains that the ideal type of Australian CLE has been 'where law students work at a community legal centre providing legal services to the "disadvantaged" in the practice areas of minor crime, family, housing, social security, neighbourhood issues and consumer credit law'.<sup>156</sup> After more than 40 years of

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<sup>145</sup> See, eg, above n 9 and n 10; see also Barry, Dubin and Joy, above n 7, 9-12.

<sup>146</sup> See, eg, above n 11, n 12 and n 13.

<sup>147</sup> See, eg, Jeff Giddings et al, 'The First Wave of Modern Clinical Legal Education: The United States, Britain, Canada, and Australia' in Bloch, above n 2, 7-8.

<sup>148</sup> Maisel, above n 14.

<sup>149</sup> Giddings et al, above n 146, 5; Barry, Dubin and Joy, above n 7, 5-11.

<sup>150</sup> Giddings et al, above n 146, 5.

<sup>151</sup> Ibid.

<sup>152</sup> Ibid.

<sup>153</sup> Bergman, above n 10, 109.

<sup>154</sup> James, above n 76, 974.

<sup>155</sup> Cody, above n 12.

<sup>156</sup> See K Tranter, 'The Different Side of Society: Street Practice and Australian Clinical Legal Education'

development, the live client in-house clinic is still a prominent CLE model in many Australian law schools. Australian CLE has even gone further by researching and publishing best practices for building, maintaining and developing clinical programs.<sup>157</sup> These best practices encompass various standards, recommendations and guidelines on how to effectively create and operate a CLE program. Although developed within the Australian context, these best practices are expected to be a significant resource for other countries, particularly CLE newcomers, to build, maintain and develop their clinical programs.

South Africa pioneered a clinical approach for teaching law on the African continent. Maisel has noted that all law schools in South Africa have established a university-based clinic in order to teach students various professional skills necessary for the profession.<sup>158</sup> CLE emerged in South Africa during the Apartheid regime as a voluntary program run by law students and supervised by private attorneys on a rotating roster.<sup>159</sup> According to McQuoid-Mason, Ojukwu and George Wachira, many of these early clinical programs aimed to help the victims of Apartheid and other poor people access legal advice and assistance.<sup>160</sup> Nowadays, CLE constitutes a significant part of legal education in South Africa.<sup>161</sup>

In Canada, legal clinics were established in the early 1970s in some law schools such as University of Manitoba Legal Aid, Student Legal Services at University of Alberta, Downtown Legal Service at the University of Toronto, Community Legal Advice Services at Osgoode hall, and Community Legal Aid at University of Windsor.<sup>162</sup> As Giddings et al have noted, these clinics, housed in the law schools, were often run by volunteer students who received 'little or no academic credit'.<sup>163</sup> Early development of CLE in Canada also witnessed clinics established and located in communities with federal government

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(2006) 15 *Griffith Law Review* 1, 3.

<sup>157</sup> See Adrian Evans et al, *Best Practices: Australian Clinical Legal Education* (Department of Industry, Innovation, Science, Research, and Tertiary Education, 2012).

<sup>158</sup> Maisel, above n 14, 387–8.

<sup>159</sup> *Ibid* 380.

<sup>160</sup> See, eg, David McQuoid-Mason, Ernest Ojukwu and George Mukundi Wachira, 'Clinical Legal Education in Africa: Legal Education and Community Service' in Bloch, above n 2, 23.

<sup>161</sup> *Ibid*.

<sup>162</sup> Giddings et al, above n 147, 7.

<sup>163</sup> *Ibid*.

funding.<sup>164</sup> These included Community Legal Service, Inc. of Point St. Charles in Montreal, Dalhousie Student Legal Aid, Osgoode Hall Law School (for Parkdale Community Legal Service) and Saskatoon Legal Assistance Society (College of Law, University of Saskatchewan).<sup>165</sup> Giddings et al argue that, in Canada, 'in comparison with law school-based clinics, these community CLE program had a broader vision of access to justice'.<sup>166</sup> Nowadays, new clinical programs have continued to be created and become an important component of Canadian legal education.<sup>167</sup>

#### *2.4.1.2 Asian Countries Within the Global Clinical Movement*

Asian countries have also been prominent in their attempts to reform their legal education systems<sup>168</sup> and CLE is emerging to complement improvements to doctrinal legal education.<sup>169</sup> In China, for example, Yanmin and Pottenger have pointed out that CLE was introduced in the early 1990s at Wuhan University — a pioneer of the Chinese clinical movement.<sup>170</sup> This was seen as a response to the various challenges created by a long-standing doctrinal Chinese legal education system. The university established the Wuhan Center to deliver CLE to students.<sup>171</sup> It was then followed by the Women's Legal Aid Center supported by Beijing University a couple of years later.<sup>172</sup> From 2000, the Ford Foundation increased its support and promotion of CLE in China by providing more funding for Chinese universities to establish and run legal clinics.<sup>173</sup> Also in the same year, the Committee on Chinese Clinical Legal Education (CCCCLE) was established as a coordinating body of Chinese CLE.<sup>174</sup> As Baskir, Liqun and Ao have pointed out, by May 2014 the CCCCLE had 177 school members with 187 different law clinics and over 800 clinical teachers.<sup>175</sup>

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<sup>164</sup> Ibid.

<sup>165</sup> Ibid.

<sup>166</sup> Ibid 8.

<sup>167</sup> Ibid.

<sup>168</sup> Sarker, above n 15.

<sup>169</sup> Bloch, above n 2; Sarker, above n 15; Wilson, above n 8.

<sup>170</sup> See, eg, Cai Yanmin and JL Pottenger, 'The "Chinese Characteristics" of Clinical Legal Education' in Bloch, above n 2, 91.

<sup>171</sup> Baskir, above n 57, 171–3.

<sup>172</sup> Yanmin and Pottenger, above n 170, 92.

<sup>173</sup> Baskir, above n 57, 172–5.

<sup>174</sup> Yanmin and Pottenger, above n 170, 93.

<sup>175</sup> See Cecily E Baskir, Ma Liqun and Li Ao, 'Chinese Clinical Legal Education: Globalizing and Localizing' in Sarker, above n 15, 39.

In Japan, CLE was seen, among other measures,<sup>176</sup> as an important option for legal education reform. In particular, CLE was believed to be a 'new kind of scholarship to bridge the gaps between theory and practice'<sup>177</sup> in legal education through the promotion of interactions between legal practitioners and law teachers. In Japan in 2006, 52 out of 74 law schools offered clinical courses in different forms such as externships, simulations and live-client clinics.<sup>178</sup> Of these, 38 schools were running live-client clinics by 2008.<sup>179</sup> The Japan Clinical Legal Education Association was also formed in 2008 with 212 clinical teachers as founding members.<sup>180</sup> In the view of Wilson and Joy et al, although Japanese CLE still remains in its infancy<sup>181</sup> and its future is uncertain,<sup>182</sup> there are positive signs to believe that CLE will develop and take root in Japan in the near future.<sup>183</sup>

In India, as Sarker notes, the birth of CLE was closely linked to the development of law school legal aid programs.<sup>184</sup> In particular, the Indian legal aid movement in the 1960s was one of the main driving forces for law schools to establish and run their clinical programs.<sup>185</sup> However, it was not until 1997 when the Bar Council of India issued a circular directing universities and colleges to review their curricula and include clinical-type programs and courses that CLE started to develop rapidly and become popular among legal education institutions in India.<sup>186</sup> This intervention was seen as a response to the failure of Indian law schools to employ effective teaching methodologies.<sup>187</sup> As

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<sup>176</sup> In Japan, legal education reform formed a significant part of the national law and judicial reform strategy. In addition to CLE, Japan has also been concerned about other issues such as adoption of graduate-level legal education, bar examination reform, law curriculum reform, and more. See, eg, Shigenori, above n 59; Peter A Joy et al, 'Building Clinical Legal Education Programs in a Country Without a Tradition of Graduate Professional Legal Education: Japan Educational Reform as a Case Study' (2006) 13(1) *Clinical Law Review* 417.

<sup>177</sup> Peter A Joy et al, above n 176, cited by Peter A Joy et al in 'Japan's New Clinical Programs: A Study of Light and Shadow' in Bloch, above n 2, 109.

<sup>178</sup> *Ibid.*

<sup>179</sup> See, eg, Matthew J Wilson, 'Legal Clinical Education in Japan: A Work in Progress' in Sarker, above n 2, 201.

<sup>180</sup> Joy et al, above n 177, 117.

<sup>181</sup> Wilson, above n 179, 210.

<sup>182</sup> Joy et al, above n 177, 115.

<sup>183</sup> *Ibid* 117–18.

<sup>184</sup> See Shuvro Prosun Sarker, 'Empowering the Underprivileged: The Social Justice Mission for Clinical Legal Education in India' in Sarker, above n 15, 177–9.

<sup>185</sup> *Ibid.*

<sup>186</sup> See, eg, Bruce A Lasky and MRK Prasad, 'The Clinical Movement in Southeast Asia and India: A Comparative Perspective and Lessons to be Learned' in Bloch, above n 2, 45–6.

<sup>187</sup> *Ibid.*

Bloch and Prasad have pointed out, one of the greatest successes of Indian CLE is the social justice mission incorporated in their programs.<sup>188</sup> This may be due to the social and political context of India where the government is under huge pressure to meet the demand for legal aid from the country's large population. The social justice mission can also be seen as one of the typical characteristics and the central objective of Indian CLE.<sup>189</sup>

In Southeast Asia, the University of the Philippines (the Philippines), Thammasat University and Chiangmai University (Thailand) are considered to be some of the first institutions in the region to adopt and develop CLE in supporting legal education.<sup>190</sup> Many other ASEAN countries,<sup>191</sup> recognising the values of CLE for legal education, have followed Thailand and the Philippines in adopting CLE for teaching law. Apart from Vietnam, these include Cambodia, Indonesia, Malaysia,<sup>192</sup> Singapore, Laos and recently Myanmar.<sup>193</sup>

One of the noticeable characteristics of CLE in Southeast Asia is the attention to community legal education. Many such CLE programs have been designed to enhance legal awareness and knowledge of marginalised and under-served people. As in many other regions,<sup>194</sup> international donors and supporters have played a significant role in initiating and fostering CLE in Southeast Asia. These include the United Nations Development Program (UNDP), Bridges Across Borders Southeast Asia Clinical Legal Education Initiatives (BABSEA CLE), Herbert Smith Freehills, and DLA Piper.<sup>195</sup> As Lasky and Sarker argue, although still at an early stage of development, CLE in Southeast Asia has the potential to develop and take root in the future as countries in the region see CLE as a promising option for reforming their legal education systems.<sup>196</sup>

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<sup>188</sup> Ibid.

<sup>189</sup> See Frank S Bloch and MRK Prasad, 'Institutionalizing A Social Justice Mission For Clinical Legal Education: Cross-National Currents from India to The United States' (2007) 13 *Clinical Law Review* 165, 165–70; see also Sarker, above n 184, 181–5.

<sup>190</sup> Lasky and Prasad, above n 186, 38–9.

<sup>191</sup> Ibid 38–42.

<sup>192</sup> See generally, Bruce A Lasky and Nazeri Mohamed Norbani, 'Development and Expansion of University-Based Community/Clinical Legal Education Programs in Malaysia: Means, Methods, Strategies' (2011) 15 *International Journal of Clinical Legal Education* 59.

<sup>193</sup> See, eg, Bruce A Lasky and Shuvro Prosun Sarker, 'Introduction: Clinical Legal Education and Its Asian Characteristics' in Sarker, above n 15, 10–11.

<sup>194</sup> Wilson, above n 9, 424–7.

<sup>195</sup> Lasky and Sarker, above n 193, 10.

<sup>196</sup> Ibid.

#### 2.4.1.3 Clinical Legal Education in Europe

In Western Europe, the United Kingdom was one of the pioneers in accepting and developing CLE within its legal education system.<sup>197</sup> Giddings et al have pointed out that although a live-client clinic model has not been the main focus in Britain, CLE has flourished at a few law schools.<sup>198</sup> However, in the view of Wilson, Britain is also considered an exceptional case among Western European countries where there is still a heavy resistance to CLE.<sup>199</sup> For this reason, he has argued that Western Europe may be the 'last holdout' in the legal education world to accept CLE.<sup>200</sup>

In Central and Eastern Europe, the post-communist transition has significantly affected the initiation and development of CLE.<sup>201</sup> As Berbec-Rostas, Gutnikov and Namyslowska-Gabrysiak have suggested, after the collapse of the communist regime, many countries started to build democratic and rule-of-law societies in which the strengthening of the legal profession was an important factor.<sup>202</sup> Consequently, many initiatives, including CLE programs, have been encouraged by international donors and countries in the region in an effort to reform legal education and enhance the democracy-strengthening capacity of the legal profession. Organisations such as the American Bar Association's Central European and Eurasian Law Initiative (ABA CEELI), the Ford Foundation, the Open Society Institute, the Soros Foundation Network, the Constitutional and Legal Policy Institute (COLPI), and the Public Interest Law Institute (PILI) have been actively supporting and fostering the initiation and development of CLE in the region.<sup>203</sup>

Nowadays, CLE has developed and taken root in many central and eastern European countries such as Poland, Hungary, Bulgaria, Ukraine, Russia and the Western Balkans.<sup>204</sup>

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<sup>197</sup> See, eg, Richard J Wilson, 'Western European: Last Holdout In The Worldwide Acceptance Clinical Legal Education' (2009) 10 *German Law Journal* 823, 828.

<sup>198</sup> Giddings et al, above n 146, 6–7.

<sup>199</sup> Wilson, above n 197, 823.

<sup>200</sup> Ibid.

<sup>201</sup> See Mariana Berbec-Rostas, Arkady Gutnikov and Barbara Namyslowska-Gabrysiak, 'Clinical Legal Education in Central and Eastern Europe: Selected Case Studies' in Bloch, above n 2, 53–5.

<sup>202</sup> Ibid.

<sup>203</sup> Ibid; see also Wilson, above n 9, 424–7

<sup>204</sup> Berbec-Rostas, Gutnikov and Namyslowska-Gabrysiak, above n 201, 56–65.



CLE has acted as a significant motivation for the political transition and legal professional reform of these countries. As Berbec-Rostas et al have pointed out:

The role of legal clinics in assisting in shaping the future profession is without any doubt a topic that should be constantly present in political negotiations and discussions within the legal profession and with regard to the long-term success of rule of law reforms.<sup>205</sup>

The clinical movement in Central and Eastern Europe has contributed to success in the political transition process and in the promotion of social justice in post-communist countries.<sup>206</sup> More importantly, Wilson argues that the success of clinical programs in this region will be an important motivation and inspiration for the introduction and development of CLE in some Western European states such as Spain, Germany and Italy, where there appears still to be considerable resistance to CLE.<sup>207</sup>

#### *2.4.1.4 Clinical Legal Education in Latin America, Africa and the Middle East*

In other regions, such as Latin America and Africa, some countries have received support from outside donors to develop clinical programs. In Latin America, Castro-Buitrago, Espejo-Yaksic, Puga and Villarreal have noted that organisations including the United States Agency for International Development (USAID), the Ford Foundation, Yale University, Harvard University, the University of Wisconsin, and Stanford University have been active supporters in the initiation and development of CLE.<sup>208</sup> Building rule-of-law societies and strengthening social justice have been seen as important motivations for clinical programs to be initiated and developed in Latin American countries. By the 1980s and the early 1990s, many countries in the region had gone through authoritarian governments and started to build more democratic societies.<sup>209</sup> As Castro-Buitrago, Espejo-Yaksic, Puga and Villarreal suggest:

Although not yet consolidated in the region, new approaches to clinical education based on the ideological and practical tenants of public interest law (PIL) may, nevertheless, help provide new forms of conceiving the rule of law, provide access to justice to insular

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<sup>205</sup> Ibid 67.

<sup>206</sup> Ibid 56–65.

<sup>207</sup> Wilson, above n 197, 828–39.

<sup>208</sup> See Erika Castro-Buitrago et al, 'Clinical Legal Education in Latin America: Toward Public Interest' in Bloch, above n 2, 69.

<sup>209</sup> Ibid 70.

minorities, and provide remedies for more effective and fairer social policies.<sup>210</sup>

Although recognising that challenges remain for CLE at its early stage of development in the region, Castro-Buitrago et al have a very strong hope about the significant role that CLE will play in regional legal education reform:

Nonetheless, their stand against formalism and the inspiration that some clinics' PIL cases have had on law students and professionals have made clinics an increasingly better known model for channelling expectations of legal education reform, which so far has been deeply disappointing for law students and the communities that the law and the legal system should serve.<sup>211</sup>

In Africa, most clinical programs are live-client clinics established with two main purposes: teaching students practical skills and helping communities with legal service.<sup>212</sup> As McQuoid-Mason, Ojukwu and Wachira have pointed out, throughout the development of CLE in Africa, law school-based clinics tend to 'relate the teaching of legal skills to the social justice issues that law students experience through dealing with indigent and marginalized clients'.<sup>213</sup> In some schools with a mission to provide vocational training for law graduates, a clinical approach has been employed as the teaching methodology.<sup>214</sup>

After South Africa, other countries in Southern Africa, East Africa and West Africa established various legal clinics to deliver clinical programs to students and provide free service to under-served people.<sup>215</sup> As McQuoid-Mason argues, university legal aid clinics continue to have a 'valuable role in supplementing the work of [the] national aid body'<sup>216</sup> in Africa. In a continent like Africa, pressured by poverty and hunger, the balance between community service and the education mission has been and will be an important factor in the development and sustainability of CLE.<sup>217</sup>

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<sup>210</sup> Ibid 69.

<sup>211</sup> Ibid 84.

<sup>212</sup> McQuoid-Mason, Ojukwu and Wachira, above n 160, 23.

<sup>213</sup> Ibid.

<sup>214</sup> Ibid.

<sup>215</sup> Ibid 24-34.

<sup>216</sup> Ibid.

<sup>217</sup> Ibid.

In Israel, CLE was initiated and developed alongside the development of the national legal profession.<sup>218</sup> As in India, the very first effort in Israel to include an experiential learning approach in legal education was promoted through legal aid in the 1980s.<sup>219</sup> According to Efron, other factors affecting the development of Israeli CLE at its early stage were the debates between the private interest and public interest; and between skills and theory in legal education.<sup>220</sup> He believes that the flourishing development of Israeli CLE led to the establishment of the Board of Clinicians in Law Schools and Faculties in 2011. This volunteer arrangement has been playing a significant role in proposing ways for legal education reform and in fostering CLE in Israel.<sup>221</sup> A survey conducted by this board in 2012–13 showed that all 14 Israeli legal education institutions offer clinical programs, with 116 legal clinics established throughout the country.<sup>222</sup> In addition to common clinical models such as in-house clinics and externships, Israeli law schools also run clinical programs in partnership with non-academic organisations.<sup>223</sup> This has been part of an effort by Israeli law schools to diversify forms of CLE to serve students and the community.

Palestine is another country in the Middle East where CLE has been in the interest of law schools. Chavkin has noted that the first law clinic established in Palestine in 2006 was the Al-Quds University Clinic that focused on human rights protection.<sup>224</sup> As of 2016, all of the 11 law schools in Palestine now either operate a clinic or are ‘on the way’ to establish one.<sup>225</sup> As Qafisheh has noted, the Hebron University legal clinic — a major clinic in Palestine — has not only played a significant role in Palestine legal education but become a model for CLE in Palestine and in the Middle East region.<sup>226</sup> As is the case for many CLE programs in Southeast Asia and Eastern Europe, clinical programs in Palestine were initiated and supported by international organisations. UNDP was a primary donor

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<sup>218</sup> Efron, above n 82, 91.

<sup>219</sup> Ibid 93.

<sup>220</sup> Ibid 93–5.

<sup>221</sup> Ibid.

<sup>222</sup> Ibid 96.

<sup>223</sup> Ibid 100.

<sup>224</sup> See David F Chavkin, ‘Thinking/Practicing Clinical Legal Education from within the Palestinian-Israeli Conflict: Lessons from the AlQuds Human Rights Clinic’ (2010) 18(1) *Human Rights Brief* 14, cited in Wilson, above n 8, 293.

<sup>225</sup> Ibid.

<sup>226</sup> See Mutaz M Qafisheh, ‘Clinical Legal Education in Palestine: A Clinical Case under Military Occupation’ in Sarker, above n 15, 113.

which supported the establishment of six legal clinics in Palestine.<sup>227</sup> The main objectives were to encourage students' practice of law by applying their legal knowledge in the provision of legal assistance to communities.<sup>228</sup> Qafisheh notes that, in addition to various clinical programs such as legal aid, interactive teaching, moot court, internship, and lawyering skills training, the clinic has developed and maintained relationships with different international organisations and university-based legal clinics around the world.<sup>229</sup> This may be one of the important factors for Palestine CLE to develop further in the future. Qafisheh concludes that the future of Palestine CLE is uncertain unless legal educators carry out reform, including changing their perception of teaching and learning and the 'apprenticeship system and the concept of legal aid'.<sup>230</sup>

To summarise, CLE now has a global footprint and is increasingly expanding. As CLE's benefits to legal education and communities are increasingly demonstrated, more countries around the world have been moving toward a clinical approach for their legal education systems. In a context where legal education in many countries has failed to sufficiently prepare students for the profession, CLE appears to be a promising option for reform.

#### ***2.4.2. Forms of Clinical Legal Education***

As the global clinical movement has developed and expanded, the diversity of clinical methodologies is apparent in many countries. Various forms of experiential learning have been developed and delivered by law schools around the world, notably the live client in-house clinic, externships, and community legal education (sometimes known as the street law model). In some settings, simulations are also a popular approach to expose law students to realistic situations, in order to build their professional knowledge and to practise skills.

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<sup>227</sup> Ibid 114.

<sup>228</sup> Ibid.

<sup>229</sup> Ibid 116–8.

<sup>230</sup> Ibid 130.

#### 2.4.2.1 Live Client In-house Clinic

Live client is probably the most important form of CLE that many countries around the world would like to develop. As noted by Milstein, a live client in-house clinic looks very much like an actual law office, established 'for the purpose of providing students with a faculty supervised setting within which to practice law and learn from the experience'.<sup>231</sup> Similarly, Feber describes a live client in-house clinical course as a 'capstone educational experience, where law students work closely under the supervision of faculty to represent clients, draft legislation, or mediate disputes'.<sup>232</sup> In most cases, live client in-house clinics are established, operated and managed by law schools. Giddings, however, refers to agency clinics where student are working in 'an external agency but with academic supervision'.<sup>233</sup> In practice, agency clinics operate in a similar way to the university-based in-house clinic. Springvale Monash Legal Service in Victoria, Australia, is a good example of this form of CLE. There, Monash Law School works closely with a separate community legal centre to operate and manage the clinic.<sup>234</sup> This was the first legal clinic established in Australia in the 1970s and continues to be one of the leading institutions in the country and around the world in delivering in-house CLE.

Students in an in-house clinic are given opportunities to work with real clients on real cases under the close supervision of qualified lawyers.<sup>235</sup> It is widely agreed that a live client in-house clinic is the most productive environment for students to learn law in context, practise various professional skills and build a sense of professional responsibility and legal ethics.<sup>236</sup> For example, in the light of best practices, Evans et al assert that a live-client legal clinic is the best approach to teach students 'law in context'.<sup>237</sup> They believe that a clinical program involving real legal and client work will

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<sup>231</sup> See 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.

<sup>232</sup> See, eg, Paul S Ferber, 'Adult Learning Theory and Simulations – Designing Simulations to Educate Lawyers' (2002) 9 *Clinical Law Review* 417, 418–9.

<sup>233</sup> See Jeff M Giddings, 'Influential Factors in the Sustainability of Clinical Legal Education Programs' (Griffith University, 2010) 88.

<sup>234</sup> For more information about Springvale Monash Legal Service see <<http://smls.org.au/about/>>.

<sup>235</sup> Milstein, above n 231, 376.

<sup>236</sup> See, eg, R Grimes, 'The Theory and Practice of Clinical Legal Education' in Roger Burrigge (ed), *Effective Learning and Teaching in Law* (Kogan Page, 1996) 12–15; see also Evans et al, above n 156, 15; Milstein, above n 231, 376–80.

<sup>237</sup> Evans et al, above n 157, 15.

‘teach students to think critically about law, rules and practice from a variety of perspectives and theoretical understandings of law’.<sup>238</sup> Similarly, Milstein believes that the pedagogy of the in-house clinic model is designed to ‘engender appropriate professional values while also teaching students the theory and practice of lawyering’.<sup>239</sup> In common with this view, Uphoff believes that a live client in-house clinic is much more effective than simulations in teaching students professional values. This is because simulations ‘cannot replicate the pressure and tension faced by students grappling with real decisions that affect actual clients in a live-client clinic’.<sup>240</sup> Since there is always a ‘gap’ between the law and practice, learning the law in practice has a strong and perhaps irrefutable claim to be the most effective way of studying law for those who want to be lawyers.

The effectiveness of the in-house clinic model can also be seen through its established goals. For example, Milstein has pointed out various important goals of an in-house clinic in the United States. Specifically, an in-house clinic is designed to teach students client-centered lawyering; theory-driven preparation and advocacy; professionally responsible legal work; fact investigation and development; persuasive advocacy; strategic planning and problem-solving; critical analysis of the justice system; and reflective practice.<sup>241</sup>

In the global clinical movement, an in-house clinic can exist under any of the forms of general, specialised or multidisciplinary clinic. To some degree, these three types of in-house clinics are also three levels of development of the model, in which the multidisciplinary clinic is considered the most recent and developed type of in-house clinic. In a general in-house clinic, students learn to practise and build professional skills in not only one but many different areas of law. In these types of clinic, free legal services in various areas of law are delivered by students under close and intensive supervision by law teachers. By comparison, specialised in-house clinics are designed to focus on certain areas of law<sup>242</sup> such as children’s rights, employment law, family law, human rights protection, immigration, or labour law. In this sense, specialised clinics are

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<sup>238</sup> Ibid.

<sup>239</sup> Milstein, above n 231, 376.

<sup>240</sup> See Rodney J Uphoff, ‘Why in-House Live Client Clinics Won’t Work in Romania: Confessions of a Clinician Educator’ (1999) 6 *Clinical Law Review* 315, 321.

<sup>241</sup> Milstein, above n 231, 378.

<sup>242</sup> Giddings, above n 233, 92–6.

important vehicles that allow law teachers to teach any area of law, be it family law, civil law, criminal law or corporate law.<sup>243</sup> Students participating in this type of clinic will have opportunities to delve deeply into certain areas of law in order to learn professional knowledge and skills.

Furthermore, CLE in an increasing number of law schools has gone beyond the traditional law-student-alone approach and moved to multidisciplinary clinics where students from different disciplines work together assisting the same clients.<sup>244</sup> This clinical model has proved to be an exciting and innovative way of teaching as students and supervisors from different disciplines begin learning from each other.<sup>245</sup> Additionally, clients of this multidisciplinary CLE approach also benefit from the application of a wide range of knowledge from different disciplines, all delivered in the context of others' contributions.

#### *2.4.2.2 Street Law as an Example of Experiential Learning*

Street law as an educational movement is believed to have originated in the United States in 1974 and has now spread to more than 40 countries around the world. Outside the United States, South Africa was the first country to develop and deliver this form of legal education.<sup>246</sup> 'Street law', as McQuoid-Mason states, is a term which refers to how the law

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<sup>243</sup> In Australia, for example, many universities are offering various courses using clinical teaching methods. These include Clinical Youth Law Program, Community Law Clinical Program, The International Social Justice unit (Australia National University); Professional Practice Unit, Professional Practice Unit specialising in Family Law, Clinical Externship (Monash University); Administrative Law Clinic (Bond University); Alternative Dispute Resolution Clinic (Griffith University); Human Rights Clinic, Family Law Clinic (Murdoch University). See, eg Cody, above n 12.

<sup>244</sup> One of the best examples 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. This newly employed approach was based on the observation that many clients come to clinics with not only legal, but also financial and social problems. Consequently, in order to effectively address clients' problems, a knowledge of law and legal procedures is not enough. See, eg, Ross Hyams, 'Multidisciplinary Clinical Legal Education: The Future Of The Profession' (2012) 37(2) *Alternative Law Journal* 103, 103–5; Ross Hyams and Fay Gertner, 'Multidisciplinary Clinics – Broadening the Outlook of Clinical Learning' (2012) 18 *International Journal of Clinical Legal Education* 23, 23–5; 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, 165–8.

<sup>245</sup> See, eg, Ross Hyams and Denise Sadique, 'The Value of Incidental Learning in a Multidisciplinary Setting' (2014) 20 *International Journal Of Clinical Legal Education* 439, 444–56.

<sup>246</sup> See, eg, Edward L O'Brien, 'Democracy for all: Human Rights and Street Law Legal Literacy Programs' <<http://www.nylslawreview.com/wp-content/uploads/sites/16/2014/11/O'Brien.pdf>>.

affects the daily lives of ordinary people 'on the street'.<sup>247</sup> It is a legal literacy program designed to enable law students and others to help people become aware of their legal rights and where to obtain assistance. For example, each time someone buys something, rents a house, gets married or divorced, or is accused of or becomes a victim of crime, they come into contact with the law. Street law helps people to understand how the law works in these common situations, and how it can protect them.<sup>248</sup>

In India, as Bloch and Ishar point out, street law is known as 'legal literacy camp' and is run by law schools, where students and teachers work in collaboration with local social workers to deliver legal knowledge to rural communities.<sup>249</sup> Similarly in Japan, street law is known as 'know your rights' programs, where students provide education about rights and law to communities in remote and disadvantaged areas.<sup>250</sup> In Southeast Asia, the street law model is more commonly known as community legal education programs, which have been implemented by different law schools in the region with assistance and support from international organisations and clinicians.<sup>251</sup> Various Australian clinicians have worked closely with Bridges Across Borders Southeast Asia Community Legal Education Initiative (BABSEA CLE) to help develop a number of clinical legal education programs throughout the region.<sup>252</sup>

In general, street law programs employ a wide variety of student-centred activities in their teaching methods: role-plays, simulations, games, small-group discussions, opinion polls, mock trials, debates, field trips and street theatre.<sup>253</sup> The heart of the street law program is the use of interactive teaching and learning methods rather than the lecture method.<sup>254</sup> Street law students are trained to teach interactively and to draw on the real-life experiences of the school pupils, school teachers, prisoners and the communities

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<sup>247</sup> See David McQuoid-Mason, 'Street Law As A Clinical Program — The South African Experience With Particular Reference To The University KwaZulu-Natal' (2008) 16 *Griffith Law Review* 26, 26.

<sup>248</sup> *Ibid* 26.

<sup>249</sup> See Frank S Bloch and Iqbal S Ishar, 'Legal Aid, Public Service and Clinical Legal Education: Future Directions From India and The United States' (1990–1991) 12 *Michigan Journal of International Law* 108, 114.

<sup>250</sup> See, eg, Peter Joy et al, above n 176.

<sup>251</sup> See generally, Lasky and Norbani, above n 192; Lasky and Sarker, above n 193, 5–12.

<sup>252</sup> Evans et al, above n 4, 246; Lasky and Norbani, above n 192, 59–68; Lasky and Prasad, above n 186, 42–3.

<sup>253</sup> McQuoid-Mason, above n 247, 30

<sup>254</sup> *Ibid*.



taught by them, when discussing the law. In this way, the law students also obtain first-hand knowledge about social justice issues in the schools and communities where they work.<sup>255</sup> Interactive teaching methods also help students to learn how to communicate effectively with communities and clients — a vital skill for their legal careers.

#### *2.4.2.3 Externships*

Externship is a form of CLE employed by law schools around the world to expose students to the real world of law and to enable them to practise professional skills. According to Joy, this form of CLE is also known as field placement<sup>256</sup> where students are placed with a law firm, a judicial agency or a legal institution to learn law in context. Within the Australian context, Evans et al define externships as ‘the form of clinical legal education where individual students are placed in an independent legal practice, community legal centre, and government agency or not-for-profit organisation’.<sup>257</sup> Evans et al point out that externships are also often known as internships or placements.<sup>258</sup>

As Caplow has pointed out, each externship student works on assigned tasks but is not the ‘attorney of record’.<sup>259</sup> Supervision is provided by outside agency lawyers rather than faculty members, although an instructor usually teaches a classroom component to complement the field work experience.<sup>260</sup> Quite often, there is a close connection and collaboration between law school and externship host institutions to monitor students during their externship. For example, Milstein has noted that ‘many schools try to create a three-way relationship between professor, student, and supervisor so that the faculty member can monitor the student's work and the supervisor's evaluation of it’.<sup>261</sup> In many other cases, however, law schools rely on the students’ reflections upon the work in the externship as fodder for learning. In most externship programs, students write reflective

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<sup>255</sup> Ibid.

<sup>256</sup> See, eg, Peter A Joy, ‘The Costs of Clinical Legal Education’ (2012) 32 *Boston College Journal of Law and Social Justice* 309, 321.

<sup>257</sup> Evans et al, above n 4, 56.

<sup>258</sup> Ibid.

<sup>259</sup> See Stacy Caplow, ‘Clinical Legal Education in Hong Kong: A Time to Move Forward’ (2006) 36 *Hong Kong Law Journal* 229, 234.

<sup>260</sup> Ibid.

<sup>261</sup> Milstein, above n 231, 380.

journals, have tutorial meetings with faculty, and participate in seminar discussions.’<sup>262</sup>

In general, professional settings where students are placed for externships are physically and organisationally external to the law school and very diverse. They might include law offices within both governmental and non-governmental organisations.<sup>263</sup> Caplow noted that students were assigned to law offices, agencies, or judicial chambers as interns (or, confusingly, externs) to work on cases. Most such host offices were government or non-profit although a few law schools permit students to earn credit for work at a private law firm.<sup>264</sup> Law schools use the students' experience in those offices as the basis for teaching and learning.<sup>265</sup> Since externship host institutions are diverse and approaches to deliver externships programs vary, the professional knowledge and skills students learn and practise differ from student to student. For example, Evans et al have noted that, in the Australian context:

most externships programs involve students working for a day a week during the semester at the host organisation. However, this period can vary, so that students work intensively for two or three weeks, particularly if the placement is overseas or interstate.<sup>266</sup>

Accordingly, students' learning goals and law schools' expectations in externships vary greatly. Milstein noted that the 'learning goals of externships include providing students with a milieu within which to learn a substantive area in depth while developing a critical perspective on the organization of legal work'.<sup>267</sup> In many cases, 'externship supervisors often explore the ethical dimensions of the student's experiences and observations, as well as explore the justice issues that are inherent in most of the settings in which students practice'.<sup>268</sup> Evans et al noted that externships' learning outcomes are not often clearly defined but are variable from workplace to workplace.<sup>269</sup> In general, the professional knowledge and skills learned during an externship depend on the work of the host office, the type and amount of responsibility delegated to the student, the efficacy

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<sup>262</sup> Ibid.

<sup>263</sup> See John P Ogilvy, 'Introduction to the Symposium on Developments in Legal Externship Pedagogy' (1999) 5 *Clinical Law Review* 337, cited in Milstein, above n 231, 376.

<sup>264</sup> Caplow, above n 259, 234.

<sup>265</sup> See Peter Jaszi et al, 'Experience as Text: The History of Externship Pedagogy at the Washington College of Law, American University' (1999) 5 *Clinical Law Review* 403, cited in Milstein, above n 231, 376.

<sup>266</sup> Evans et al, above n 4, 56.

<sup>267</sup> Milstein, above n 231, 380.

<sup>268</sup> Ibid.

<sup>269</sup> Evans et al, above n 4, 56.

of the supervision, and other variables outside the control of the law school.<sup>270</sup>

As the literature reveals, although an externship model is less expensive than the live client in-house clinic, '[it] also demands an experienced teacher with the time and energy to devote to monitoring the educational experiences of the clinical students if those experiences are to be pedagogically sound'.<sup>271</sup> In addition, due to a number of reasons (discussed below), the externship model does not ensure a quality environment for experiential learning even though it is widely agreed to be a legitimate form of CLE.

#### *2.4.2.4 Simulations*

In essence, simulation is a teaching method in which students are put into simulated lawyer roles to perform some aspect of the lawyering process in a controlled setting. Each of these uses the students' experiences as the subject matter for analysis, both within and outside the classroom.<sup>272</sup> Evans et al maintain that simulation is a form of experiential education that can be used to teach students about 'specific skills, such as negotiation or interviewing specifically in preparation for actual negotiation or interviewing, or generally doing legal work'.<sup>273</sup> Similarly, Milstein considers simulation to be a component of clinical programs where clinicians teach students about different professional skills such as 'interviewing and counseling, negotiation, legal writing, alternative dispute resolution, and trial and appellate practice'.<sup>274</sup> In addition, simulation is also used to teach substantive law courses — either the entire course or, more commonly, a portion of the syllabus.<sup>275</sup>

In simulation programs, Caplow noted that 'students simulate legal problems by role playing in hypothetical exercises that recreate legal problems. The subject matter is limitless and the skills taught vary'.<sup>276</sup> He believes that simulation exercises are based on

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<sup>270</sup> Caplow, above n 259, 234.

<sup>271</sup> See, eg, Daniel J Givelber, Brook K Baker, John McDevitt and Robyn Milano, 'Learning Through Work: An Empirical Study of Legal Internship' (1995) 45 *Journal of Legal Education* 1, cited in Uphoff, above n 240, 329.

<sup>272</sup> Milstein, above n 231, 376.

<sup>273</sup> Evans et al, above n 4, 44.

<sup>274</sup> Ibid.

<sup>275</sup> Ibid 380.

<sup>276</sup> Caplow, above n 259, 234.

simulated materials prepared for students to perform tasks without actual clients, opposing counsel, or adjudicators.<sup>277</sup> Appellate mootings are an example of a simulation course, but other classes might focus on trial advocacy, negotiation, pre-trial litigation, or mediation. Some courses might further limit the scope of the simulation by focusing on a particular area of practice and its associated skills.<sup>278</sup>

In general, simulation is regarded in the literature as an effective form of experiential learning that can be employed in the legal education process. Caplow has pointed out that simulations can help 'teach a wide range of skills and assure a degree of uniformity and predictability to the student work, but are much less resource-intensive than live-client clinics'.<sup>279</sup> In addition, Tarr believes that simulations can be 'effective for teaching the student how to organize a direct examination and ask non-leading questions', the development of specific skills through a discrete focus on them.<sup>280</sup> In keeping with this thinking, Giddings maintains that 'both simulations and 'real client' courses are valuable as a means of achieving specific learning goals with students. The ideal approach is an integrated one.'<sup>281</sup> In addition, simulation is not a complicated approach to prepare and deliver. This is because simulations 'do not require cooperation from outside agencies, courts or professional bodies. Nor do the participants need professional indemnity insurance'.<sup>282</sup> Accordingly, a teacher in a simulation course can teach more students than a clinician because the role playing is more controlled.<sup>283</sup>

However, the question of whether or not simulation is considered to be a legitimate form of CLE is debated among international clinicians. Some scholars have included simulations in the definition of CLE. For example, when discussing CLE in the United States, Milstein considers simulations to be one of the three basic forms of CLE, alongside live client in-house clinic and externships.<sup>284</sup> Caplow holds a similar view, believing that simulation is a form of CLE.<sup>285</sup> Other international clinicians, on the other hand, believe

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<sup>277</sup> Ibid.

<sup>278</sup> Ibid 235.

<sup>279</sup> Ibid.

<sup>280</sup> Tarr, above n 7, 36.

<sup>281</sup> Giddings, above n 7, cited in Evans et al, above n 4, 45.

<sup>282</sup> Caplow, above n 259, 235.

<sup>283</sup> Ibid.

<sup>284</sup> Milstein, above n 231.

<sup>285</sup> Caplow, above n 259.

simulation has less claim to be considered a legitimate form of the clinical pedagogy. For example, Evans et al, citing their own survey of the opinions of Australian clinicians, noted that they 'could not agree that student engagement in simulated legal practice be included in the definition of clinical legal education'.<sup>286</sup> Their reason was their observation that 'students acting for real clients in the handling of their real legal problems has been a point of differentiation from other forms of legal education and practical legal training for Australian clinicians'.<sup>287</sup> However, they appreciated the role of simulations in teaching students about professional skills and in preparing them for actual participation in in-house clinical activities.<sup>288</sup>

#### *2.4.2.5 What the Literature Says about Different Types of CLE*

##### *(i) Live Client In-house Clinic is the Best Model for Teaching Students about Law-in-Context and for Preparing Them Effectively for the Profession*

Each of the forms of experiential learning discussed above has its own strengths and limitations. However, when it comes to the question of teaching students about practical legal knowledge and professional skills and preparing them effectively for the profession, the live client in-house clinic model stands out in the literature. In the light of best practices, Evans et al assert that a live client legal clinic is the best approach to teach students 'law in context'.<sup>289</sup> Similarly, Milstein believes that the pedagogy in the in-house clinic model is designed to 'engender appropriate professional values while also teaching students the theory and practice of lawyering'.<sup>290</sup> Evans et al further argue that 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'.<sup>291</sup>

In comparison with simulation, the live client in-house clinic appears to be much more effective in teaching students professional values and skills. The reason, as Uphoff argues,

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<sup>286</sup> Evans et al, above n 4, 44.

<sup>287</sup> Ibid.

<sup>288</sup> Ibid.

<sup>289</sup> Evans et al, above n 157, 15.

<sup>290</sup> Milstein, above n 231, 376.

<sup>291</sup> Evans et al, above n 157, 15.

is that simulations ‘cannot replicate the pressure and tension faced by students grappling with real decisions that affect actual clients in a live-client clinic’.<sup>292</sup> In addition, although a law teacher using simulations can teach a larger number of students than a clinician in the in-house clinic, they are unable to create ‘experiences upon which students can draw to learn and develop their skills’.<sup>293</sup> Tarr argues:

Only real cases create the challenge of interviewing a person who is both similar and different from the student, the frustration of developing a legal strategy that takes into account the strengths and weaknesses of real facts, the patience of counseling someone whose life is complex and uncertain, the insight required to negotiate with attorneys, the shock of experiencing the gaps between the theories of procedure and the realities of actual courtrooms, and the intimidation of looking in the eyes of a person wearing a robe who has the power of a judge. Experiencing all of these feelings, organizing the testimony, and asking the individual who has real losses at stake a non-leading question is very different than ‘role playing’ a direct examination.<sup>294</sup>

The live client in-house clinic model is also apparently superior to the externship. Although externships and in-house clinics are commonly dealing with real clients, the latter form of CLE prevails in preparing students to be practice-ready. Evans et al argue that ‘externships have often been seen as a lesser form of clinical legal education in Australia and elsewhere, because frequently they are not rigorously designed with clearly defined learning outcomes’.<sup>295</sup> Quite often, the learning outcomes, if defined, are more likely to be general and variable ‘because the supervision varies from workplace to workplace’.<sup>296</sup> In addition, in spite of providing students with ‘diverse learning sites in a cost-effective way, the actual standard of any externship program will be dependent on available resources and skilled, sensitive relationship management’.<sup>297</sup>

In a situation in which the externship host organisation is a law firm (a setting which is very similar to that of an in-house clinic) students may have a productive environment for learning law in context and practising professional skills. However, the differences may come from the supervision and the priorities of the law firm and this means a law firm is not as good as an in-house clinic when it comes to the issue of professional training.

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<sup>292</sup> Uphoff, above n 240, 321.

<sup>293</sup> Tarr, above n 7, 36.

<sup>294</sup> Ibid.

<sup>295</sup> Evans et al, above n 4, 56.

<sup>296</sup> Ibid.

<sup>297</sup> Giddings, above n 7, cited in Evans et al, above n 4, 56.

For example, Giddings has noted that ‘as the teaching of students is not an essential part of the student supervisors’ role, there is a risk that student learning goals are of secondary importance to the functioning of the workplace’.<sup>298</sup> In most cases, serving clients is the inevitably more important concern than students’ education in a law firm externship setting.<sup>299</sup> This is completely different from an in-house clinic which tends to balance the education objective with client service, or even treats education as the first priority.<sup>300</sup> In an in-house clinic, education is a dominant objective and also an important criteria by which to measure success. Therefore, every effort is made by both supervisors and students to understand the practical requirements of legal ethics and to translate these into professional skills and responsibilities. Conversely, lawyer supervisors in law firms tend to be very conscious of the ‘making money’ mission<sup>301</sup> and, as a result, the educational purpose can become secondary in their mind, their attitude and expressly in their supervision activities.

Importantly, Lerman argues that a profit-driven organisation is not a productive environment for reflective education.<sup>302</sup> He believes that ‘some of the best learning is accomplished through a lengthy reflective dialogue in which the student is able to raise and explore a wide range of questions about how to address a legal problem’.<sup>303</sup> This is one of the reasons why many clinical programs choose to accept a small number of cases in order to focus on their education mission.<sup>304</sup> In a ‘fee-generation’ environment, however, the financial pressure and large caseload can ‘make it more difficult for a professional to give full attention to the ethical, strategic and pedagogical questions that arise in the practice of law’.<sup>305</sup> In addition, in the business environment of a private law firm, the fact that time for reflection, debriefing and analysis is limited also constrains the educational objective of the clinical approach.<sup>306</sup>

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<sup>298</sup> Ibid.

<sup>299</sup> See, eg, Simon Rice, *A Guide to Implementing Clinical Teaching Method in the Law School Curriculum*, (Centre for Legal Education, 1996) 12–14.

<sup>300</sup> Giddings, above n 7, 88–96

<sup>301</sup> See, eg, Mark Galanter and Thomas Palay, *The Tournament of Lawyers: The Transformation of the Big Law Firm* (University of Chicago Press, 1991), cited in Jeff Giddings, ‘Contemplating The Future of Clinical Legal Education’ (2008) 16(1) *Griffith Law Review* 1, 6.

<sup>302</sup> See Lisa G Lerman, ‘Fee-for-service Clinical Teaching: Slipping Toward Commercialism’ (1995) 1 *Clinical Law Review* 685, 691.

<sup>303</sup> Ibid 696.

<sup>304</sup> Ibid.

<sup>305</sup> Ibid 691.

<sup>306</sup> Rice, above n 299, 12.

Further, there are other concerns raised by scholars around the world when comparing externships with the in-house clinic model. For example, Tarr expresses concern about ‘the lack of control over the quality of the educational experience’.<sup>307</sup> Quite often, law schools will find it challenging to control and manage the quality of students’ participation and learning outcomes during externships. In most cases, this must depend on the externships’ host institutions. Giddings, on the other hand, worries that externship students will have limited opportunities to take on client responsibility compared to those in an in-house real client clinic.<sup>308</sup> This concern is quite understandable because in an externship setting, supervisors may sometimes feel hesitant to allocate work to students because they are afraid students’ involvement may fail to meet their clients’ interests.

Another concern may come from supervision in an externship setting. As Giddings has pointed out, ‘supervisors need to be trained in order to understand the requirement and perspective from law schools as an education institution’.<sup>309</sup> Evans et al hold a similar view, maintaining that ‘quality externships require ongoing training of supervisors’.<sup>310</sup> While supervisors in the externship model are lawyers, students enrolled in an in-house clinic model are supervised by qualified lawyers who are also law teachers. It is to be expected that these teacher-lawyer supervisors will take every advantage of their teaching and practising strengths to teach students more effectively. This is also another reason for many to believe that an in-house clinic will deliver a better environment for clinical students to learn professional knowledge and to practise skills.

*(ii) An Appropriate Combination of Different Models Should be the Ideal Approach in Delivering CLE Programs*

The in-house clinic model is no doubt the most productive form of CLE in delivering professional training to students. Probably the only disadvantage of the live client in-house clinic model is the cost. Since in-house clinic is relatively costly, many scholars

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<sup>307</sup> Tarr, above n 7, 39.

<sup>308</sup> Giddings, above n 233, 79–82.

<sup>309</sup> Ibid.

<sup>310</sup> Evans et al, above n 4, 56.



believe it will create challenges for many countries to maintain and develop it in their legal education systems.<sup>311</sup> Therefore, it is important for law schools to combine all the forms of CLE in clinical programs so that they can make use of the advantages of each of the models and reduce risks. Giddings believes that the 'various clinical models are complementary rather than being in competition, often working best in combination. A wide range of variations and hybrids can be used to tailor the clinical experience to suit the teaching objectives and available resources.'<sup>312</sup> Similarly, Caplow is of the opinion that CLE models are delivered 'in sequence or are combined'.<sup>313</sup> He believes that law schools often require an externship to precede a live-client experience, so that students can build upon the skills learned in the more closely supervised clinic in real-time, real world practice.<sup>314</sup>

Evans et al, when discussing the role of simulations, have referred to the 'integrative approach' in CLE. They believe that simulations and case studies should be employed 'to prepare students for the responsibility of working with clients on real cases'.<sup>315</sup> This can help students best develop ethical awareness, judgment and proficiency in the application of professional skills through having 'repeated opportunities to perform the tasks to be learned or improved upon until they reach the desired level of proficiency'.<sup>316</sup> Caplow has a similar view on this issue, maintaining:

both live-client and externship clinics rely on simulation exercises for the classroom component. Therefore, the most fully developed CLE program will offer instruction in all three models: simulations, externships and in-house clinic. Of course, the extent of each model will depend on resources available to each of law schools.<sup>317</sup>

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<sup>311</sup> See, eg, Dennis R Nolan, 'The Status Of American Legal Education' (1989) 1 *Legal Education Review* 183, 200; Lee Stuesser, 'Skills for the Masses: Bringing Clinical Skills to More Students at Less Cost' (1992) 10 *Journal of Professional Legal Education* 119, 120-3; Erwin Chemerinsky, 'Rethinking Legal Education' (2008) 43 *Harvard Civil Rights-Civil Liberties Law Review* 595, 595.

<sup>312</sup> See Jeff Giddings, 'A Circle Game: Issues In Australian Clinical Legal Education' (1999) 10 *Legal Education Review* 33, 35.

<sup>313</sup> Caplow, above n 259, 235

<sup>314</sup> *Ibid.*

<sup>315</sup> Evans et al, above n 4, 45.

<sup>316</sup> Roy Stuckey et al, above n 41, cited in Evans, above n 4, 45.

<sup>317</sup> Caplow, above n 259, 235.

### ***2.4.3 Major Debate around the World about Clinical Methodology in Legal Education***

CLE has been initiated, developed and become an important component of the legal education process in many countries. Nevertheless, debates over relevant issues of clinical methodology continue to occur among scholars. This section of the chapter reviews these debates.

#### ***2.4.3.1 Educational Objective or Social Justice Mission?***

One of the contentious issues in the global clinical movement is the focus of CLE. That is, whether the educational objective or a social justice mission is prioritised. As Giddings argues, the issue of whether CLE should focus on learning or service is too important to be ignored.<sup>318</sup>

The history of the global clinical movement has revealed that education was the main reason for law schools to include CLE in their curricula. Barry, Dubin and Joy, for example, have pointed out that the 'first wave' of CLE emerged in the United States as a response to the demand for legal education reform.<sup>319</sup> In their view, although the case law method had gained a wide acceptance among American law schools, there was an increasing demand for learning lawyering practice skills and this led to the birth of CLE.<sup>320</sup> Kosuri has a similar opinion, maintaining that although CLE is agreed to have originated during the civil rights and property law movement in the United States during the late 1960s and the 1970s, the educational objective of American CLE has dominated.<sup>321</sup> In most American clinical programs, any social justice mission has become secondary.<sup>322</sup>

However, in various early clinical programs in the United States, the provision of legal service was prioritised.<sup>323</sup> This was because such clinical programs mainly relied on public funding. Wilson has also confirmed this reality. In his view, some American law

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<sup>318</sup> Giddings, above n 231, 7.

<sup>319</sup> Barry, Dublin and Joy, above n 7, 5–12.

<sup>320</sup> Ibid 6–7.

<sup>321</sup> See Praveen Kosuri, 'Losing My Religion: The Place of Social Justice in Clinical Legal Education' (2012) 32(2) *Boston College Journal of Law and Social Justice* 331, 336–8.

<sup>322</sup> Ibid.

<sup>323</sup> Barry, Dublin and Joy, above n 7, 5–12.

schools have given a priority to a service mission when designing their clinical programs.<sup>324</sup> The major reason is because the government and local bar associations have not assumed responsibility for the provision of legal services for the poor. In this context, law school clinics are almost the only actors in the provision of community legal aid.<sup>325</sup>

In the context of American CLE today, however, most law schools have reserved a part of their regular budget for the operation of clinical programs.<sup>326</sup> This situation has made American law schools less dependent on external funding for CLE, and allows them to decide how much their clinical programs should focus on a community service mission. In addition, growing competition in legal education also plays an important role in forcing American law schools to focus their clinical programs more on education missions.<sup>327</sup>

In fact, the literature shows that education is a central mission of any clinical program. The live client in-house clinic, externship, simulation, and street law models all aim to teach students professional knowledge and skills. In contrast, the community service or social justice mission operates differently in clinical programs. The street law model, for example, as McQuoid-Mason has suggested, can provide students with an exposure to justice in the real world.<sup>328</sup> However, unlike a live client in-house clinic where social justice is achieved through direct client representation, street law tends to educate a community about law and their rights so that the members of the community can act for themselves.<sup>329</sup>

In relation to the simulation model,<sup>330</sup> Giddings suggests that the simulated legal cases and clients are selected and designed for the purpose of teaching law<sup>331</sup> without any real legal assistance provision to needy people. As such, the simulation model does not ordinarily involve the direct promotion of social justice, although a social justice value in simulations may reside in the training of students to be 'justice ready'. Generally,

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<sup>324</sup> Wilson, above n 9, 430.

<sup>325</sup> Ibid.

<sup>326</sup> Giddings et al, above n 147, 16.

<sup>327</sup> Ibid.

<sup>328</sup> See David McQuoid-Mason, 'Street Law As A Clinical Program — The South African Experience With Particular Reference To The University KwaZulu-Natal' (2008) 17 *Griffith Law Review* 27, 27.

<sup>329</sup> Ibid 27–9.

<sup>330</sup> Giddings, above n 233, 79–82.

<sup>331</sup> Ibid.

however, the literature does not assert that all clinical programs are helping poor or marginalised people in a direct way.

At a wider level however, access to justice has become an important aspect of the global clinical movement.<sup>332</sup> Rice argues that some of the educational objectives of CLE cannot be realised unless clinical programs provide legal assistance to the poor.<sup>333</sup> In his view, undergraduate education is an excellent level at which to sensitise law students to the social-economic context of law, including the issue of social justice, with which they are unlikely to be familiar.<sup>334</sup> Thus, undergraduate education is a productive environment and a perfect level for teaching law students about social justice. In support, Aiken believes that everything has just or unjust effects, therefore CLE cannot avoid dealing with a justice mission.<sup>335</sup> She goes on to say that justice is about 'doing' and clinical teachers are the only teachers at law schools who can actually help law students to be exposed to justice.<sup>336</sup>

For many scholars, social justice is an important mission of CLE, but education should be prioritised. Wilson, for example, maintains that if legal clinics take community service, rather than training of students, as their primary mission then they may risk failure in both.<sup>337</sup> The reason given by Wilson is that in those clinics, under the pressure of serving a big number of clients, students tend to provide less than adequate legal service. A similar pressure also constitutes a barrier for the law teachers in providing effective supervision. As a result, clients are poorly served and student learning is limited.<sup>338</sup>

Within a clinical program, a social justice mission can be achieved through an education objective. William suggests that 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.<sup>339</sup> While highly appreciating the

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<sup>332</sup> Bloch, above n 8, 135.

<sup>333</sup> Rice, above n 299, 12.

<sup>334</sup> Ibid.

<sup>335</sup> Aiken, above n 35, 231.

<sup>336</sup> Ibid.

<sup>337</sup> Wilson, above n 9, 430.

<sup>338</sup> Ibid.

<sup>339</sup> See, eg, Quigley P William, 'Letter to a Law Student Interested in Social Justice' (2007) 1 *DePaul Journal for Social Justice* 7, 13–14.

educational objective of CLE, Wilson also maintains that ‘a primary emphasis on training rather than service does not in any way diminish the importance of clinical legal education as a vital source of services to underserved populations’.<sup>340</sup> He believes that clinical students are given opportunities to act for their clients and to fight for justice and this experience helps produce generations of lawyers with a ‘sense of mission and commitment to public service’.<sup>341</sup>

The social justice mission of CLE can also be achieved through building and strengthening community capacity. Bloch maintains that in many developing countries, ‘justice is inaccessible to a large number of people simply because they are unaware of laws and legal institutions’.<sup>342</sup> Wilson argues that since legal clinics are located within the vibrant intellectual community of the law schools, they can ‘detect and act upon issues affecting the poor and other marginal populations in ways that contribute to the true legal empowerment of those groups’.<sup>343</sup> In some cases, therefore, in order to promote access to justice clinical programs need also to enhance the legal awareness and understanding of the community. In this sense, street law as a CLE model plays a significant role in delivering legal education to marginalised communities. Bloch has also referred to India, Chile and South Africa as some of the prominent examples of this trend.<sup>344</sup>

In Australia, a balance between educational objectives and a social justice mission is a strong concern of many clinical scholars. Giddings points out that early Australian clinical programs developed a strong focus on community legal service with a close link to community legal centres.<sup>345</sup> The history of Australian CLE has revealed that a social justice mission was one of the major driving forces in the emergence of Australian clinical programs. However, as CLE develops with a growing number of Australian law schools interested in clinical pedagogy, there is a demand for a balance between teaching/learning and service.<sup>346</sup>

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<sup>340</sup> Wilson, above n 9, 430.

<sup>341</sup> Ibid.

<sup>342</sup> Bloch, above n 8, 119.

<sup>343</sup> Wilson, above n 9, 430.

<sup>344</sup> Bloch, above n 8, 119–20.

<sup>345</sup> Giddings, above n 312, 37.

<sup>346</sup> Rice, above n 299, 11–12.

According to Giddings, the tension created by the service mission and the educational objectives of CLE cannot always be reconciled. It is more important, therefore, for clinical teachers to identify and prioritise objectives to fit in their clinical programs.<sup>347</sup> In fact, not all Australian clinical programs can balance the educational objective and the justice mission. For example, Bell, based on his experience with La Trobe clinical programs, asserts:

The educational needs of the students did not figure highly in decisions made about whether a case was picked up or not. The focus was on the needs of the client, what we could do for them with the limited resources we had and whether or not a particular case was worthy of our follow-up or personal attention because it had consequences beyond the immediate.<sup>348</sup>

In Giddings' view, it is not always simple to balance the three priorities: casework, community action and legal education.<sup>349</sup> At Monash University, clinical programs seem to place an emphasis on community service. For example, the *1987 Report of the Discipline Assessment of Australian Law Schools* stated about the then Springvale Legal Service:

Its primary goal really is the provision of legal services to the community. We heard criticisms of this in terms of the time and supervision which can be devoted to the education of students. Such a relationship is often not entirely satisfactory.<sup>350</sup>

Discussing the future, Giddings suggests that a 'focus on community service' will still be a trend of Australian CLE, given that government funding continues to be a principal source of finance for the operation of most clinical programs in this country.<sup>351</sup> In addition, he maintains that CLE in Australian law schools is also becoming more effective in addressing potential conflicts between learning and service. This has been done by developing a broader use of various CLE models and fostering the multidisciplinary clinical approach.<sup>352</sup> Giddings believes that Australian CLE has also 'increasingly emphasized the importance of clinical experiences in developing the ethical awareness and community service commitment of law students'.<sup>353</sup>

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<sup>347</sup> Giddings, above n 233, 7.

<sup>348</sup> See Kevin Bell, personal interview by Jeff Giddings in Melbourne (13 September 2002), quoted in Giddings, above n 233, 8.

<sup>349</sup> Giddings, above n 233, 8.

<sup>350</sup> See Pearce et al, *Australian Law Schools: A Discipline Assessment for the Commonwealth Tertiary Education Commission: A Summary and Volume 1* (AGPS, 1987) 126, cited in Giddings, above n 299, 8.

<sup>351</sup> Giddings, above n 233, 9.

<sup>352</sup> Ibid.

<sup>353</sup> Ibid.

#### 2.4.3.2 What Makes a Legitimate Clinical Program?

As CLE develops and takes root in many countries, its models become more diverse and adaptable. Consequently, the concepts, definitions and features of CLE vary from country to country, program to program and from scholar to scholar. For one definition of CLE, Brayne, Duncan and Grimes suggest that:

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' problems and work with them.<sup>354</sup>

More narrowly, Stacy defines clinical legal education as a:

... form of pedagogy in which students are exposed to problems that lawyers might confront in practice. Students assume the responsibility to solve these problems, both non-contentious and contentious, in the role of lawyer or advocate.<sup>355</sup>

Dickson, from the perspective of a live client in-house clinic, has defined CLE as:

... a legal practice-based method of legal education in which students assume the role of a lawyer and are required to take on the responsibility, under supervision, for providing legal services to real clients.<sup>356</sup>

Giddings defines CLE as follows:

Clinical legal education involves an intensive small group or solo learning experience in which each student takes responsibility for legal and related work for a client (whether real or simulated) in collaboration with a supervisor. Structures enable each student to receive feedback on their contributions and to take the opportunity to learn from their experiences through reflecting on matters including their interactions with the client, their colleagues and their supervisor as well as the ethical dimensions of the issues raised and the impact of the law and legal processes.<sup>357</sup>

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<sup>354</sup> See Hugh Brayne, Nigel Duncan and Richard Grimes, *Clinical Legal Education-Active Learning In Your Law School* (Blackstone Press Limited, 1998) xiii.

<sup>355</sup> Caplow, above n 259, 230.

<sup>356</sup> See Judith Dickson, 'The Role of Clinic in Linking Law and Justice' (Address to the Australian Clinical Legal Education Conference, Caloundra, Queensland, 11 July 2003) 23.

<sup>357</sup> Giddings, above n 233, 18.

It can be seen from these definitions that there are two principal elements making a clinical program: the role of students and the education mission. The role of students is the central element in a clinical program, whereas the education mission is usually the main motivation for law schools to establish and maintain their clinical activities.

Wilson, on the other hand, identified six components making a legitimate clinical program:

- Clinical program must be established by a law school and is linked to the academic curriculum of that school.
- Law students are the main actors working in the clinical program to provide legal assistance to real clients.
- Law students are closely supervised by a qualified lawyer admitted to practice in the relevant jurisdiction.
- Clients serviced by the clinical programs generally are not able to afford for legal service.
- In addition to supervised case, students are taught about theories of how to practise law and represent clients.
- Students participating in clinical programs will receive credit.<sup>358</sup>

Obviously, Wilson draws these six components from the perspective of a live client in-house clinic — a common CLE model in the United States. However, the practice of the global clinical movement has shown that other operational CLE models are legitimate, notably externships, simulations and street law (known as community legal education in many countries).<sup>359</sup> These forms of experiential learning have been contributing to the innovation of legal education in many countries around the world.

As implied above, it is debatable whether a legitimate legal clinic must provide free legal service for poor and marginalised people. From the six components identified by Wilson above, it is obvious that providing free legal assistance to the poor constitutes an important criterion for a legitimate clinic. As stated above, provision of free legal service is a significant dimension of CLE and is often referred to as the social justice mission.

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<sup>358</sup> Wilson, above n 9, 423.

<sup>359</sup> See above section 2.4.2 of this chapter.



However, providing free legal assistance to the marginalised does not necessarily make for legal clinic legitimacy. Rice has pointed out that while most global legal clinics maintain community service, a few of them are operating for 'net profit' and are not designed for the poor.<sup>360</sup> He refers to tax and business clinics as examples of these clinical programs: they are deliberately designed to teach students practical knowledge and skills in tax and business law without any provision of legal service to under-served clients.<sup>361</sup> Rice at least considers these clinics to be legitimate because they provide clinical legal education to students — a central feature of a legal clinic.

#### *2.4.3.3 Should CLE Programs Charge a Fee for Providing Legal Service?*

The concepts of a fee-generating clinic and a law school firm have been around in the American clinical literature and global debates for some time. A law school 'firm', as Borden and Rhee have defined it, is a 'professionally-managed, revenue-generating, non-profit law firm' which is separate and distinct from the law school;<sup>362</sup> whereas a fee-generating clinic is established within the clinical legal education context.

The fee-generating model has been criticised by scholars for being inconsistent with two traditional rationales for in-house clinics: that they serve the poor and thus help fulfill the law school's social obligation to the profession and the community; and that, through serving the poor, students are sensitised to the problems of poverty and the obligations of lawyers to provide pro bono legal services.<sup>363</sup> However, scholars who are in favour of a fee-generating clinic continue to argue for and defend the existence of this model.

Laser, for example, believes that a fee-generating clinic would reduce the heavy financial burden of law schools because it would not cost law schools as much.<sup>364</sup> He asserts that 'the cost to the Law School is far less than if the salary of the clinical professor were paid

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<sup>360</sup> Rice, above n 231, 11.

<sup>361</sup> Ibid.

<sup>362</sup> See Bradley T Borden and Robert J Rhee, 'The Law School Firm' (2012) 63 *South Carolina Law Review* 1, 2.

<sup>363</sup> See, eg, Gary Laser, 'Significant Curricular Developments: The MacCrate Report and Beyond' (1995) 1 *Clinical Law Review* 425, 441.

<sup>364</sup> Ibid; see also Richard A Matasar, 'The Maccrater Report from the Dean's Perspective' (1995) 1 *Clinical Law Review* 457.

for with law school funds'.<sup>365</sup> In this regard, the fee-generating clinic might help to reduce the opposition to CLE from academic faculty who have been using the cost of CLE as a 'weapon' to argue against clinical pedagogy.<sup>366</sup>

Additionally, it is said that a fee-generating clinic better bridges the gap between law school and law practice.<sup>367</sup> Further, in a fee-generating clinic, students can receive additional educational benefits. Laser maintains that the students' learning is not limited to the areas of poverty law but can be broadened to include other areas such as employment discrimination, general civil litigation, domestic and international commercial litigation, federal tax litigation, real estate transactions, criminal defence litigation, immigration, and domestic and international business transactions.<sup>368</sup>

Many opponents of this CLE model, however, do not see a fee-generating clinic as an appropriate model of education. Guggenheim, for example, holds the view that a fee-generating clinic will 'create very high risk that a clinical office will come to regard its central mission as the provision of legal services rather than legal education'.<sup>369</sup> He also believes that 'representing clients is a by-product of the methodology'<sup>370</sup> and clinical teachers 'use cases in order to teach' not to 'teach in order to handle cases'.<sup>371</sup>

Some other scholars also believe that potentially large caseloads of fee-generating clinics may harm their educational objective. Guggenheim, for example, maintains that if fee-generating clinics need to raise money to pay for clinicians' salaries, then that financial incentive may force clinics to take on high caseloads. The increased caseload will potentially further reduce 'the likelihood that clinic supervisors and students will have the time necessary for non-directive, experiential learning'.<sup>372</sup> In addition, he argues that the existence of a fee-generating clinic will turn clinicians into the funders for the

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<sup>365</sup> Laser, above n 363, 438.

<sup>366</sup> Ibid.

<sup>367</sup> Borden and Rhee, above n 362, 8.

<sup>368</sup> Laser, above n 363, 438

<sup>369</sup> See Martin Guggenheim, 'Fee-Generating Clinics: Can We bear the Cost?' (1995) 1 *Clinical Law Review* 677, 681.

<sup>370</sup> Ibid.

<sup>371</sup> Ibid.

<sup>372</sup> Ibid.

operation of CLE.<sup>373</sup> In his view, this is a duty that no law school dean would like to impose on their faculty members.

As is to be expected, the most common reason for scholars to deny the value of the fee-generating clinic is CLE's social justice mission. As we have seen, many clinical scholars believe that CLE should provide legal assistance to poor and under-served people.<sup>374</sup> In this way it helps instil social justice awareness in law graduates and produces generations of responsible and ethical lawyers. As Bloch argues, educating students to have a sense of social responsibility and willingness to do pro bono legal work has become an integral part of the global clinical movement.<sup>375</sup> Guggenheim further believes that 'many students [had] careers [that] were permanently affected by their exposure, while in law school clinics, to the plight of the poor, the disadvantaged, and the despised of our society'.<sup>376</sup> As a result, many of them go on to devote their careers to public interest law. Other law graduates, 'although joining law firms or taking other jobs within the private sector, came away from their clinical experiences with a heightened appreciation of their obligation to do pro bono work'.<sup>377</sup> In this regard, the fee-generating clinics potentially threaten to 'destroy what many of us regard as the very heart of the clinical approach' — the social justice mission — by 'converting the clinical enterprise to pure enterprise'.<sup>378</sup>

Laser, however, argues differently. He believes that helping the community and sensitising students to the problems of the poor is not the obligation of law schools. Rather, he perceives that the principal mission of legal education is to produce competent, ethical, and reflective practitioners.<sup>379</sup> Accordingly, his argument is that as long as the fee-generating in-house clinic constitutes a positive way to teach the 'art of lawyering and offer clinical education to many more students', it is good.<sup>380</sup>

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<sup>373</sup> Ibid.

<sup>374</sup> See above section 2.4.3.1 of this chapter.

<sup>375</sup> Bloch, above n 8.

<sup>376</sup> Guggenheim, above 369, 683.

<sup>377</sup> Ibid.

<sup>378</sup> Ibid.

<sup>379</sup> Laser, above n 363, 441.

<sup>380</sup> Ibid.

In general, the concept of a fee-generating clinic is not well-supported in the global clinical literature. Perhaps the proponents of this model were struggling financially in the operation of their clinical programs and looking for solutions. In fact, a fee-generating clinic might at some point be able to address some financial challenges facing CLE. However, it is hard to believe a fee-generating clinic can effectively address all the other aspects of a legitimate clinical program such as social justice education, the balance between the educational objective and service, and the educational focus versus the fee-generating mission. In other words, a fee-generating clinic has never been and may never be a productive environment for educating law students and preparing them to be practice and social justice ready. These are also the reasons why not many clinical scholars believe fee-generating clinics to be a true form of CLE.

## **2.5 Conclusion**

Globally, the challenges facing legal education are quite similar from country to country. One of the prominent and common problems of legal education systems around the world is the lack of professional skills training, which has been widely referred to as a major reason for law graduates' lack of practice-readiness. Consequently, legal education reform has become a common issue for scholars to write about, discuss and debate. A large proportion of the literature on legal education has concluded that there is a demand for legal education reform in order to provide students with more professional knowledge and skills and to better prepare them for the profession.

Although the need for legal education reform is commonly agreed upon in many countries, different approaches and strategies have been employed. In some countries, law curricula have been regularly reviewed and changed in order to meet the requirements of the profession and practice. Many law schools have included courses teaching international law and the law of other countries, whereas others have increased the teaching of non-law courses. These reforms by legal educators have been in response to the legal profession's demand for more interdisciplinary education and to demand for internationally aware lawyers. Additionally, curriculum reform has also been seen as a response by law schools to the requirement from the legal profession for more professionally and ethically practice-ready law graduates. Accordingly, legal education

has begun to prepare law students to be not only practice-ready but also, if these are separate things, justice-ready and ethics-ready.

Another trend in legal education reform has been the adoption of a 'graduate-level legal education' model. Initiated in the United States, graduate-level legal education — the Juris Doctor degree — has become the principal form of American legal education. Many other countries have experimented with this model as an approach to reforming their legal education systems. These countries include, but are not limited to, Australia, Canada, the Philippines, Japan, South Korea (the JD degree) and China (the MJ degree). In most of these countries, although it will take time for graduate-level legal education to take root and be successful, the introduction of the JD or JM degree has been considered to be a significant reform and is likely to provide an example for other countries to follow.

Another significant legal education reform around the world has been the introduction of CLE. Together with Langdell's case method,<sup>381</sup> most scholars see CLE as an innovative and effective methodology in teaching law. First adopted in the United States, CLE has now become more and more popular in law schools around the world, in both developed and developing countries and in both common law and civil law jurisdictions. As CLE has become a global movement, debates occur among global scholars over various issues relevant to the clinical approach. Differences in political and legal systems, social settings and cultural norms can lead to divergences in the understanding of clinical concepts and values among scholars. Nevertheless, CLE's benefits, strengths and values have been widely recognised and appreciated and, because of this, CLE has been seen as one of the most promising options for legal education reform.

Vietnamese legal education is only about 40 years old in its current form. As in other countries, the Vietnamese system has faced its own challenges. It has failed to prepare law graduates for the future of employment and this has consequently led to calls for urgent reform. In the context of Vietnamese legal education reform, CLE can be considered to be one of the promising possibilities. The following chapters of the thesis

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<sup>381</sup> See generally, George S Grossman, 'Clinical Legal Education: History and Diagnosis' (1974) 26 *Journal of Legal Education* 162; see also Frank, above n 75.

will examine the Vietnamese context and possibilities for reform in detail, utilising the empirical process undertaken for this thesis. We begin with Chapter Three, which describes the empirical research methodologies employed to explore the research questions and to examine the research hypothesis.

## CHAPTER THREE

### RESEARCH METHODOLOGY

#### 3.1 Introduction

This chapter presents and describes the methodologies employed to explore the research questions and to examine the research hypothesis. In particular, reviewing existing literature and conducting empirical research were the primary methodologies used throughout the research process. These methodologies were based on the research questions and hypothesis identified in Chapter One of this thesis. Specifically, clinical legal education (CLE), globally recognised as a potential for legal education reform,<sup>382</sup> is hypothesised in this thesis to be a promising approach for innovating and strengthening Vietnamese legal education.

In this thesis, the literature review was an important approach enabling an examination of the global experiences of legal education reform and CLE, to address various relevant theoretical concepts, and to identify research directions. In addition, the literature review also contributed significantly to setting out the research background and creating the foundation for designing questionnaires for empirical research investigation. Following this work, empirical research provided the fundamental approach to exploring and examining research questions in the thesis.

This chapter begins with a discussion of the research methodologies adopted in the thesis and their justification. The chapter then describes in detail the process of empirical research as well as data analysis and presentation. The research methodology in this thesis has been informed by Bouma's *The Research Process*<sup>383</sup> and Miles and Huberman's *Qualitative Data Analysis: An Expanded Sourcebook*.<sup>384</sup> While the former assisted the author in outlining a general research design and necessary procedures to be undertaken,

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<sup>382</sup> See above Chapter One.

<sup>383</sup> See Gary D Bouma, *The Research Process* (Oxford University Press, revised ed, 1993).

<sup>384</sup> See Matthew Miles and Michael Huberman, *Qualitative Data Analysis: An Expanded Sourcebook* (Thousand Oaks, California - Sage Publication, 2<sup>nd</sup> ed, 1994).

the latter has been an essential source for designing the empirical research as well as for analysing and displaying research data.

## **3.2 Literature Review**

### **3.2.1 *Why a Literature Review?***

The literature review has been an important part of the research methodologies adopted in this thesis for a number of reasons. First, it helped set out the research background and helped to match the research with the relevant global context. Legal education reform has been a common trend around the world, for different purposes, and CLE, among various approaches, has become one of the most favoured means of reform.<sup>385</sup> The Vietnamese setting shares some commonalities with other countries in terms of the challenges for legal education and the demand for reform.<sup>386</sup> Vietnam has also attempted to reform legal education to ensure a better legal profession, socio-economic development and a rule-of-law society.<sup>387</sup> In this regard, the literature review has enabled the thesis to link to earlier research (whether about Vietnamese legal education reform or CLE) and avoid any possible overlap. The relevant literature has allowed identification and understanding of the most important issues in the research field and their relevance to this thesis.

Secondly, the literature review has assisted in addressing various theoretical concepts and definitions. In particular, the literature review was essential in order to identify common understandings and different opinions on various relevant clinical concepts and to identify the scope of research before any empirical research commenced. Research is in fact a 'way of knowing'<sup>388</sup> in which we are, as researchers, looking for new knowledge based on existing theoretical frameworks, concepts and definitions. In some cases, research can also establish a new theoretical framework based on the research findings and results.<sup>389</sup>

Thirdly, the literature review has also created a significant foundation for designing an

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<sup>385</sup> See above Chapter Two.

<sup>386</sup> See above Chapter One.

<sup>387</sup> See below section 5.2 of Chapter Five.

<sup>388</sup> Bouma, above n 383.

<sup>389</sup> Ibid.



appropriate and effective empirical research process. Specifically, it has helped identify the gaps in the relevant field of knowledge which need further investigation and has assisted in justifying the reason for conducting the research. In this thesis, the question of whether or not CLE is a promising approach for Vietnamese legal education reform is central and needs to be explored and examined comprehensively and intensively. Given that CLE is a new concept in the Vietnamese setting, literature about how clinical approaches have been adopted and operated in the Vietnamese setting has been limited and insufficient to answer the research questions.<sup>390</sup> Accordingly, the literature review has helped to determine the research participants and the approaches by which information could best be obtained from them.

### **3.2.2 What to Review?**

The thesis has drawn extensively on literature about global legal education and CLE. Various themes within the literature have been reviewed including, but not limited to: the challenges of global legal education and the demand for reform; the current state of, and the challenges for, Vietnamese legal education and the demand for reform; CLE at a regional and global level and its challenges; major global debates about clinical methodology in legal education; the current state of CLE in Vietnam; possibilities for legal education reform in Vietnam; what makes CLE an appropriate option for the Vietnamese legal education; and global experiences and lessons in adopting and incorporating CLE into law curricula.

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<sup>390</sup> In general, there have been two primary research projects conducted so far on these issues. Mark Sidel and Duy Nghia Pham, *Building Clinical Legal Education in Vietnam* (UNDP Vietnam, 2010); and UNDP Vietnam, *Final Report – Assessment of Clinical Legal Education Programs in Law Training Institutions in Vietnam* (hereinafter UNDP Clinical Report) (November 2014). The research by Sidel and Pham was conducted in 2010 as a survey on the conditions of Vietnamese law schools, aimed to discover whether or not CLE would work in Vietnam. Based on this UNDP would decide to provide funding or not to develop CLE among Vietnamese law schools. Meanwhile, the UNDP Clinical Report was conducted by an independent expert to evaluate and assess the effectiveness of the 2010-2014 Clinical Project funded by UNDP. Neither of these research projects explored comprehensively the issue of how clinical approaches have been adopted and operated in the Vietnamese setting.

### 3.3 Empirical Research

#### 3.3.1 *Why Empirical Research?*

Empirical study has constituted the central approach in conducting this research. Empirical approaches employed in this research included qualitative semi-structured interviews and focus group discussions. Combining theory and data has been recognised as an effective approach in the research process.<sup>391</sup> In this research, the literature review method was employed to create a theoretical foundation (theory) that assisted in identifying the research hypothesis. Then, empirical research followed to assist in obtaining views and insights of participants (data) that aimed to support the answering of research questions. There are a number of reasons to explain why empirical research is used in this thesis.

First, while Vietnamese legal education reform is not a new topic, local (Vietnamese) literature on the research questions is completely inadequate. Therefore, reviewing literature, by itself, is not a legitimate and efficient approach to answer the research questions and examine the research hypothesis. Some research, conducted by others before this thesis, has referred to different relevant aspects (such as the challenges facing Vietnamese legal education and the demand for legal education reform in Vietnam), and proposed some measures for reform. However, none of this work has looked into CLE as a potential approach for innovating and strengthening Vietnamese legal education. Accordingly, the empirical research informing this thesis was based primarily on the practice of CLE in Vietnam and whether a clinical approach can be adopted and incorporated into Vietnamese legal education, to make the system function better.

Secondly, empirical research has been central to allowing the thesis to connect theory with practice in order to test the research hypothesis. The research hypothesis is that CLE may be an appropriate option for Vietnamese legal education reform because it can help strengthen and improve the national legal education system. This is based on the theoretical framework, widely agreed in many countries, that CLE is an innovative and

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<sup>391</sup> Bouma, above n 383, 15-18.

effective approach for teaching law and preparing students for the legal profession.<sup>392</sup> On this basis, empirical research is central to providing this research with practical evidence to determine whether or not the research hypothesis is accurate.

### **3.3.2 Data Collection**

#### *3.3.2.1 Qualitative Interviews*

##### *(i) Choosing Appropriate Research Sites*

Naturally, Vietnam was chosen as the context in which to conduct interviews for data collection as the research is about legal education and CLE in Vietnam. Because of the nature of the research questions, it was decided to obtain information from both academic (law school) and practical (law firms and judicial agencies) perspectives.

For the academic perspective, of the more than 30 Vietnamese law schools in existence at the time the research started, plans were made to visit 12 of them. Among these 12 law schools, eight schools had CLE programs and four of them did not have CLE programs. In fact, all the schools visited for empirical research are geographically representative of Vietnamese law schools throughout the country, with four in the North, three in the Central region, four in the South and one in the Mekong Delta region. The 12 law schools chosen as research sites also represented different types and sizes of Vietnamese law schools with two *law universities* (principal or large size), three *law schools* (medium size), and seven *law faculties* (small size).<sup>393</sup> *Table 1* below shows all the Vietnamese law schools visited during the two empirical research visits in 2014 and 2016. In addition, interviews of three law teachers from three other law schools occurred without physically visiting them (via the internet, using Skype and Facebook video phone).

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<sup>392</sup> See above Chapter One.

<sup>393</sup> See below Chapter Four for more details about Vietnamese law schools.

**Table 1 – Vietnamese law schools visited for empirical research**

#	Law school visited	Size (number of students recruited per academic year)	CLE program
<b>North</b>			
1	Hanoi Law University	4500-5300	No
2	Hanoi National University Faculty of Law	300-400	Yes
3	Trade Union University Faculty of Law	550-700	Yes
4	National Economics University Faculty of Law	120-150	Yes
<b>Central</b>			
5	Vinh University Faculty of Law	250-300	Yes
6	Hue University School of Law	750-900	Yes
7	Danang University of Economics Faculty of Law	150-250	No
<b>South</b>			
8	Ho Chi Minh City Law University	4700-5300	Yes
9	Saigon University Faculty of Law	75-100	No
10	Ho Chi Minh City University of Economics Faculty of Law	100-120	No
11	Ho Chi Minh City National University School of Economics and Law	550-700	Yes
<b>Mekong Delta</b>			
12	Cantho University Faculty of Law	250-350	Yes

Balance and diversity of opinion was achieved by conducting interviews with related stakeholders. To provide the legal practice perspective, visits to 15 law firms were conducted, with three in the North, six in Central, two in the South, and four in the Mekong Delta region. In addition, visits to a number of courts, procuracies, public notary offices, local bar/lawyers associations, and other judicial agencies were also conducted. *Table 2* below shows all the law firms, judicial agencies, and local bar/lawyers associations visited during the empirical research.

**Table 2 – Law firms and judicial agencies visited for empirical research**

#	Law firms visited		#	Judicial agencies and bar/lawyers associations visited
<b>North</b>				
1	Phidenson Law Firm		1	Supreme People's Court – Hanoi office
2	Nguyen Trung Law Firm		2	Hoa Binh Public Notary Office
3	Binh and Associates Law Firm			
<b>Central and Highland</b>				
4	Ngoc Hanh and Associates Law Firm		3	Nghe An Bureau of Civil Law Enforcement
5	FDVN Law Firm		4	Vinh city People's Court
6	Vinh Dien and Associates Law Firm		5	Quang Tri Bureau of Civil Law Enforcement
7	Phan Van Chieu Law Firm		6	Quang Tri Provincial People's Court
8	Phuoc and Associates Law Firm		7	Thua Thien Hue Provincial People's Court
9	Quynh Bang Law Firm		8	Thua Thien Hue Department of Justice
			9	Thua Thien Hue Provincial People's Procuracy
			10	Danang Bureau of Civil Law Enforcement
			11	Supreme People's Court -Danang office
			12	Pleiku city People's Court
			13	Thua Thien Hue Lawyers Association
			14	Danang Bar Association
<b>South</b>				
10	Chinh Nghia Luat Law Firm		15	District 4 People's Procuracy
11	CNC Law Firm		16	District 3 People's Court
			17	Binhthanh district People's Court
<b>Mekong Delta</b>				
12	Le Khanh Law Firm		18	Ninhkieu district people's Court
13	Van Ly Law Firm		19	Cantho city People's Court
14	Dinh Chuong Law Firm		20	Cantho city People's Procuracy
15	Maria Ha Vu Law Firm		21	Cairang district People's Procuracy

*(ii) Identifying Themes of Data to be Collected*

Based on the literature review, research questions and hypothesis, the author identified a number of different general themes to be investigated:

- the current state of, and challenges for, Vietnamese legal education;
- possible approaches for Vietnamese legal education reform;

- the current state of, and challenges for, the legal profession in Vietnam;
- the current state of, and challenges for, CLE in Vietnam;
- the benefits of CLE for Vietnamese legal education;
- factors making CLE a promising option for Vietnamese legal education reform;
- supporting conditions for CLE to develop and take root in the Vietnamese setting;  
and
- future possibilities for CLE in Vietnam.

### *(iii) Choosing and Recruiting Participants*

As noted above, it was considered appropriate to obtain data from two main perspectives: academic participants and participants in legal practice (or participants in the operations of the legal system). On the academic side, the author identified (see below) people to be interviewed as including law school leaders and managers (deans, vice deans, heads of academic departments or divisions), law teachers, clinical teachers and clinical students. From the practical perspective, the author decided to invite practising lawyers, judges, procurators, and other judicial officials (court clerks, civil law enforcement officials and public notary officials) to participate in the research. The author considered that the knowledge and experience of these people would benefit the research significantly. In general, the research participants were quite diverse, so as to enable the collection of opinions from as many different perspectives as possible. In fact, the participants provided a great variety of opinions, views and critiques.

The first step in recruiting people to the research was to obtain personal information and contact details. This was done in different ways: by accessing the websites of the relevant institutions/agencies; through introductions made by friends or colleagues; and through searching on the internet. Next, the author contacted people (by email or telephone) to invite them to participate in the research. Often, it was quite a straightforward process to directly invite each individual to be interviewed. For some Vietnamese law schools, judicial agencies and law firms, the author first had to ask for permission in order to recruit their people to take part in the research. Once a letter of permission (*see appendix A for an example of this type of letter*) was granted by the relevant institution, the author simply invited people by sending out an invitation letter (*see appendix B for an example*).

In all cases, an explanatory statement about the research was attached to the letter of invitation, in accordance with the research ethics clearance. Normally, participants responded (by email or by phone) within a few days to agree or decline to take part in the research. Where they agreed to participate, discussions continued in order to set the date, time and location for each interview to be undertaken.

The author benefited greatly from his earlier teaching career when conducting the empirical research. More than 13 years of teaching experience at a Vietnamese law school had helped him establish a good relationship with people working in both legal academic and practical environments. Accordingly, after sending out invitation letters, the author received an overwhelming number of acceptances from potential participants in the research. In fact, the number of interviewees was much larger than originally planned. Initially, the author planned to interview approximately 60–70 people (a number already higher than the average for qualitative empirical research<sup>394</sup>). However, at the end, the author was able to conduct 103 interviews, with 16 participants being interviewed twice.

The author expected that some potential participants would not be willing to take part in the interviews; or they might agree to be engaged in the research but not want their voice to be recorded. In fact, a number of different people did not want to participate in the interviews. The reasons were that they were not interested in the topics; they thought the problem was too complicated to solve; or they did not want to talk about legal education reform as they believed it is a politically sensitive issue in Vietnam. In addition, two participants in the research were happy to participate in the interviews but did not want their voices to be recorded.

#### *(iv) Designing Questionnaires*

Along with choosing appropriate participants, question design was obviously an important condition for the success of the research.

The author designed questions based on the two general themes relevant to the two

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<sup>394</sup> Miles and Huberman, above n 384, 30.

central research topics in the thesis: Vietnamese legal education and CLE in Vietnam. For the first theme, the author planned to dig deeply into the historical development of Vietnamese legal education, to identify various challenges and demand for reform, as well as to explore some possibilities for such reform. As noted earlier, there was limited relevant literature. However, it was also important to use the research to investigate the current state of the Vietnamese legal education system, including the many challenges it faced. As a part of this process, the author also wanted to evaluate and compare some legal education reforms already carried out in Vietnam and possibilities for future reform proposed by informants with CLE experience. Such evaluation and comparison would be critically important for Vietnamese legal education in deciding how and where to progress.

In relation to the second theme, the interviews focused on the potential benefit of CLE to Vietnamese legal education reform. Accordingly, the questions were designed to obtain information and opinions on the issues outlined above (see page 72 dot point list).

The questions used were semi-structured, which allowed the author, as the interviewer, to expand and delve into the field or the research topic during the interview. On average, an interview lasted from 45–90 minutes, depending on how much information was to be obtained and how the interviews progressed. Generally, participants in any one group were asked the same set of questions, designed and prepared in advance. However, participants were not necessarily asked the same number of questions as it depended on how the interviews were going and on their responses to the questions. *Table 3* below shows the various types of participants and question themes.



**Table 3 – Types of research participants and question themes**

#	Type of research participants	Themes of question	Notes
1	Leaders/managers of law schools with clinical programs  Clinical teachers	Historical development of Vietnamese legal education; current state of and challenges for Vietnamese legal education; the demand and possibilities for legal education reform in Vietnam; future possibilities of Vietnamese legal education; CLE benefits to legal education; current state of and challenges for CLE in Vietnam; future possibilities of CLE in Vietnam; supporting conditions for the development of CLE in Vietnam	Eight out of 12 law schools visited had self-described clinical programs at the time of research
2	Leaders/managers of law schools without clinical programs  Law teachers	Historical development of Vietnamese legal education; current state of and challenges for Vietnamese legal education; the demand and possibilities for legal education reform in Vietnam; future possibilities of Vietnamese legal education	
3	Clinical students	CLE benefits to students' learning; current state of and challenges for CLE in Vietnam from students' perspective; future possibilities of CLE in Vietnam; supporting conditions for the development of CLE in Vietnam	
4	Practising lawyers, judges and procurators with clinical experience	Current state of and challenges for Vietnamese legal education; current state of and challenges for the legal profession in Vietnam; the demand and possibilities for legal education reform in Vietnam; future possibilities of Vietnamese legal education; CLE benefits to legal education; current state of and challenges for CLE in Vietnam; future possibilities of CLE in Vietnam; supporting conditions for the development of CLE in Vietnam	Some Vietnamese practising lawyers, judges, and procurators were invited by law schools to supervise and mentor clinical students
5	Practising lawyers, judges, procurators and other judicial officials without clinical experience	Current state of and challenges for Vietnamese legal education; the demand and possibilities for legal education reform in Vietnam; current state of and challenges for the legal profession in Vietnam; future possibilities of Vietnamese legal education	

### *3.3.2.2 Ethics, Privacy and Confidentiality, and Risk of Harm Considerations*

#### *(i) Ethics Approval*

In order to conduct research, the author applied for and obtained Monash University Human Research Ethics Committee (MUHREC) ethical approval. The first ethics application, lodged in 2014, was considered low risk and it was approved within two weeks of submission. This was prepared for the first empirical research visit to Vietnam in 2014 where the author interviewed law school leaders/managers, law teachers, clinical teachers and students.

The second research visit to Vietnam was made in 2016 for in-depth interviews and follow-up discussion seminars. The author had to modify the questionnaires, design new sets of questionnaires for new participants and for follow-up discussion seminars, and to reflect all this in an amended ethics application. Shortly after, the amended application for ethical approval was passed by the MUHREC, in time for the second empirical research visit in early 2016.

#### *(ii) Privacy and Confidentiality*

An explanatory statement (*see appendix C for a sample of this statement*) of the research was sent to each participant along with the invitation letter. This process ensured that each participant had enough time to read about and understand the research, the objectives of data collection, and other issues relevant to privacy, confidentiality and risk of harm to interviewees. In addition, at the beginning of each interview, the author briefly went through all the main points of the statement, provided further explanation if needed, and asked each participant to sign a consent form (*see appendix D for a sample for this form*) to show they agreed to participate in the research. The participants were told at the beginning of each interview that they could withdraw from further participation at any stage of the research under any circumstances and without any responsibility. The author also explained to the participants that it would be impossible, however, to withdraw data once it was analysed and had become a part of the thesis publication.

In the empirical research visits, the interviewees quite often chose the locations for their convenience and comfort. These could be an office at a law school, a client interviewing room at a law firm, or an office at a judicial agency. In some cases, when these locations were not available, the author conducted interviews in a cafe or a restaurant. In a few instances, the author conducted interviews using Skype or Facebook video phone with a recorder for audio data. Generally, the author always gave the interviewee the option to decide the location that they felt was the most convenient and comfortable. In addition, every attempt was made to ensure privacy and confidentiality before, during and after the interview, particularly when it came to the stage of data analysis and presentation.

Participants' personal information has been and will be kept confidential. No identifying details are used in the transcript or disclosed in the published findings of the research, or to any party. In order to protect privacy and confidentiality, pseudonyms are used in the thesis chapters and in any published materials.

### *(iii) Risk of Harm to Research Participants*

It was not anticipated that the interview would cause participants inconvenience or discomfort. However, the interviewees were told that if they found any questions distressing or embarrassing then they simply did not have to answer them. The explanatory statement also provided participants with details of available services if they wished to attend for counselling should they feel distressed after the interview process. No problem was encountered or has been reported by the participants before, during or after the interviews.

### *3.3.2.3 The interview Process*

#### *(i) The First Empirical Research Visit: a Scoping Study*

The first empirical research visit was undertaken in November 2014 – after completion of a considerable amount of the literature review process. This helped the author develop his knowledge about legal education trends, legal education reform, and CLE at global and regional levels, as well as from a Vietnamese perspective. Accordingly, the 2014 visit

operated as a ‘scoping study’ where the author obtained a general picture of Vietnamese legal education and its challenges, the demand for legal education in Vietnam, the current state of, and challenges and future possibilities for, CLE in Vietnam. During this first research visit, the author travelled to seven cities throughout Vietnam and interviewed 52 people, including Vietnamese law school leaders/managers, law teachers, clinical teachers and students.<sup>395</sup> This assisted the author in obtaining academic views and opinions on the research topics.

Another reason to make the first visit in 2014 was the UNDP Clinical Project<sup>396</sup> – a significant program to promote the initiation and development of clinical programs among Vietnamese law schools – which was planned to be completed in November 2014. The author intended to attend the UNDP Clinical Conference,<sup>397</sup> which was held for representatives from different Vietnamese law schools to evaluate, share, and learn about their clinical experience with each other.

In fact, the author attended this conference as a representative of Hue University School of Law – a core partner of the UNDP Clinical Project. The conference was a significant occasion where Vietnamese law school representatives presented, discussed and evaluated the achievements of their clinical programs during the four years of the UNDP Clinical Projects, as well as discussed the future of the clinical movement in Vietnam. This conference also gave the author an opportunity to access the *UNDP Clinical Report on Clinical Programs at Vietnamese Law Schools*.

In this first research visit, the author also attended the ‘The Lawyering Career in Vietnam: Opportunities and Challenges’ seminar co-organised in Hue city by the Vietnamese Bar Federation and Hue University School of Law. The target audience was students of Hue University School of Law. However, the author found quite a lot of information and discussion at the seminar relevant and beneficial to the research, including the question of how to best prepare law students for the legal profession.

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<sup>395</sup> All the interviews and follow-up discussion seminars were conducted in Vietnamese as the author is fluent in Vietnamese and research participants were Vietnamese. The data was then translated into English and transcribed by the author.

<sup>396</sup> See below Chapter Six.

<sup>397</sup> Ibid.

*(ii) The Second Empirical Research Visit: In-depth Study*

The author made a second visit to Vietnam in early 2016 for in-depth research. In this second visit, the author expanded research participants to include people from a practical perspective: practising lawyers, judges, procurators and other judicial officials. At the same time, second interviews were conducted of some previous participants to find out whether there were any changes in their views or opinions, particularly after the completion of the UNDP Clinical Project, in comparison with those in 2014. In addition, some of the issues missed out or newly raised by participants during the first visit were considered and included in the revised questionnaires for the 2016 research visit.

Fifty-one people were interviewed during the second visit. This was a mixture of participants, consisting of 16 old and 35 new interviewees. They included law school leaders/managers, law teachers, clinical teachers, practising lawyers, judges, procurators and other judicial officials. In addition, two follow-up discussion seminars were organised in the cities of Hue and Cantho for participants (of both 2014 and 2016 research visits) to share their views and opinions on the research topics (*see the details of these seminars in the following section of this chapter*). In this second visit, the author decided not to interview students for two reasons: (1) the author had already interviewed 16 students during the first visit in 2014 and this helped him obtain enough relevant opinions and information from them; (2) with limited time and resources, the author wanted to expand the interviews with practising lawyers and judicial officials. In fact, some students did participate in both the Hue and Cantho follow-up discussion seminars.

Overall, there were 87 participants interviewed during these two research visits to Vietnam. This number was broken down as follow: (1) law school leaders/managers: 15; (2) law teachers: 9; (3) clinicians: 16; (4) clinical students: 15; (5) practising lawyers: 18; and (6) judicial officials: 14.

#### *3.3.2.4 Focus Group Discussions*

Follow-up focus group discussion seminars were another form of data collection during the empirical research visits. The principal objective of this type of seminar was to bring participants, who had already been interviewed, to a round-table meeting for further in-depth discussion on the research topics. These discussions assisted the author in identifying common and divergent opinions on the research topics, from which he could draw his own conclusions later.

Initially, the author planned to organise three focus group discussions, one in each of the cities of Hanoi (North), Hue (Central) and Cantho (Mekong Delta).<sup>398</sup> However, the author was in fact able to invite only some participants for follow-up discussion seminars for several reasons. First, the interviewees were based in nine different cities throughout Vietnam and it was not always convenient for participants to travel long distances just to participate in a focus group discussion. The author had limited research budget and was unable to find a source of funding to support their travelling, accommodation and other expenses. Secondly, participants' working schedules were quite different and this did not allow them all to gather at a place at the same time for a seminar. The Hanoi focus group discussion seminar was unable to be held as planned for this reason. Therefore the author had to choose to invite some participants with common views or divergent opinions and to ensure participants in the seminar represented as many types of participant as possible.

The seminar held in Hue city was attended by 13 people (one law school vice dean, two clinical teachers, three law teachers, one judge, one procurator, one court clerk, two clinical students, and two practising lawyers) and lasted for about two hours and 40 minutes. It was a very productive seminar with an overwhelming number of opinions and robust debate. The Cantho seminar had nine participants with three practising lawyers, two judges, one procurator, one clinical teacher, one law school dean, and one clinical student. The seminar organised in Cantho also witnessed a quite vigorous discussion on

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<sup>398</sup> In support of this plan, the author always asked the participants, at the end of each individual interview, if they wished to participate in a focus group discussion seminar. This option was also stated in the consent form read and signed by each interviewee at the beginning of every interview. The participant could tick the box if they were interested in attending the follow-up seminar for further discussion.

different issues and conflicting opinions from participants.

### **3.3.3 Data analysis**

The author employed the Miles and Huberman framework for qualitative data analysis. This framework has three main components: data collection, data display and drawing and verifying conclusions.<sup>399</sup> All the recorded interviews were transcribed and translated from Vietnamese into English by the author. This data was then analysed using the qualitative data analysis software *NVivo*.<sup>400</sup> In general, the analysis process was based on two main themes in the interviews: Vietnamese legal education and CLE in Vietnam. After all the transcripts had been imported into *NVivo*, the author coded responses and comments using a number of general categories.

For the Vietnamese legal education theme, the author coded using categories such as challenges facing legal education, the demand for legal education reform, approaches for legal education reform and the future of Vietnamese legal education. For the Vietnamese CLE topic, the coding process was based on categories such as the benefits of CLE to Vietnamese legal education, the current state of Vietnamese CLE, challenges facing CLE in Vietnam, what makes CLE a promising option for Vietnamese legal education reform, supporting conditions for CLE in Vietnam, and future possibilities of CLE in Vietnam.

These general categories enabled the author to develop lists of issues to be investigated. Based on these, the author developed a series of sub-categories and summaries of data. With this process, the author was able to identify, compare and group themes, issues, and categories among interview transcripts, which is significant for data display and for drawing conclusions in the later stages of the research process.

Analysed data are displayed in a number of forms such as tables, figures, or quotations throughout the thesis chapters, beginning with Chapter Four. A working table of the list of participants was created to make it easy for data reference and citation. However, to

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<sup>399</sup> Miles and Huberman, above n 384, 4.

<sup>400</sup> *Nvivo* is a well-known software developed by QSR International specifically for qualitative data analysis. For more details see <<http://www.qsrinternational.com/nvivo-product>>.

protect the privacy and confidentiality of interviewees, the author has not included that table in this thesis.

### **3.4 Conclusion**

This chapter has presented and discussed the different methodologies that the author employed to examine the research questions and hypothesis of the thesis. The literature review was significant in setting the research background, placing the research in the global context and assisting in planning for empirical research, particularly in designing questionnaires for interviews and follow-up discussions. However, the central methodology of the research was empirical. In Chapter Four, the history, current state of, and challenges for Vietnamese legal education is discussed and is the first chapter of the thesis where research-derived information is displayed and discussed.



## CHAPTER FOUR

### LEGAL EDUCATION IN VIETNAM: THE HISTORY, CURRENT STATE AND CHALLENGES

#### 4.1 Introduction

This chapter discusses legal education, the legal profession and the training of qualified lawyers in Vietnam and examines their various challenges. The current socialist system of Vietnamese legal education is a relatively new<sup>401</sup> system with no connection to the previous non-socialist systems.<sup>402</sup> Legal education was introduced into Vietnam during French colonisation in the late 19<sup>th</sup> century and continued through the Vietnam War. During the period from 1955 to 1975, a few law schools were established throughout the nation. After the Vietnam War, there was no legal education in Vietnam as all the pre-1975 law schools had been closed. It was not until 1976 that Hanoi University Faculty of Law was established. This was one of the institutions combined to form Hanoi Law University<sup>403</sup> — the largest law school in Vietnam today.

The first part of this chapter presents a brief history of Vietnamese legal education and discusses the current state of this system. Emphasis is placed on issues such as legal education institutions, teaching curriculum and training structure, and legal education objectives. At present, with more than 40 institutions offering legal education at different levels, the Vietnamese system still remains underdeveloped and traditional in both curriculum and teaching methodology. Arguably, the system has failed to properly prepare students for the profession. Unlike in many other countries where legal education aims to ‘produce’ lawyers, the Vietnamese system focuses mainly on what can be described as training legally-qualified human resources.

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<sup>401</sup> See, eg, Cheng Han Tan et al, 'Legal Education in Asia' (2006) 1(1) *Asian Journal of Comparative Law* 184, 184–6 (regarding Asian legal education as a ‘young creature’. Although there had been legal education programs offered in most Asian jurisdictions during the colonisation period, these countries built their new legal education systems after gaining independence); see also Hanoi Law University, below n 364 (identifying that the current Vietnamese legal education system is approximately 40 years old, with the first law school being established in 1976).

<sup>402</sup> Bui, above n 17, 136.

<sup>403</sup> Hanoi Law University (HLU) is different from the Hanoi National University Faculty of Law (HNUFL) mentioned below. HLU is the oldest Vietnamese law school established under the administration of the Ministry of Justice (MOJ); HNUFL was established under the administration of Hanoi National University which is not under the control of the MOJ.

The second part of this chapter presents an overview of the legal profession and the Judicial Academy (JA) and discusses the training of qualified lawyers in Vietnam. The Vietnamese legal profession is also a new institution as its lawyer members were first permitted to conduct private business in 1987. The Vietnamese Bar Federation (VBF) – the profession’s highest administration body – is even younger, as it was established only in 2009. Generally, the legal profession has been operating under the close supervision of the Vietnamese central government. The JA was established as a national judicial training school in 2004 to formalise the professional training of various judicial positions in Vietnam. However, the organisation and operation of the JA remains problematic and arguably has its own need for reform.

This chapter then turns to the various challenges facing the current Vietnamese legal education system. These challenges can be summarised as follows:

- law graduates lack the professional knowledge and skills necessary for functioning effectively as lawyers;
- legal education is disconnected from the legal profession;
- law graduates have limited capacity to think independently, creatively, and critically;
- law students lack training in legal ethics and professional responsibility; and
- law schools lack autonomy and flexibility in delivering legal education.

Additionally, this chapter establishes the context for future discussions of the possibilities for reform of Vietnamese legal education. The discussion and analysis in this chapter relies primarily on the Vietnam Empirical Research (VER)<sup>404</sup> conducted in 2014 and 2016.

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<sup>404</sup> See above Chapter Three for further details of the VER and how it was conducted.

## 4.2 A Brief History of Vietnamese Legal Education

Vietnam is a civil law system which was derived from and heavily influenced by that of France during their ruling time in Vietnam in the nineteenth century.<sup>405</sup> There was no formal legal education in Vietnam before 1858, which was when the French arrived and started to establish their own political system for governing the country. Prior to this date, the country, led by a long-standing feudal regime of the Nguyen dynasty, was underdeveloped, unstable and weak in national defence. During the period of French colonisation (from 1858 to 1954), a law school was established in 1931 in Hanoi.<sup>406</sup> However, little has been recorded about this law school or its graduates. This chapter, therefore, focuses more on the development of Vietnamese legal education after French colonisation.

### 4.2.1 Legal Education in North Vietnam

The Vietnam War from 1955 to 1975 witnessed the separation between the North and the South of Vietnam. In the North, the Democratic Republic of Vietnam (DRV) took the war 'for the reunification' or 'to liberate the South' (as claimed by DRV) as their first priority and concentrated all of their resources on the fighting. During the 1960s, the DRV Ministry of Justice had to be closed due to the war.<sup>407</sup> In order to meet the demand for judicial officials at this time, a Judicial Training School was established in 1960 under the Vietnam People's Supreme Court (VPSC).<sup>408</sup> This institution was missioned to train and provide human resources for Vietnamese courts.

After the Vietnam War, a faculty of law was established in 1976 at Hanoi University under the Ministry of Education and Training (the MOET), named Hanoi University Faculty of Law.<sup>409</sup> In 1979, the Judicial Training School was upgraded and renamed Hanoi College

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<sup>405</sup> See, eg, San Bich Tran, 'Vietnam under French Ruling' *Co Thom Magazine*, cited by Bui, above n 22, 301-303.

<sup>406</sup> Ibid 301.

<sup>407</sup> See, eg, Mark Sidel, 'Law Reform in Vietnam: The Complex Transition from Socialism and Soviet Models in Legal Scholarship and Training' (1993) 11(2) *Pacific Basin Law Journal* 221, 224.

<sup>408</sup> The Court Academy of Vietnam, *The Historical Development of The Vietnam Court Academy* (26 April 2015) <<http://tcbita.toaan.gov.vn/portal/page/portal/tcbita/27676661/27677412>>.

<sup>409</sup> Hanoi National University Faculty of Law, *Introduction to Law Faculty* (29 January 2018) <<http://law.vnu.edu.vn/article-Gioi-thieu-Khoa-Luat-12609-1103.html>>.

of Law. Its mission was to train judicial officials for the Vietnamese court system. In 1982, this college was brought under the administration of the Ministry of Justice (MOJ), and in the same year, it was merged with Hanoi University Faculty of Law to form Hanoi Law University (HLU).<sup>410</sup> This is the first and largest law school in Vietnam to date.

In 1994, as required by the judicial reform mission, another Judicial Training School was established under the VPSC<sup>411</sup> to deliver training to court officials. After more than 20 years of operation, this school was upgraded and renamed the Court Academy in July 2015. Its mission was to provide professional training for court officials throughout the nation.<sup>412</sup> At present, the Court Academy is one among several professional training institutions,<sup>413</sup> alongside law schools, in the two-stage Vietnamese legal education system (this will be discussed further in the following sections of this chapter).<sup>414</sup>

Hanoi University re-opened a faculty of law in 1986. In 1995, Hanoi University was divided into two universities, namely the University of Natural Sciences and the University of Social Sciences and Humanities. The faculty of law was then under the administration of the University of Social Science and Humanities. After Hanoi University was upgraded and renamed Hanoi National University in 2000, this faculty of law became Hanoi National University Faculty of Law (HNUSL).<sup>415</sup>

#### **4.2.2 Legal Education in South Vietnam**

In the South, under the administration of the Republic of Vietnam (RV), three law schools were established during the Vietnam War: Saigon Faculty of Law, Cantho Faculty of Law and Hue Faculty of Law. However, there is no evidence that these early institutions had any impact on the establishment and operation of the current law schools which were established after the end of the Vietnam War in 1975.

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<sup>410</sup> Hanoi Law University, *The Ceremony of 35 years of Establishment and Development of Hanoi Law University* (5 April 2015) <<http://hlu.edu.vn/tintuc/2976/LE-KY-NIEM-35-NAM-NGAY-THANH-LAP-TRUONG-DAI-HOC-LUAT-HA-NOI-VA-DON-NHAN-HUAN-CHUONG-DOC-LAP-HANG-NHI.html>>.

<sup>411</sup> The Court Academy of Vietnam, above n 408.

<sup>412</sup> See below section 4.4.2 of this chapter.

<sup>413</sup> These include the Judicial Academy and Hanoi Procuratorate University. See below section 4.4.2 of this chapter for further details of these three legal professional schools.

<sup>414</sup> See below section 4.4.2 of this chapter.

<sup>415</sup> Hanoi National University Faculty of Law, above n 409.

In 1976, Ho Chi Minh City (HCMC) University of Economics was established and the Saigon Faculty of Law was merged with this university. In 1996, HCMC University of Economics established a Department of Law missioned to teach the Vietnamese legal system and commercial law units for non-law students. It was then upgraded and renamed the Faculty of Law in 2001, and started to deliver legal education at the undergraduate level in 2005.<sup>416</sup> In 1981, HLU opened another campus in HCMC named 'Hanoi Law University's campus in Ho Chi Minh City'. In the late 1980s, HCMC University formed a faculty of law with its pre-1975-trained lawyers.<sup>417</sup> In 1996, this law school was merged with Hanoi Law University's campus in Ho Chi Minh City to form HCMC Law University (HCMCLU) under HCMC University. After HCMC University was upgraded and renamed HCMC National University (HCMCNU) in 2000, HCMCLU separated and came under the administration of the MOET.<sup>418</sup>

At present, HCMCLU is one of the two major Vietnamese law schools, along with HLU. Also in 2000, another faculty of law was established at HCMCNU. This faculty of law was later merged with the Faculty of Economics to form the School of Economics and Law in 2010 under the administration of HCMCNU (HCMCNU SEL).<sup>419</sup>

#### **4.2.3. Legal Education in Central Vietnam**

In central Vietnam, Hue University Faculty of Law was established in 1957 in Hue city (belonged to South Vietnam during the Vietnam War) of the Republic of Vietnam. It was closed after reunification in 1975. There is no evidence of a connection between this faculty of law and the current Hue University School of Law (HUSL).<sup>420</sup> In fact, HUSL was established in 1995 as the Department of Law under Hue University of Sciences. In 2009,

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<sup>416</sup> Ho Chi Minh City University of Economics Faculty of Law, *Introduction to Faculty of Law* (24 September 2014) <<http://law.ueh.edu.vn/gioi-thieu-khoa-luat/>>.

<sup>417</sup> Sidel, above n 406, 224–5.

<sup>418</sup> Ho Chi Minh City Law University, *The Historical Establishment and Development* (23 December 2017) <<http://www.hcmulaw.edu.vn/vi/luoc-su/qua-trinh-hinh-thanh-va-phat-trien>>.

<sup>419</sup> Ho Chi Minh City National University School of Economics and Law, *The Historical Establishment and Development* <<http://www.uel.edu.vn/ArticleId/098e3942-d9c0-4d71-9e45-1436ad2a6538/lich-su-hinh-thanh-va-phat-trien>>.

<sup>420</sup> Hue University School of Law, *The Historical Development of Hue University School of Law* (9 November 2016) <<http://www.hul.edu.vn/so-luoc-lich-su.html>>.

it separated from Hue University of Sciences and became Hue University Faculty of Law. In early 2015, pursuant to a decision by the Vietnamese Prime Minister, it was upgraded and renamed Hue University School of Law.<sup>421</sup> It has been a principal legal training institution in central Vietnam and has provided law graduates for the judicial system and the profession.

Additionally, many other legal education institutions have been established throughout the nation such as Cantho University Faculty of Law (CUFL), Vinh University Faculty of Law (VUFL), Trade Union University Faculty of Law (TUUFL), Saigon University Faculty of Law (SUFL), Dalat University Faculty of Law (DUFL), and others. Most of these law schools, however, are new and small in size.

In summary, as there is no clear connection between pre- and post-1975 law schools, Vietnamese legal education can be seen as a new system. The last 40 years has witnessed the birth, separation and merging of Vietnamese law schools in the early stages of development. The discussion in the next part of this chapter will provide more details about this system.

### **4.3 The Current State of the Vietnamese Legal Education System**

#### **4.3.1 *Legal Education Institutions***

At undergraduate level, Vietnamese legal education institutions can be classified into three categories: *law universities, law schools, and law faculties*.<sup>422</sup> By April 2017, there were more than 40 institutions in Vietnam offering legal education. See *Table 4* below for a full list of Vietnamese legal education institutions. They produce approximately 20 000 law graduates annually. The geographical location of Vietnamese law schools is set out in *Figure 1* below.

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<sup>421</sup> Ibid.

<sup>422</sup> In Vietnam, legal education institutions are relatively diverse in size, name and structure. Within this thesis, however, all of these legal education institutions are hereinafter referred to as *law schools*.

HLU and HCMCLU are the two major law schools in Vietnam. These universities are commonly known as ‘specialised’<sup>423</sup> or ‘stand-alone’ law schools established under the direct administration of the MOJ and the MOET.<sup>424</sup> Currently, they are also two of five Vietnamese law schools offering legal education at all three levels: bachelors, masters, and doctoral.<sup>425</sup>

Other Vietnamese institutions that are known as a *school of law* or a *faculty of law* have been established under a multidisciplinary university in which legal education is offered along with other professional education. This group includes HCMCNU SEL, HNUFL, HUSL, CUFL, VUFL, and others.<sup>426</sup> Most of them, however, are recently-established and concentrate on delivering legal education at bachelors’ level. Under the Vietnamese system, there are distinctions between a school of law and a faculty of law. A school of law tends to be more independent as it has its own bank account, campus, and more autonomy in finance, human resources, and training issues. In a faculty of law, these issues tend to be decided by the university to which the faculty belongs.

There are similarities in the organisational structures of Vietnamese law schools. One of the important factors influencing the organisation of Vietnamese law schools is the division of law into different branches. Learning from the former Soviet Union, Vietnam has built a legal system based on 13 fundamental branches of law. These are:

- Constitutional Law;
- Administrative Law;
- Criminal Law;
- Criminal Procedure Law;
- Civil Law;
- Civil Procedure Law;
- Economic Law;

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<sup>423</sup> Bui, above n 17, 137.

<sup>424</sup> In Vietnam, most law schools are under the MOET. HLU is the only one established under the MOJ’s administration, while a few others are administered by both the MOET and other relevant ministries. For example, TUUFL is administered by the MOET and the Ministry of Labour – Invalids and Social Affairs; Foreign Trade University Faculty of Law is administered by the MOET and the Ministry of Industry and Trade.

<sup>425</sup> These include HLU, HCMCLU, HNUFL, HCMCNU SEL and HUSL.

<sup>426</sup> See Table 4 for a full list of Vietnamese law schools.

- Finance Law;
- Labour Law;
- Family Law;
- Land Law;
- Public International Law; and
- Private International Law.<sup>427</sup>

Within a law school, some of the branches that are connected to each other are sometimes grouped to form an academic unit described as (confusingly) a *faculty*, *department*, or *division*. In most cases, Vietnamese law teachers teach and conduct research within a particular academic unit. A law school usually has several academic units. In HUSL, for example, there are five academic units, namely Department of Civil Law, Department of Criminal Law, Department of Economics Law, Department of Constitutional and Administrative Law, and Department of International Law<sup>428</sup> (see *figure 1* below). Similarly, five academic faculties established under HCMCLU include Civil Law, Criminal Law, Administrative Law, Trade Law, and International Law.<sup>429</sup> In addition, HCMCLU has also established a number of academic faculties in order to support the education process. These include Faculty of Administration, Faculty of Fundamental Knowledge and Faculty of Foreign Languages for Legal Profession (see *figure 3* below).

In smaller law schools, academic units are commonly named ‘divisions’. Generally, there is little difference between a ‘department’ and a ‘division’ as they both combine some branches of law and include a number of law teachers for teaching and conducting research therein. For example, CUFL has three academic divisions, namely Administrative Law, Trade Law and Judicial Law<sup>430</sup> (see *figure 2* below). VUFL has formed four academic sections: Civil Law, Criminal Law, Economic-International Law, and Administrative Law.<sup>431</sup> A common distinction between a ‘department’ and a ‘section’ is

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<sup>427</sup> See, eg, Tam Minh Le, *Textbook on Theory of State and Law* (People’s Police Publisher, 1998), 393–414.

<sup>428</sup> Hue University School of Law, above n 420.

<sup>429</sup> Ho Chi Minh City Law University, above n 417.

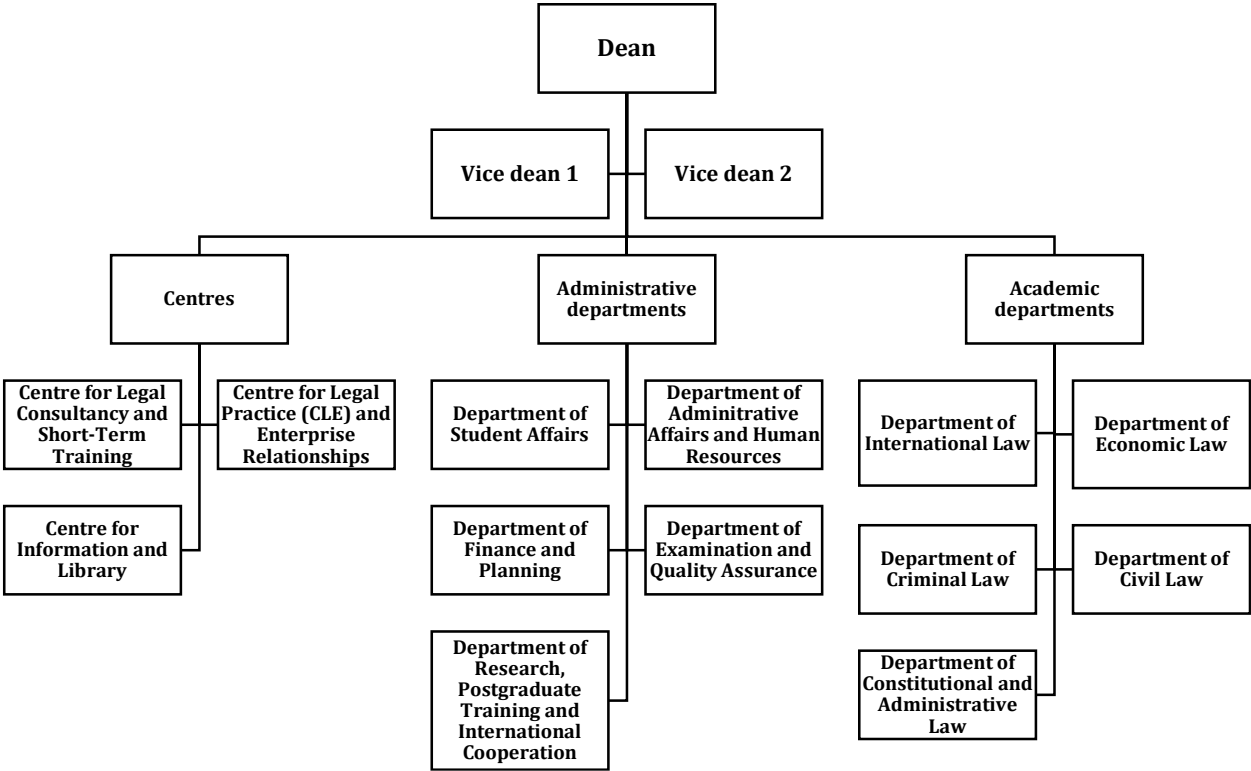
<sup>430</sup> Cantho University Faculty of Law, *Introduction to the Faculty of Law* (14 November 2017) <<https://sl.ctu.edu.vn/gioi-thieu.html>>.

<sup>431</sup> Vinh University Faculty of Law, *Introduction to Vinh University Faculty of Law* (17 May 2016) <<http://khoaluat.vinhuni.edu.vn/gioi-thieu/lich-su-phat-trien/seogioi-thieu-khoa-luat-truong-dai-hoc-vinh-65930>>.

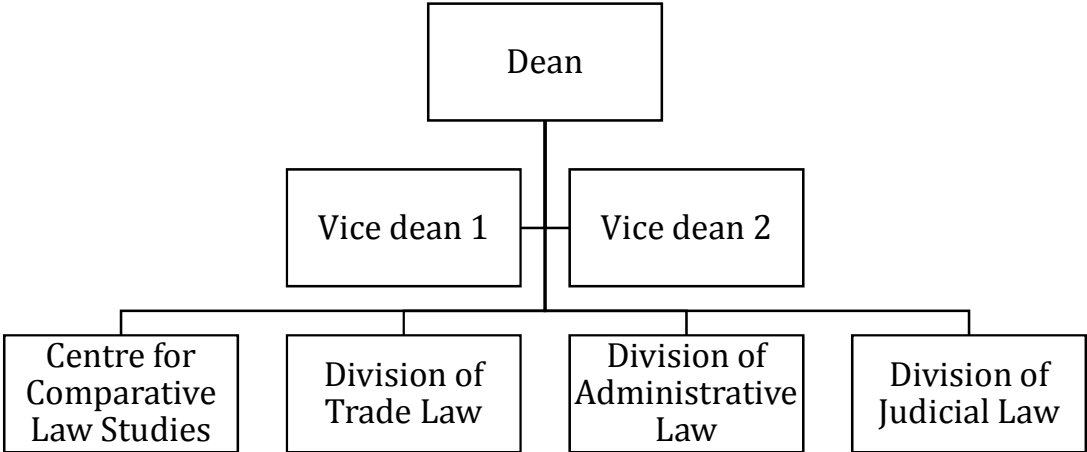


their size and autonomy. In Vietnam, an academic department is bigger than an academic division in terms of the number of teachers and in-depth teaching and research. In addition, a department may be more independent from its law school than a division.

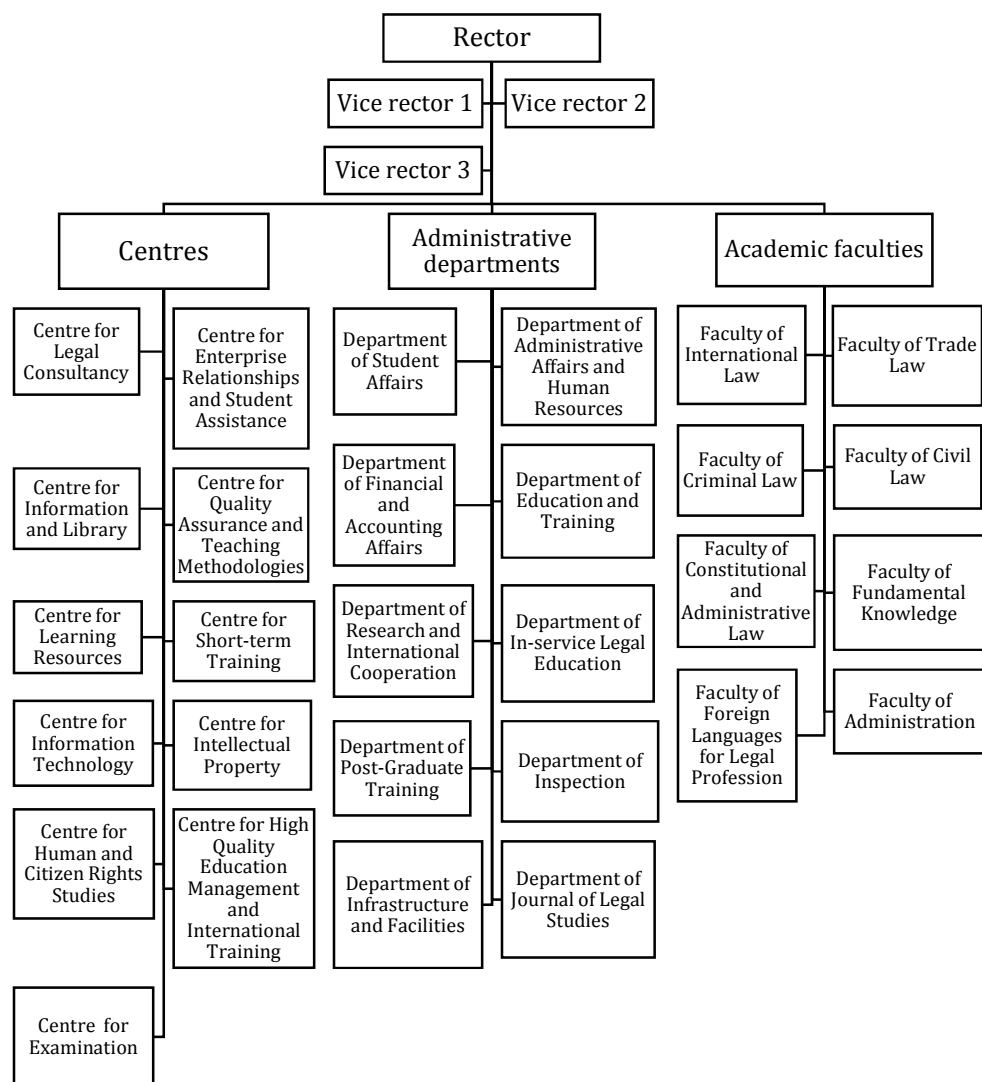
**Figure 1 – The organisational structure of Hue University School of law**



**Figure 2 – The organisational structure of Cantho University Faculty of Law**



**Figure 3 – The organisational structure of Ho Chi Minh City Law University**



These figures were produced based on information derived from the VER in 2014 and 2016 and from the official websites of these three law schools in Vietnam. These three law schools represent geographically three regions in Vietnam: the Central, the South and the Mekong Delta regions. They also represent three typical types of Vietnamese legal education institutions: law university (large size – HCMCLU), school of law (medium size – HUSL) and faculty of law (small size – CUFL).

*Table 4* below lists all the Vietnamese institutions offering legal education, while *Figures 4, 5 and 6* shows the spread of these institutions throughout the country. These figures and table were compiled and designed by the author as an outcome of the VER. Hanoi has most legal education institutions with 14 law schools, Ho Chi Minh City ranks just behind Hanoi with 11 law schools. The rest are allocated throughout the country, with 10 in Central and Highland Vietnam, five in the Mekong Delta region, one in Binhduong, one in Hoabinh, one in Thainguyen and one in Haiphong.

**Table 4 – Vietnamese law schools as of April 2017**

#	Name of institution (by region)	Abbreviation	Organisational structure <i>(academic units)</i>		
			Faculty	Department	Division
North					
1	Foreign Trade University Faculty of Law	FTUFL			X
2	Hanoi Law University	HLU	X (*)		
3	Hanoi National Economics University Faculty of Law	HNEFL			X
4	Hanoi National University Facultyof Law	HNUSL			X
5	Hanoi Open University Faculty of Law	HOUFL			X
6	Hanoi Procuratorate University (**)	HPU			X
7	Hanoi University of Internal Affairs Faculty of Law	HNIAFL			X
8	Hoabinh University Faculty of Law	HBUFL			X
9	Thainguyen University of Sciences Faculty of Law	TUSFL			X
10	The Court Academy (**)	CA			X
11	The Diplomatic Academy Faculty of Law	DAFL			X
12	The People’s Police Academy Faculty of Law	PPAFL			X
13	The People’s Security Academy Faculty of Law	PSAFL			X
14	Trade Union University Faculty of Law	TUUFL			X
15	The University of Commerce Faculty of Law	UCFL			X

16	Vietnam Academy of Banking Faculty of Law	VABFL			X
17	Vietnam Maritime University Faculty of Law	VMUFL			X
<b>Central and Highland</b>					
18	Dalat University Faculty of Law	DLUFL			X
19	Danang Economics University Faculty of Law	DEUFL			X
20	Dong A University Faculty of Law	DAUFL			X
21	Duytan University Faculty of Law	DTUFL			X
22	Hatinh University Faculty of Law	HTUFL			X
23	Hue University School of Law	HUSL		X	
24	Phanthiet University Faculty of Law	PTUFL			X
25	Quangbinh University Faculty of Law	QUFL			X
26	Taynguyen University Faculty of Law	TNUFL			X
27	Vinh University Faculty of Law	VUFL			X
<b>South</b>					
28	Binhduong University Faculty of Law	BUFL			X
29	HCMC Banking University Faculty of Law	HCMCBUFL			X
30	HCMC Economics University Faculty of Law	HCMCEUFL			X
31	HCMC Law University	HCMCLU	X (*)		
32	HCMC National University School of Economics and Law	HCMCSEL		X	
33	HCMC People's Security University Faculty of Law	HCMCSUFL			X
34	HCMC People's Police University Faculty of Law	HCMCPPUFL			X

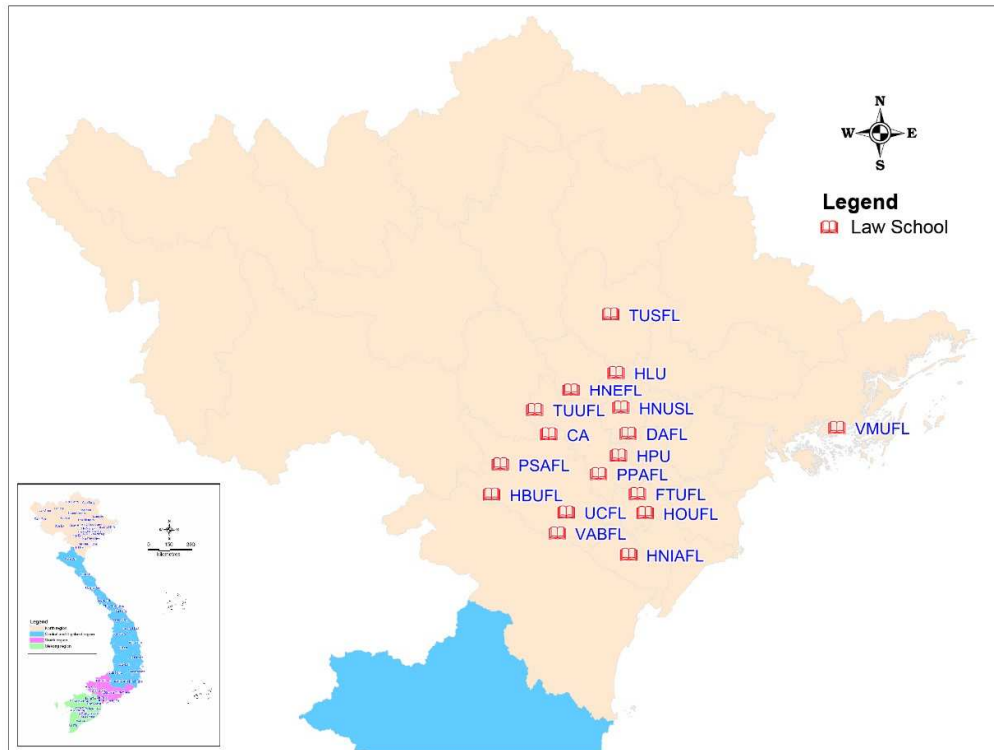
35	HCMC University of Economics and Finance Faculty of Law	HCMCUEFFL			X
36	HCMC University of Technology Faculty of Law	HCMCUTFL			X
37	Hong Bang University Faculty of Law	HBUFL			X
38	Saigon University Faculty of Law	SUFL			X
39	Tonducthang University Faculty of Law	TDTUFL			X
<b>Mekong Delta</b>					
40	Angiang University Faculty of Law	AUFL			X
41	Cantho University Faculty of Law	CUFL			X
42	South Cantho University Faculty of Law	SCUFL			X
43	Taydo University Faculty of Law	TDUFL			X
44	Travinh University Faculty of Law	TVUFL			X

Note:

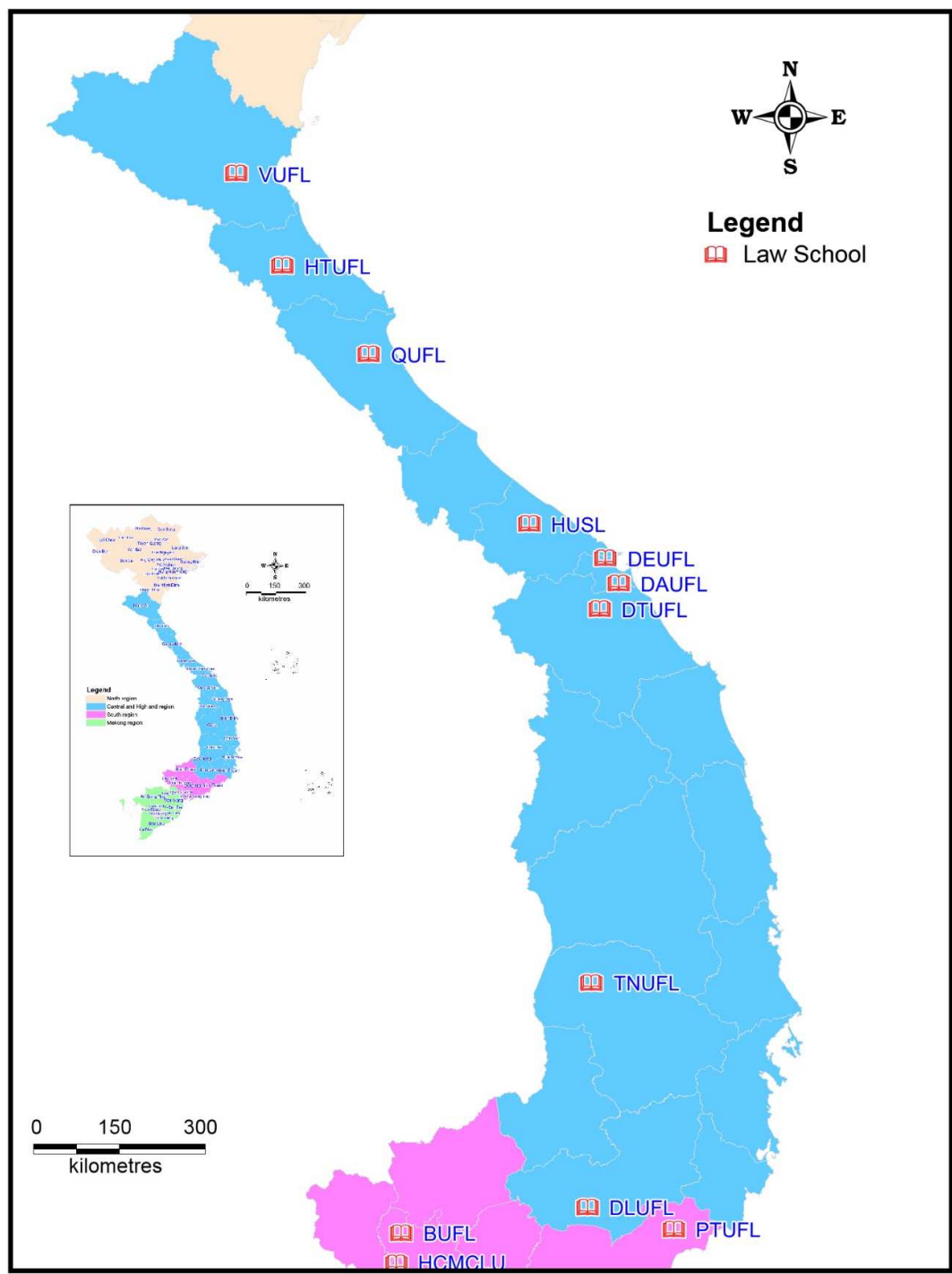
(\*) HLU and HCMCLU are universities solely devoted to legal education. Each institution has a number of faculties of law, with each faculty concentrating on a number of areas of law.

(\*\*) Although the CA and HPU are legal professional training schools, they are also authorised to deliver general legal education in a similar manner to other law schools.

**Figure 4 – Geography of Vietnamese legal education institutions: North region**

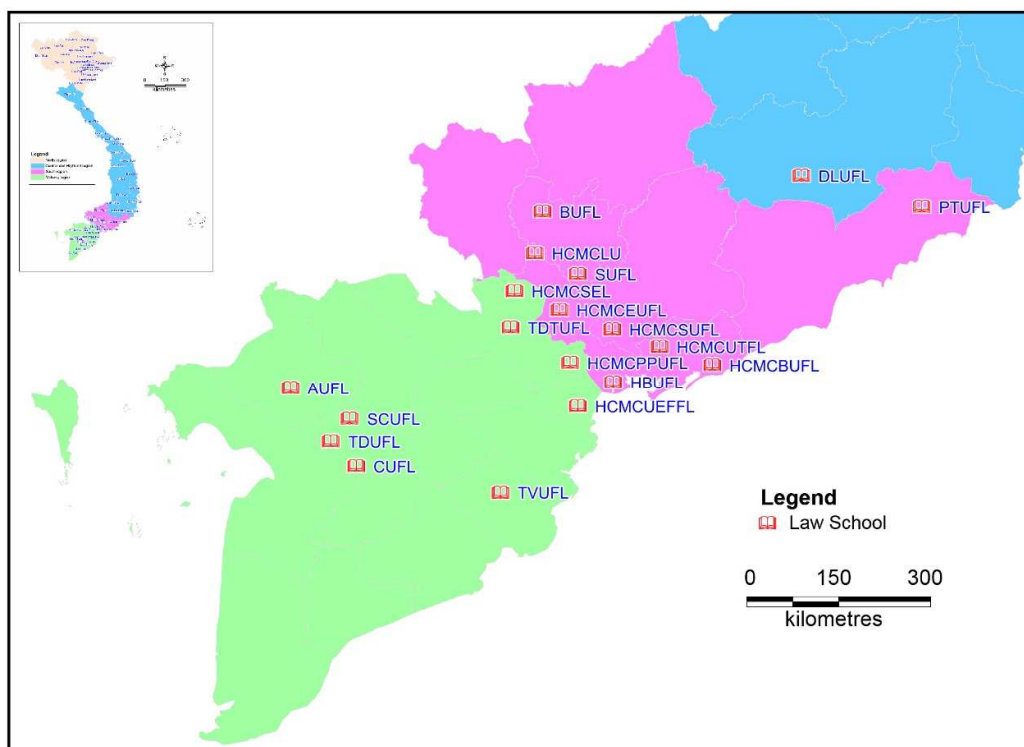


**Figure 5 – Geography of Vietnamese legal education institutions: Central and Highland regions**





**Figure 6 – Geography of Vietnamese legal education institutions: South and Mekong Delta regions**



### **4.3.2 Teaching Curriculum and Training Structure**

#### **4.3.2.1 Teaching Curriculum**

In Vietnam, legal education at an undergraduate level is provided in three forms: full-time on-campus with students enrolling directly from high schools; distance learning where students mainly study by themselves with limited law teacher instruction; and in-service designed for working people and taught during evenings or on weekends. Some law schools also offer a second-degree Bachelor of Laws. Legal education as a second-degree is delivered to people who have already graduated from university and hold a bachelors degree. These forms of legal education vary in objective, teaching approach, curriculum, motivation, evaluation methodology and quality.

As stated earlier, this thesis focuses only on undergraduate full-time legal education delivered by Vietnamese law schools on campus ('full-time on-campus').<sup>432</sup> A full-time on-campus law degree, standardised as a four-year program throughout the country, is the most common and important pathway for a student to enter the legal profession. Since 2003, the MOET has developed a general basic curriculum known as the 'framework curriculum' and has imposed it on all Vietnamese law schools. Applied specifically to full-time on-campus legal education, this framework curriculum commonly sets out 70–80 per cent of the required courses that all undergraduate students must take and the number of credits for each course. These include non-law and law courses. Within this structure, law schools are able to develop their own curriculum taking into account their capacities, strengths, and local demand. At present, different undergraduate law degrees are offered in Vietnam, namely the Bachelor of Laws, the Bachelor of Commercial Law, the Bachelor of International Law, and the Bachelor of International Trade Law. These degrees are based on four framework curricula standardised by the MOET.

Since 2010, however, these framework curricula are no longer mandatory for Vietnamese law schools. This means that legal education institutions in Vietnam can now, if they wish, design law curricula in their own way. The only compulsory components law schools have to include in the curriculum are political and ideological subjects such as Marxist-Leninist Philosophy, Political Economy, Socialist Science and the History of Vietnamese Communist Party, and Ho Chi Minh Thought.<sup>433</sup>

Under the Vietnamese system, there is a distinction between a Bachelor of Laws and a law degree specialising in commercial law, international law or international trade law. In the Bachelor of Laws, students will study law on a general basis in the first three years followed by some specialised courses in their final year. Students studying this degree tend to study all the areas of law but there is limited opportunity for them to study any of these areas in depth. In contrast, the Commercial Law, International Law, and International Trade Law degrees are designed to provide students with in-depth specialised knowledge of these areas. While the former is the traditional form of

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<sup>432</sup> See above section 1.4 of Chapter One.

<sup>433</sup> The VER – interviews with various participants. See above Chapter Three for more details of the VER and how it was conducted.

Vietnamese legal education, the three latter forms have only been introduced in some Vietnamese law schools in the last 10 years.

The introduction of these new law degrees is seen by research interviewees as a positive response by Vietnamese legal education to the legal profession's demands. A growing international integration-oriented Vietnamese economy is demanding more commercial and international lawyers. In particular, since Vietnam's entry to the World Trade Organisation (WTO) in 2006,<sup>434</sup> the increase in international transactions between Vietnamese and foreign companies has challenged the country's legal profession. These new law degrees have made Vietnamese legal education more diverse and students now have options to study law on either a general or a specialised basis. To some extent, these education options are also helpful for students to plan for their future career as they will have a clearer picture of the potential jobs they may take upon graduation.<sup>435</sup> More importantly, the general Bachelor of Laws and specialised bachelors law degrees can all lead to admission to the profession.

#### *4.3.2.2 Training Structure*

The Vietnamese undergraduate law curriculum consists of three areas of knowledge: the general, the fundamental and the specialised. Although variable among law schools, the total number of credits required for law students ranges from 123 to 170, which amounts to approximately 52–57 courses (subjects or units). Quite often, an undergraduate law student takes seven to 10 courses per semester. This means that on average, a student may spend approximately 24–30 hours weekly participating in class activities with law teachers. This is quite intensive because, in addition to class activities, students have to spend their time on group assignments, self-study and consultation with teachers.

The general knowledge component, often introduced to first-year students, includes mainly non-law courses such as Marxist-Leninist philosophy, political economy, socialist

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<sup>434</sup> See generally, World Trade Organisation, *General Council approves Viet Nam's membership* (7 November 2006) <[https://www.wto.org/english/news\\_e/pres06\\_e/pr455\\_e.htm](https://www.wto.org/english/news_e/pres06_e/pr455_e.htm)> (identifying that Vietnam started to negotiate for its accession to the WTO in 1995 and officially became a member of this multinational trade organisation in 2006).

<sup>435</sup> Interview # 50; interview # 96; interview # 91.

science, history of Vietnamese communist party, Ho Chi Minh thought,<sup>436</sup> foreign languages, psychology, sociology, Vietnamese culture, history of the Vietnamese state and law, and international history of state and law. These subjects are designed to provide students with a general understanding about state, law, society and other relevant disciplines, and create a foundation for studying law in later years. Many of these subjects, however, are about ideology, which some scholars believe is intended to create a socialist orientation in students and to build up their socialist awareness.<sup>437</sup>

There are various compulsory units (courses) in the fundamental knowledge component typically offered by all Vietnamese law schools. These include general theory of state and law, constitutional law, administrative law, administrative procedure, criminal law, criminal procedure law, civil law, civil procedure law, economic law, labour law, land law, public international law, private international law, family law, law on finance, environmental law and banking law.<sup>438</sup> In Vietnam, this component of knowledge is considered to be the 'fundamental elements' in the Bachelor of Laws degree and consequently required for all undergraduate law students.<sup>439</sup>

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<sup>436</sup> Bui, above n 17, 139.

<sup>437</sup> Ibid; this opinion was also revealed in interview # 6; interview # 20; and interview # 89.

<sup>438</sup> Tan, above n 401, 192.

<sup>439</sup> Internationally, the principle of required fundamental knowledge is not unique to Vietnamese legal education. In the Japanese system, for example, there are six fundamental law areas (The Constitution, the Civil Code, the Commercial Code, the Criminal Code, the Constitution of Japan, the Code of Criminal Procedure and the Code of Civil Procedure) required for all undergraduate law students. These areas of law also constitute a significant part in the bar examination that most Japanese law students will take. See, eg, Annelise Riles and Takashi Uchida, 'Reforming Knowledge? A Socio-Legal Critique of the Legal Education Reforms in Japan' (2009) 1 *Drexel Law Review* 3, 10–11; see also Constance O'Keefe, 'Legal Education in Japan' (1993) 72 *Oregon Law Review* 1009, 1010–12. Similarly in Australia, the so-called Priestly 11 identifies 11 core learning areas in legal education as the 'academic requirement' for admission to practise law. Accordingly, Australian law schools have included these areas of knowledge in their curricula as required units. To some extent, the required fundamental academic knowledge for admission is necessary to 'standardise' legal education and the legal profession of a country, as well as to assist local lawyers with international clients. In Vietnam, the fundamental knowledge component in legal education was also established for these reasons. See, eg, Brand, above n 76, 125–7 (identifying that due to the problems generated by different admission rules in the Australian States and Territories, a *Consultative Committee of State and Territory Law Admitting Authorities* was established in the early 1990s. Chaired by Justice LJ Priestley, the committee released a *Discussion Paper on Uniform Admission Requirements* in 1992. Generally, the Discussion Paper supported the specification of broad core academic learning areas in which applicants for admission to the legal profession would need to demonstrate basic knowledge and competence. There were 11 such areas, including criminal law and procedure, torts, contract, property (including torrens system land), equity (including trusts), administrative law, federal and state constitutional law, civil procedure, evidence, company law, professional conduct (including basic trust accounting). These are commonly known as the Priestley 11). In Victoria (Australia), for example, the compulsory Priestly 11 subjects include criminal law and procedure, torts, contracts, property (both real and personal), equity (including trusts), administrative law, federal and state constitutional law, civil procedure, evidence, company law, and ethics and professional responsibility. For details of the requirements for admission to

Similarly to other civil law jurisdictions, Vietnamese legal education places a considerably strong emphasis on the teaching of legal doctrine, principles and basic codes. This is premised on a common perception that students should have a fundamental understanding of legal theories and principles in order to better study legal codes and be able to effectively participate in skills training courses.<sup>440</sup> The fundamental knowledge, therefore, should be introduced to students at early stages of the legal education process. The emphasis on the teaching of legal doctrines and rules has in turn encouraged the lecture as the most popular teaching methodology in civil law countries' law schools.<sup>441</sup> In Vietnam, where students' online access is still limited, lectures have appeared to be the most realistic way for law teachers to address the pressure of delivering a large volume of legal knowledge within a tight time frame.

In the specialised knowledge part of the curriculum, Vietnamese law schools often design their own courses based on the strengths and interests of teachers, the availability of human resources, and practical demands. Specialised subjects are often delivered to final-year students. Given that these students have already studied fundamental courses, a specialised course is designed to provide them with in-depth knowledge of one law area. For example, fourth-year HUSL students can study specialised courses such as the protection of human rights in civil law, law on labour market, law on enterprise, law on land use planning, and more.<sup>442</sup> Although it varies school by school, a specialised course is often designed and offered within an academic unit. Since most Vietnamese law schools have adopted the credit-based system, students now have the opportunity to choose elective courses in which they are interested. These elective courses often fall within the specialised knowledge component.

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the legal profession in the state of Victoria of Australia, see <<http://www.lawadmissions.vic.gov.au/home/admission+requirements/>>.

<sup>440</sup> See, eg, Irish, above n 58, 8–9.

<sup>441</sup> Ibid 8.

<sup>442</sup> Hue University School of Law, *Courses and Syllabuses of Bachelor of Law Curriculum* (10 January 2018) <[http://www.hul.edu.vn/de-cuong-chi-tiet-hoc-phan/de-cuong-chi-tiet-cac-hoc-phan-nganh-luat-2017-\\_3627.html](http://www.hul.edu.vn/de-cuong-chi-tiet-hoc-phan/de-cuong-chi-tiet-cac-hoc-phan-nganh-luat-2017-_3627.html)>.

### 4.3.3 The Objectives of Vietnamese Legal Education

As standardised by the national education policy, the bachelor's degrees in Vietnam, including the Bachelor of Laws, are four-year programs that are studied on a full-time basis. In 2001, Vietnam adopted the *Education Development Strategy for 2001–2010*, in which the objective of education was generally identified as being ‘... to provide qualified human resources for the country's industrialization and modernization process’.<sup>443</sup>

The objective of higher education was then affirmed and elaborated by the *2012 Vietnamese Higher Education Act*:

Training human resources, improving literacy of the citizens, and strengthening the talented; conducting scientific research, producing new knowledge and products in order to serve the social-economic development and ensure national defense, security and international integration; training the learners with good political characteristics, morality, knowledge, professional skills, scientific research capacity and ability to develop and apply science and technology; training the learners with good health, creativity capacity, professional responsibility, adaptation capability to working environment, and awareness to serve the community.<sup>444</sup>

In fact, *Resolution 08/NQ-TW*, issued in 2002 by the Central Committee of the Vietnamese Communist Party, was the first to state the objectives of Vietnamese legal education as being ‘... to provide the government with legally-qualified human resources ...’.<sup>445</sup>

In 2005, the *Judicial Reform Strategy*, adopted by the Central Committee of the Vietnamese Communist party under *Resolution 49/NQ-TW*, identified that ‘[h]igher legal education aims at training officials as a source for judiciary sector positions and bodies;

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<sup>443</sup> See the *Education Development Strategy 2001–2010* issued by the Vietnamese Prime Minister on 28 December 2001, which provides an overview of the assessment, development directions, objectives, and solutions for improvement of the Vietnamese education system (21 April 2015) <[http://www.moj.gov.vn/vbpq/Lists/Vn%20bn%20php%20lut/View\\_Detail.aspx?ItemID=22049](http://www.moj.gov.vn/vbpq/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=22049)>.

<sup>444</sup> See article 5.1 of the *2012 Higher Education Act* (Vietnam) (16 March 2015) <[http://www.chinhphu.vn/portal/page/portal/chinhphu/hethongvanban?class\\_id=1&mode=detail&document\\_id=163054](http://www.chinhphu.vn/portal/page/portal/chinhphu/hethongvanban?class_id=1&mode=detail&document_id=163054)>.

<sup>445</sup> Central Committee of the Vietnamese Communist Party, *Resolution 08/NQ-TW on Fundamental Judicial Missions in the Upcoming Time* (21 April 2015) <<http://thuvienphapluat.vn/archive/Nghi-quyet-so-08-NQ-TW-2002-nhiem-vu-trong-tam-cong-tac-tu-phap-vb165169.aspx>>.

training judiciary sector officials ...'.<sup>446</sup> In addition, *Resolution 48/NQ-TW on Legal Reform Strategy*, issued in 2005 by the Vietnamese Central Committee of the Communist Party, identified the purpose of higher legal education as being to '... ensure the quantity and quality of human resources working as public officials and civil servants in the legal profession ...'.<sup>447</sup>

From these documents, the principal objective of Vietnamese legal education is to provide 'human resources' to serve the country's social and economic development. In Vietnam, legal education is regarded by the central government as the state's concern and it has to be closely managed.<sup>448</sup> From the state's perspective, therefore, the narrower objective of 'producing lawyers' might not be seen as the priority of legal education. According to interviewees, this broader objective, in turn, has influenced the design of curricula and teaching methodology among Vietnamese law schools. Accordingly, while in many other jurisdictions professional training is an important component of law curricula,<sup>449</sup> it is not a stated objective of Vietnamese legal education. Even though the *2012 Vietnamese Higher Education Act* identifies 'professional skills' as an objective of higher education, professional knowledge and skills have not been included in most Vietnamese law schools' curricula.

Further, since 1995, 'international integration' has been repeatedly mentioned as an objective of Vietnamese education. Especially since 2006, when the country became a member of the WTO, promoting 'international integration' has become a mission of Vietnamese public agencies. Vietnamese higher education has accordingly been missioned to train students to assist the country's international integration.<sup>450</sup> In legal education, this mission is often interpreted as meaning that law graduates must not only be knowledgeable in domestic laws but also in international law and laws of other countries. In addition, they are expected to be fluent in foreign languages, mainly English,

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<sup>446</sup> Central Committee of the Vietnamese Communist Party, above n 17.

<sup>447</sup> Central Committee of the Vietnamese Communist Party, above n 21.

<sup>448</sup> Bui, above n 22, 303.

<sup>449</sup> Boyer and Cramton, above n 75, 270; see also 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, 305.

<sup>450</sup> The 'international integration' objective had been identified in different state documents before it was reaffirmed in the *2012 Higher Education Act* (Vietnam). See article 5.1a of the *2012 Higher Education Act*, above n 440.

so that they can work in foreign law firms, participate in international litigation or continue their education abroad at higher levels. Similar objectives are found in the training of judicial public officials such as judges and procurators to ensure they can effectively handle not only domestic cases but also cases with foreign aspects.

#### **4.4 The Legal Profession, the Judicial Academy (JA), the Two-stage<sup>451</sup> Legal Education System and the Training of Qualified Lawyers in Vietnam**

##### **4.4.1 The Vietnamese Legal Profession**

As late as 1987, lawyers in Vietnam could not open their own private offices or undertake private legal business. Prior to this date, local bar associations (established at provincial level) had the authority to organise legal services by assigning their lawyer members to represent clients.<sup>452</sup> In 1987, the *Ordinance on Lawyer Organisation* was adopted. This created a legal foundation for lawyers' private practices<sup>453</sup> and provided motivation for the development of the legal profession in Vietnam. The Vietnam Bar Federation (VBF) was established in 2009 as the highest national lawyers' governance body to oversee the entire legal profession. Sixty three local bar associations, under the VBF's direct administration, have authority over the legal profession and lawyer members within their organisations.

By May 2015, with approximately 9436 licensed lawyers,<sup>454</sup> Vietnam has one of the

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<sup>451</sup> In general, the legal education system in Vietnam has two stages: at stage 1, doctrinal (or academic) legal education is delivered by law schools; at stage 2, professional training is delivered by different Professional Training Schools, including the Judicial Academy, Hanoi Prosecutorate University, and the Court Academy. See below section 4.4.2 for further details of the Vietnamese two-stage legal education system and these professional training schools.

<sup>452</sup> See, eg, Minh Thi Nguyen, 'Legal and Professional Challenges Confronting Practising Lawyers in Contemporary Vietnam' (The University of New South Wales, 2008), cited in Pip Nicholson, 'Access to Justice in Vietnam State Supply – Private Distrust' in John Gillespie and Albert HY Chen (eds), *Legal Reform in China and Vietnam A Comparison of Asian Communist Regimes* (Routledge, 2010) 378, 191.

<sup>453</sup> See more details about private legal practice in the 1987 *Ordinance of Lawyer Organisation*, (23 April 2015) <[http://www.moj.gov.vn/vbpq/Lists/Vn%20bn%20php%20lut/View\\_Detail.aspx?ItemID=2789](http://www.moj.gov.vn/vbpq/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=2789)>.

<sup>454</sup> Vietnam Bar Federation, *Report on the Legal Profession period of 2009–2014 and Orientation for the period of 2015–2019* at the 2<sup>nd</sup> Vietnam Lawyer Federation Conference organised on 18 April 2015 (23 April 2015) <<http://liendoanluatsu.org.vn/vi/news/Thong-bao/BAO-CAO-TONG-KET-CONG-TAC-NHIEM-KY-I-2009-2014-VA-PHUONG-HUONG-CONG-TAC-NHIEM-KY-II-2014-2019-CUA-LIEN-DOAN-LUAT-SU-VIET-NAM-1047/>>. According to a recent Report by the Ministry of Justice in December 2017 (*The Annual Report on the Implementation of Judicial Programs in 2017 and Orientations for 2018*) the total number of licensed lawyers in Vietnam was 12 581 (this document is on file with the author). This means that the



lowest lawyer/population ratios of countries in the region.<sup>455</sup> In 2011, the Vietnamese central government set a target to reach between 18 000 and 20 000 licensed lawyers by 2020.<sup>456</sup> This was seen as a way to strengthen the legal profession, promote social justice and facilitate a rule-of-law society in Vietnam. In the view of many interviewees, however, this target is unlikely to be achieved.<sup>457</sup> Given the JA's limited capacity<sup>458</sup> and the long process for training a qualified lawyer, it is almost impossible for Vietnam to have approximately another 8000–10 000 qualified lawyers within the next few years.

One of the significant challenges facing the Vietnamese legal profession is lawyers' dependence on the state. In reality, the profession operates with relatively limited autonomy. As Bui has argued, Vietnamese lawyers have been considered to be the state's 'judicial supplementary force'.<sup>459</sup> In Vietnam, law is commonly regarded as the state's 'instrument' for managing and ordering society.<sup>460</sup> In order to effectively govern society, the state must ensure the law is obeyed by all citizens and institutions. In this regard, the term 'judicial supplementary force' can be understood as meaning that Vietnamese lawyers are supposed to assist the state in interpreting and implementing the law.<sup>461</sup> This

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number of licensed lawyers has increased considerably in the last three years. However, Vietnam's lawyer/population ratio is still low in a country with a population of approximately 95 million.

<sup>455</sup> See, eg, Da Ban, 'Vietnam's lawyer-to-population ratio the region's lowest' (15 February 2009) <<http://english.thesaigontimes.vn/31264/Vietnam%E2%80%99s-lawyer-to-population-ratio-the-region%E2%80%99s-lowest.html>> (identifying that in Vietnam, the lawyer/population ratio is approximately 1/10 000. This rate is relatively low in comparison with 1/1000 in Singapore, 1/1526 in Thailand and 1/1546 in Japan).

<sup>456</sup> The Government of the Socialist Republic of Vietnam, *The Strategy for the Development of Vietnamese Lawyers to 2020* (15 April 2013) <[http://moj.gov.vn/ct/thongtinchienluoc/Lists/VanBanThongTin/View\\_Detail.aspx?ItemID=9&CatID=0](http://moj.gov.vn/ct/thongtinchienluoc/Lists/VanBanThongTin/View_Detail.aspx?ItemID=9&CatID=0)>.

<sup>457</sup> The VER – interviews with various practising lawyers in Hue, Danang, Ho Chi Minh City, Cantho and Vinh (generally maintaining that the target of 18 000 to 20 000 lawyers by 2020 is too high to achieve given the JA's limited capacity and the career choices of law graduates); a similar view was held by different participants in the seminar 'Lawyering Career in Vietnam' jointly organised by the VBF and HUSL in Hue city in November 2014. The seminar aimed to provide law students with information about a lawyering career in Vietnam and the challenges confronting the legal profession, and guidance on how to prepare for a lawyering career. The author was a participant in this seminar during his first empirical research visit to Vietnam in 2014. See also Giang Hoang, *Interviewing lawyer Phan Trung Hoai*, (25 May 2015) <<http://liendoanluatsu.org.vn/vi/news/Su-kien-van-de/Luat-su-Phan-Trung-Hoi-noi-ve-nhung-thu-thach-cua-nghe-luat-su-1032/>> (indicating that due to various challenges facing the legal profession, not many law graduates choose to follow a lawyering career and this constitutes another reason why Vietnam will probably fail to achieve this target).

<sup>458</sup> See above section 4.4.2 of this chapter.

<sup>459</sup> Bui, above n 22, 303.

<sup>460</sup> Ibid 300.

<sup>461</sup> See, eg, G Khang, 'Lawyer Training: Passing Examination with Three Marks for Two Subjects?', Vietnamnet (3 August 2006) <[www.vnn.vn/xahoi/lao-dong/2006/08/598255/](http://www.vnn.vn/xahoi/lao-dong/2006/08/598255/)> cited in Bui, above n 22, 306.

situation is fairly similar to China where lawyers are still substantially regarded as ‘state workers’ with limited autonomy and independence.<sup>462</sup> Nowadays, although both Chinese and Vietnamese legislation tends to grant lawyers a little more autonomy and self-determination and allows them to do private legal work, lawyers in these two jurisdictions still practise under the close supervision and strict control of the state.<sup>463</sup>

From the perspective of professional legal service, Nguyen argues that Vietnamese lawyers are a ‘part of state apparatus’ that provides ‘little help’ to clients.<sup>464</sup> Similarly, Nicholson maintains that Vietnamese lawyers are strictly managed by the party-state and they tend to be only a ‘last resort’ for clients when dealing with legal problems.<sup>465</sup> Particularly in disputes where the other parties are public agencies or governments, fighting for justice becomes challenging. Accordingly, although there is an increasing number of Vietnamese students studying law at undergraduate level, the VER has found only a small ratio of law graduates choose to work as practising lawyers.<sup>466</sup> This situation requires more discussion.

To begin with, the demand for lawyers is actually low in Vietnam: many people are not in the habit of hiring a lawyer to represent them in legal matters.<sup>467</sup> In many cases, they tend to settle legal problems through other channels such as negotiation or mediation and leave law and litigation as the last option. The fact that Vietnamese lawyers are

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<sup>462</sup> See, eg, Alison W. Corner, ‘China’s Lawyers and Their Training: Enduring Influence and Disconnects’ in John Gillespie and Albert Chen (eds), *Legal Reforms in China and Vietnam: A Comparison of Asian Communist Regimes* (Routledge, 2010) 284–6.

<sup>463</sup> Ibid 286–8; see also Nicholson, above n 452, 191–3; this is particularly the case in human rights law. See, eg, Terrence Halliday and Sida Liu, *Criminal Justice in China: The Politics of Lawyers at Work* (Cambridge University Press, 2016).

<sup>464</sup> See Quang Hung Nguyen, ‘Lawyers and Prosecutors under Legal Reform in Vietnam: The Problem of Equality’ in Stephanie Balme and Mark Sidel (eds), *Vietnam’s New Order: International Perspectives on the State and Reform in Vietnam* (Palgrave, 2007) 167–77, cited in Nicholson, above n 452, 191.

<sup>465</sup> Nicholson, above n 452, 191–3.

<sup>466</sup> Bui, above n 22, 303 (identifying that research in 2008 revealed that, by the end of 2007, Hanoi Law University alone had produced approximately 53 000 Bachelors of Laws, while the number of practising lawyers nationwide only reached just over 4000). In addition, a surveys carried out recently by Hue University School of Law in 2010 revealed that less than 20 per cent of law graduates became practising lawyers even though there was a growing number of students studying law. This figure was reinforced in the author’s *Research Interviews* conducted in 2014 and 2016. For example, the interviews conducted in Cantho city with Vietnamese law teachers and lawyers revealed that less than five per cent of CUFL graduates followed a lawyering career. In some other law schools, such as HUSL, VUFL and DEUFL, the interviews revealed that the number of graduates practising law fell below 10 per cent.

<sup>467</sup> Nguyen, above n 464, 20; see also the VER — interviews with lawyers and law teachers in Cantho, Ho Chi Minh City, Danang, Hue, Vinh and Hanoi.

considered to provide ‘little help’<sup>468</sup> also encourages clients to choose alternative solutions. Moreover, many people believe with good reason that, in some cases, ‘personal relationships’ or ‘bribing’ are more effective and quicker approaches in the settlement of legal problems.<sup>469</sup> In this regard, some Vietnamese lawyers tend to act as ‘brokers’ between judicial public officials and clients.<sup>470</sup> The VER provided some insights here. A practising lawyer in Hanoi said about this problem:

It is not difficult to find some lawyers who have a very close relationship with procurators, judges and court clerks. In many cases, they can take the opportunity of these relationships in order to achieve a favour judgement for their clients. This is where bribing and corruption happen in the judiciary system.<sup>471</sup>

Another practising lawyer in Hue argued similarly:

It is a ‘rule’ that working as a lawyer in Vietnam requires a close relationship with judicial officials. Therefore, it is not surprising that sometimes ‘justice’ is achieved not at court but in other places such as cafes, restaurants or wherever it could be.<sup>472</sup>

Additionally, there is a long-standing perception among Vietnamese, especially the elderly, that working for the government is stable and guaranteed. In their view, a public official has the lowest risk of unemployment and the highest chance of a pension guarantee.<sup>473</sup> This ‘seniors’ way of thinking’ has significantly influenced their children’s career orientation and made them believe working for the government is a better option. Traditionally in Vietnam, parents tend to play a significant role in orienting and determining their children’s future careers. Vietnamese law graduates, in many cases, decide their career pathways on the basis of their parents’ preferences. Over time, this trend has changed as more and more law graduates choose to work in the private sector. Nevertheless, the number of graduates practising law still remains small.

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<sup>468</sup> Nguyen, above n 452.

<sup>469</sup> The VER — interviews with practising lawyers and law teachers in Hanoi, Cantho, Danang, Hue and Vinh.

<sup>470</sup> Ibid.

<sup>471</sup> Interview # 76.

<sup>472</sup> Interview # 95.

<sup>473</sup> The VER — interviews with various participants (indicating that, in the Vietnamese context, working for the government means that employees’ pensions will be guaranteed as the government agencies are always serious in paying superannuation. Conversely, due to many reasons, private sector employers tend to delay or avoid this payment. Superannuation, therefore, is not always guaranteed for private sector employees).

Further, for many Vietnamese law students, especially those from mountainous, remote or rural areas, four years of legal education is costly. Many of them obtain their law degrees with large debts resulting from study loans. Consequently, they want to find stable jobs, earn a living, pay off their debts, and stop depending on their parents' financial support.<sup>474</sup> To them, working for the government seems a better option as they can earn income quickly; while practising as a private lawyer requires at least another 24 months of further training with very low or no payment.<sup>475</sup> This is an influential reason why Vietnamese law graduates' hesitate to practise private law.<sup>476</sup> As a practising lawyer in HCM City said:

Working as a lawyer requires a long, time-consuming and costly training and education process while to many law graduates, finding a job and starting to earn a living is the top priority after four years of law schools' education. This is not to mention that in the first five to seven years of [a] lawyering career, you will be struggling because not many clients come to you.<sup>477</sup>

Finally, being successful in the legal profession needs time, hard work and patience, which is not necessarily attractive to many young law graduates today. As some Vietnamese lawyers have pointed out, in order to stand firmly in the legal professional market, lawyers need to be patient and spend time building up their experience and reputation.<sup>478</sup> In Vietnam, many young lawyers have to give up their passion for practising law because clients tend to hire more experienced lawyers to represent them.<sup>479</sup> This has consequently contributed to law graduates' perception that 'lawyering' is too challenging a career and consequently one which not many of them choose to follow.

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<sup>474</sup> The VER — interviews with various participants.

<sup>475</sup> See above section 4.3.3 of this chapter.

<sup>476</sup> The VER — interviews with various practising lawyers; see also Giang Hoang, above n 457.

<sup>477</sup> Interview # 75.

<sup>478</sup> 'Lawyering Career in Vietnam' seminar, above n 453; this opinion was also revealed during some VER interviews: interview # 75; interview # 92; interview #21; interview #22; interview #23.

<sup>479</sup> Interview # 75; interview # 92; interview #21; interview #22; interview #23.

#### 4.4.2 The JA – a National Judicial Training School in Vietnam

##### 4.4.2.1 The JA and the Two-stage Legal Education System

Under the current Vietnamese two-stage legal education system, law schools mainly focus on doctrinal education. Professional training is left to different professional schools, including the Judicial Academy (JA),<sup>480</sup> the Court Academy, and Hanoi Procuratorate University. Depending on their interests and the requirements of their employment, law graduates will go to these schools for further training before they officially take on various positions such as judges, procurators, lawyers, civil law enforcement officials, public notary officials.

The Judicial Academy used to be the Professional Training School for Judicial Positions established in 1998 under the MOJ. The establishment of this school was intended to reform and formalise the training of human resources for the Vietnamese judicial system. In 2004, the school was upgraded and renamed the Judicial Academy<sup>481</sup> with the authority and mission to deliver professional training to law graduates in order to work as judges, court clerks, procurators, public notary officials, civil law enforcement officials and lawyers.<sup>482</sup> This change represented real progress in implementing the judicial reform strategy in Vietnam. Together with other professional training schools,<sup>483</sup> the JA supports the two-phase legal education in Vietnam currently supported by the central government.

At present, together with its headquarters in Hanoi, the JA has established another campus in Ho Chi Minh City. In addition, the JA has organised various professional

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<sup>480</sup> The Vietnam JA has a similar function to the *Leo Cussen Institute* in Victoria, Australia, in providing professional training to would-be lawyers. For more details about this institute, see <[http://www.leocussen.edu.au/cb\\_pages/ptc.php](http://www.leocussen.edu.au/cb_pages/ptc.php)>. The JA is also similar to the *Legal Training and Research Institute* in Japan which functions to train law graduates to become judges, public prosecutors, and lawyers: see, eg, Riles and Uchida, above n 439, 10. Similarly, in Taiwan, the *Judicial Training Institute* is missioned to train judges and public prosecutors: see, eg, Lo, above n 60, 42.

<sup>481</sup> The Vietnam Judicial Academy, *Function and Missions of the Judicial Academy* (20 June 2016) <<http://hocvientuphap.edu.vn/Pages/chuc-nang-nhiem-vu.aspx?ItemID=55#>>.

<sup>482</sup> Under article 3.2 of the Decision 23/2004/QĐ-TTg (25 February 2004) by the Vietnamese Prime Minister, the JA has authority and mission to deliver professional training on the various professions, notably, lawyering, judge, procurator, court clerks, civil law enforcement officials, etc; (14 April 2015) <[http://moj.gov.vn/vbpq/Lists/Vn%20bn%20php%20lut/View\\_Detail.aspx?ItemID=20635](http://moj.gov.vn/vbpq/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=20635)>.

<sup>483</sup> See below section 4.4.2 of this chapter.

courses, delivered in other cities and provinces,<sup>484</sup> for those interested in becoming lawyers. These off-campus courses have been seen as a flexible way for Vietnam to reach the stated target of 18 000–20 000 qualified lawyers.<sup>485</sup> From the trainees' perspective, these courses can be an 'easy' option as they no longer need to travel to Hanoi for training. In terms of education quality, however, these courses (delivered principally by lectures) are a major concern among the legal profession. In the view of many interviewees in the VER, since these courses are not organised at the JA campuses, there is no opportunity for the trainees to participate in practical activities (organised by the JA). What the trainees obtain after these courses, therefore, is more often a *Certificate of Completion Lawyering Course* rather than 'professional knowledge and skills'.<sup>486</sup>

A common view in the VER by a number of interviewees was that Vietnamese law schools should focus only on general doctrinal legal education and leave the professional training for the JA and other schools.<sup>487</sup> For example, a judge in central Vietnam said:

The current system is working fairly well with law schools responsible for doctrinal legal education and professional training is delivered by some professional schools. Therefore, my view is that law schools may not need to worry too much about professional training but focus more on the teaching of basic legal knowledge, principles, and codes.<sup>488</sup>

Similarly, a procurator in Ho Chi Minh City argued:

Why do we keep asking law schools to include professional training in their curricula? First, we already have a number of professional schools who can take care of this type of training. There may be unnecessary overlap if law schools and professional schools are both delivering professional training. Second, law students are often not clear on what profession they will follow upon graduation. How can law schools decide what professional knowledge and skills to be delivered to their students?<sup>489</sup>

It is undeniable that the JA has been providing legal human resources for the judicial

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<sup>484</sup> Various professional training courses for would-be lawyers have been organised and delivered in cities other than Hanoi, see (14 April 2015) <<http://www.hocvientuphap.edu.vn/>>.

<sup>485</sup> See below section 4.4.1 of this chapter.

<sup>486</sup> The VER — interviews with Vietnamese practising lawyers and judicial officials in Vinh, Hue, Danang, Ho Chi Minh City and Cantho.

<sup>487</sup> The VER — interviews with practising lawyers, judicial officials, and law teachers in Hanoi, Vinh, Hue, Ho Chi Minh City and Cantho.

<sup>488</sup> Interview # 81.

<sup>489</sup> Interview # 79.

system and the legal profession in Vietnam.<sup>490</sup> The problem remains, however, that the JA focuses its training heavily on the teaching of theory at the cost of practical skills. As Khang has argued, the JA professional training is delivered mainly by lectures and the trainees are assessed using a traditional methodology.<sup>491</sup> Similarly, Bui maintains that the ‘professional skills’ claimed and delivered by the JA are more about the ‘theory of skills’.<sup>492</sup> Moreover, ‘reflection’ (one of the most significant components of professional training, especially in clinical legal education (CLE))<sup>493</sup> has not been included in the JA curricula. Indeed, under article 11.1 of the current JA *Training Regulation*, trainees are assessed on two criteria: (1) class participation and assignment account for 10 per cent of the course’s final grade; and (2) examinations account for 90 per cent of the course’s final grade.<sup>494</sup>

In order to meet the demands for practical training, judges, procurators and practising lawyers are occasionally hired to teach at the JA. Nevertheless, internal teaching staff remain the major human resources available for the JA to train thousands of people annually. The problem with these internal staff, however, is that they are academically-oriented and relatively limited in professional knowledge and skills.<sup>495</sup> To make it worse, many of them used to be MOJ officials and they are accustomed to administrative work rather than teaching.<sup>496</sup> These realities all combine to make the training at the JA not ‘real’ and, consequently, when the trainees complete the course, they do not have the actual capacity to practise law.<sup>497</sup> Many Vietnamese lawyers interviewed in the VER were concerned about this situation. Having supervised probationary lawyers and recruited and worked with new lawyers in Vietnam for many years, they argued that many of the JA graduates have to be retrained or given further training before they can actually start

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<sup>490</sup> According to the *Training Information* published by the Vietnam JA, from 2004-06 there were approximately 3200 people per year trained at the JA and from 2007 this number was expected to increase to approximately 3500 people per year (17 April 2015) <<http://hocvientuphap.edu.vn/thongtindaotao.aspx>>.

<sup>491</sup> Khang, above n 461.

<sup>492</sup> Bui, above n 22, 306; a similar opinion was held by different Vietnamese lawyers in the VER interviews.

<sup>493</sup> See below section 5.4 of Chapter Five.

<sup>494</sup> The Vietnam Judicial Academy, *Training Regulation of the Judicial Academy* (17 April 2015) <<http://hocvientuphap.edu.vn/content/1187-QUYET-DINH-ve-viec-Ban-hanh-QUY-CHE-DAO-TAO.aspx>>.

<sup>495</sup> Interview # 6.

<sup>496</sup> Ibid.

<sup>497</sup> Bui, above n 22, 306.

to work.<sup>498</sup> For example, a practising lawyer in central Vietnam maintained:

In my view, the professional training delivered by the JA is far from enough for law graduates to work as a qualified lawyer. Many of them are still like a 'blank paper' and we, as their supervising lawyers, have to start from the beginning in the process of training of qualified lawyers. I believe that 12 months practising as a probationary lawyer at a law firm is most critically significant in that education process.<sup>499</sup>

Similarly, another practising lawyer in Cantho said:

From my experience, I believe that only approximately 20 per cent of probationary lawyers know how to practise law independently. I do not really know how and what the JA teach them during the professional training process, but in fact, we have to teach them almost everything about the legal profession and how to work as a qualified lawyer.<sup>500</sup>

A law teacher in Hanoi saw the problem of the JA from the perspective of human resources:

Many master and PhD students I have supervised are now teaching staff at the JA. I understand that they used to work for different departments of the Ministry of Justice and are accustomed to administration works rather than teaching. Therefore, I am not surprised when the professional training delivered by the JA is still academic and doctrinal oriented.<sup>501</sup>

And here is the view of a lawyer in Hue about the professional training delivered by the JA to would-be lawyers:

I do not think the JA is a good destination for professional training for would-be lawyers because of its teaching style and curriculum. There is a considerable overlap in knowledge between law schools' education and the JA's professional training and this wastes a lot of time. I believe that a law firm is the better place for law graduates to learn professional knowledge and skills and become qualified lawyers.<sup>502</sup>

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<sup>498</sup> The VER – interviews with various Vietnamese lawyers working in the cities of Hanoi, Vinh, Hue, Danang and Cantho.

<sup>499</sup> Interview # 23.

<sup>500</sup> Interview # 20.

<sup>501</sup> Interview # 6.

<sup>502</sup> Interview # 95.



#### 4.4.2.2 Distinctions Between the JA and Other Professional Training Institutions

In addition to the JA, two other legal professional training institutions have been established, namely Hanoi Procuratorate University (HPU) and the Court Academy (the CA).

Hanoi Procuratorate University was formerly the Procuracy Training School, which was established in 1964<sup>503</sup> to deliver professional training to procurators. In May 2013, this school was upgraded and renamed Hanoi Procuratorate University. Under the administration of the People's Supreme Procuracy, this institution is missioned to provide professional training for procurators and to deliver general legal education. Meanwhile, the Court Academy was established in July 2015 on the foundation of the Judicial Training School to deliver training to court officials throughout the nation.<sup>504</sup> Similar to HPU, the CA also has authority to deliver general legal education. Together with the JA, these two institutions have been playing a significant role in training and building capacity for human resources in the national judicial system. Their missions, however, are quite different. The distinctions between these institutions are summarised in *Table 5* below.

A major difference between the CA, HPU and the JA is their intake of trainees. The JA's trainees are mostly law graduates who attend professional courses in order to obtain a qualification for various positions in the judicial system. However, professional courses organised by the CA and HPU only accept people working for Vietnamese courts and procuracies, respectively. In this regard, the JA's courses aim to teach the trainees professional knowledge and skills necessary to work in a specific judicial profession, whereas the training delivered by the CA and HPU will build up the capacity of public officials working in courts and procuracies. While the JA is an important 'keeper' of a 'gate' through which law graduates must go in order to take part in various occupations

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<sup>503</sup> Hanoi Procuratorate University, *The History of Establishment and Development of Hanoi Procuratorate University* <<http://tks.edu.vn/bai-viet/chi-tiet/34/lich-su-hinh-thanh-phat-trien-cua-truong-dai-hoc-kiem-sat-ha-noi>>.

<sup>504</sup> The Court Academy of Vietnam, above n 407.

in the judicial system, the CA and HPU are places for court officials and procurators to learn how to perform better in their daily work. This in turn has led to another difference between these professional training institutions: course length. Typically, courses organised by the CA and HPU are shorter (from one day to a few weeks) than those offered at the JA (from three months to 12 months).

**Table 5 – Vietnamese legal professional training schools**

#	Name of institution	Intake trainees	Course duration	Legal education delivery	Training would-be lawyers
1	The Judicial Academy (established 2004)	law graduates	From 3 months to 12 months	No	Yes
2	Hanoi Procuratorate University (established 2013)	procuracy officials; high-school graduates; non-law bachelor degree holders	From a day to a few weeks	Yes	No
3	The Court Academy (established 2015)	court officials; high-school graduates; non-law bachelor degree holders	From a day to a few weeks	Yes	No

Additionally, the CA and HPU are authorised to deliver legal education in a manner similar to law schools, but the JA is excluded from this mission. Theoretically, the CA and HPU can offer law degrees at all three levels: bachelors, masters and doctoral. In practice however, due to their limited capacity, the CA and HPU are currently concentrating only on undergraduate legal education and are only very recent entrants to this field. In fact, the CA and HPU commenced their first classes of Bachelor of Laws in August 2017 with 350 and 400 students, respectively.<sup>505</sup>

The training of would-be lawyers is another area of distinction between the CA, HPU and the JA. Under the existing system, the JA has exclusive authority to deliver professional

<sup>505</sup> Ministry of Education and Training, *Information for University Admission in 2017* (30 June 2017) <[https://thituyensinh.vn/frontendTs/faces/TrangChu;jsessionid=vZxmZtTtCJkLpygQBM7GqXvNnQ8PvJlQldGGSWH3s2vtskzSCR!1597285141?\\_afLoop=13278737648652385&\\_afWindowMode=0&\\_afWindowId=null&\\_adf.ctrl-state=zeze0l38o\\_1](https://thituyensinh.vn/frontendTs/faces/TrangChu;jsessionid=vZxmZtTtCJkLpygQBM7GqXvNnQ8PvJlQldGGSWH3s2vtskzSCR!1597285141?_afLoop=13278737648652385&_afWindowMode=0&_afWindowId=null&_adf.ctrl-state=zeze0l38o_1)>.

training to would-be lawyers.<sup>506</sup> This has been one of the most important missions of the JA since its establishment in 2004. However, if the Lawyering Training School (referred to above) is established, the training of qualified lawyers might be moved to the Vietnam Bar Federation.

In addition, the author's empirical research visit to Vietnam in 2016<sup>507</sup> found that the Vietnam Bar Federation (the highest regulatory body for the country's legal profession) has been very active in proposing the establishment of a Lawyering Training School. It is quite possible that a Lawyering Training School (under the administration of the VBF) would join the group of professional training schools in years to come.

#### **4.4.3 Further Training of a Qualified Lawyer in Vietnam**

The further training of a qualified lawyer in Vietnam encompasses two components: completion of a lawyering professional training course; and practice as a probationary lawyer at a law firm. Under articles 10 and 12.1 of the *2006 Lawyer Act* (Vietnam) and article 12.1 of the *2012 Amendment to the 2006 Lawyer Act* (Vietnam), a Bachelor of Laws degree is required in order to attend a lawyering professional training course.<sup>508</sup> It is a 12-month course designed to provide law graduates with the professional knowledge and the skills necessary for functioning as lawyers.<sup>509</sup> The JA is currently the only institution in Vietnam that has authority to deliver this course. Although it is criticised for not providing the trainees with effective professional training,<sup>510</sup> the JA remains an important 'gatekeeper' for all those seeking to become qualified lawyers in Vietnam.

After completing the professional training course, trainees are awarded a certificate of completion and are eligible to attend another phase of the training process, that of

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<sup>506</sup> In Vietnam, the MOJ and the VBF, together with the JA, also play an important role in the process of training qualified lawyers. See below section 4.4.3 of this chapter.

<sup>507</sup> See above Chapter Three for more details about the VER and how it was conducted.

<sup>508</sup> See the *2006 Lawyer Act* (Vietnam) (3 April 2015) <[http://www.moj.gov.vn/vbpq/Lists/Vn%20bn%20php%20lut/View\\_Detail.aspx?ItemID=15094](http://www.moj.gov.vn/vbpq/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=15094)>; and the *2012 Amendment to the 2006 Lawyer Act* (Vietnam) (15 June 2013) <[http://moj.gov.vn/vbpq/Lists/Vn%20bn%20php%20lut/View\\_Detail.aspx?ItemID=28217](http://moj.gov.vn/vbpq/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=28217)>.

<sup>509</sup> Under article 12.2 of the *2006 Lawyer Act*, the lawyer professional training course is six months in length. However, under article 12.2 of the *2012 Amendment*, the training duration is increased to 12 months.

<sup>510</sup> See above section 4.4.2 of this chapter.

practice as a probationary lawyer at a law firm. This is often known as the probationary phase. The probationary period normally lasts for 12 months except in some special circumstances where it may be shortened.<sup>511</sup> During this phase, a probationary lawyer works under the supervision of an experienced qualified lawyer (the *supervising lawyer*) appointed by the local bar association. The supervising lawyer has the mission to provide guidance, assistance, comments and assessment in order to help the probationary lawyer learn how to practise and grow professionally. In addition, the supervising lawyer is responsible for the practising activities conducted by the probationary lawyer.<sup>512</sup>

Finally, the *National Bar Examination* is the last barrier a probationary lawyer in Vietnam must pass in order to be licensed as a practising lawyer. The VBF has authority for the *National Bar Examination* through an *Examination Council*. Formed by the VBF, the *Examination Council* assesses each probationary lawyer's performance and decides who will pass or fail (or who will be and who won't be a lawyer).<sup>513</sup> The *National Bar Examination* consists of both theoretical and practical components. The theoretical part tests the probationary lawyer's knowledge of and skills in litigation, legal consultation, and other necessary lawyering knowledge and skills. Meanwhile, the practical component examines the probationary lawyer's ability to apply those skills and knowledge in solving a legal problem.<sup>514</sup> Quite often, examinees are required to express their view on a legal case provided by the *Examination Council* and propose solutions.

Successfully passing the *National Bar Examination* also means that the probationary lawyer is eligible to be licensed to practise law. Under the current Vietnamese system, the Minister of Justice has authority to license probationary lawyers based on the VBF's proposal and recommendation. From the date of licensing, the probationary lawyer officially becomes a member of the Vietnamese legal profession and is qualified to

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<sup>511</sup> See articles 13 and 16 of the *2012 Amendment to the 2006 Lawyer Act*, above n 467 (providing some special circumstances in which a lawyer may have a shorter probationary period. For example, if a probationary lawyer used to work as: (1) a judge, procurator, or investigator; (2) a professor, associate professor, or doctor of law; or (3) a researcher, senior lecturer in law, then they are not required to attend a lawyer professional training course or undergo probationary learning at a law firm).

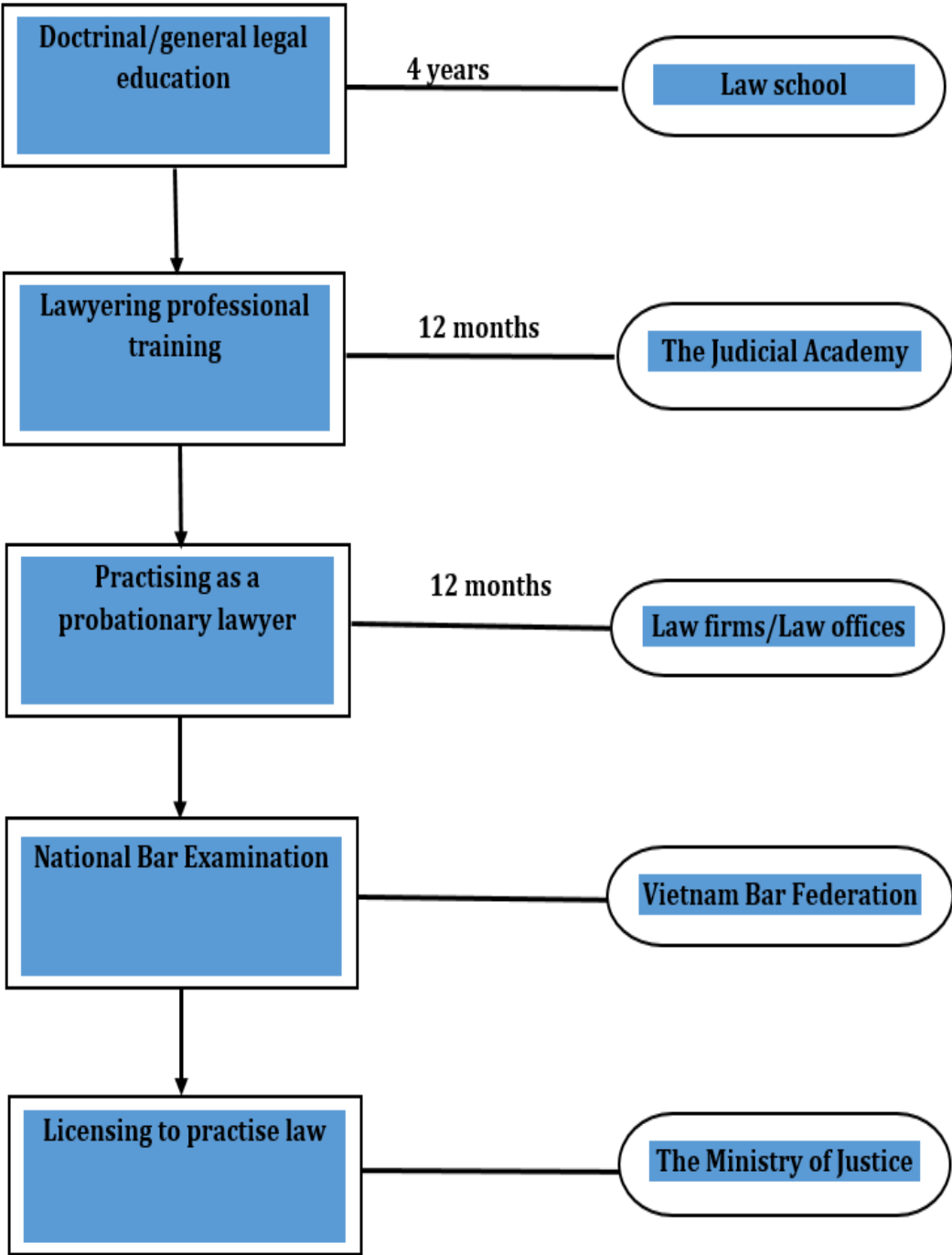
<sup>512</sup> See article 14 of the *2012 Amendment to the 2006 Lawyer Act*, above n 508.

<sup>513</sup> For more details about the Examination Council, see articles 24, 25, 26, and 27 of *Circular 19/2013/TT-BTP* issued 28 November 2013 by the Minister of Justice providing *Guidance on the Practising of Probationary Lawyers* (16 September 2014) <<http://thuvienphapluat.vn/archive/Thong-tu-19-2013-TT-BTP-huong-dan-tap-su-hanh-nghe-luat-su-vb216507.aspx>>.

<sup>514</sup> *Ibid* article 22.

practise law. *Figure 7* below summarises the process of training a qualified lawyer in Vietnam.

**Figure 7 – The training process of a qualified lawyer in Vietnam**



## 4.5 The Challenges for Vietnamese Legal Education

### 4.5.1 Law Graduates Lack Professional Knowledge and Skills

As discussed earlier, legal education has been criticised<sup>515</sup> all over the world for not effectively preparing students for the profession<sup>516</sup> and Vietnamese legal education is no exception. Sidel and Pham have described Vietnamese legal education as a system in which ‘students rarely learn practical skills, and have limited opportunities to contribute either to society or to the promotion of social justice and the rule of law’.<sup>517</sup> In the VER conducted in 2014 and 2016, many participants were of the opinion that the current teaching system is too theoretical and does not provide students with the practical skills necessary to function effectively as lawyers.<sup>518</sup> For example, a dean of a law school in central Vietnam maintained:

... Although Vietnamese legal education has improved and developed considerably in the last more than 20 years, the current system still focuses heavily on the teaching of legal theories and principles and lacks practical and skills training. This has been seen as a principal reason that makes most Vietnamese law graduates not ‘employment-ready’.<sup>519</sup>

Similarly, a lawyer working for a business group in Danang suggested:

Vietnamese law schools have not taught students many necessary practical skills required by the legal profession. I have recruited many law graduates to work in our Department of Legal Affairs but in most cases, we have to provide them with further training before we can actually have them to work for us. I completely think the current system needs to be changed and more attention should be paid to practical and skills training’.<sup>520</sup>

A judge in Hanoi was also concerned about the problem of lack of professional training in the legal education process:

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<sup>515</sup> See, eg, American Bar Association Section of Legal Education and Admission to the Bar, *Legal Education and Professional Development – An Educational Continuum, Report of the Task Force on Law Schools and The Profession: Narrowing the Gap* (ABA, 1992) 4–5; see also Roy Stuckey et al, above n 41, 1–2; Sullivan et al, above n 33, 4.

<sup>516</sup> See, eg, Margaret Barry, ‘Practice Ready: Are We There Yet?’ (2012) 32 *Boston College Journal of Law and Social Justice* 247, 247–54.

<sup>517</sup> Sidel and Pham, above n 21, 7.

<sup>518</sup> The VER – interviews with various Vietnamese law teachers and lawyers; see also, Bui, above n 17, 125–40; Nguyen, above n 17, 24–6.

<sup>519</sup> Interview # 4.

<sup>520</sup> Interview # 24.

I think the current legal education system concentrates heavily on the delivery of legal knowledge but lacks the training on professional skills and practical knowledge. This has proven to be a major limitation because in many cases, the employers have to train law graduates further after hiring them.<sup>521</sup>

While various professional skills such as negotiation, consultation, fact investigation, client interviewing, mediation and communication are commonly taught at many law schools around the world,<sup>522</sup> they are generally absent from law curricula in Vietnam. This is a major 'gap' in the Vietnamese system. Under the two-stage legal education system in Vietnam, professional knowledge and skills training is considered to be the business of the JA and other professional schools.<sup>523</sup> Consequently, law graduates in Vietnam often lack professional skills, the capacity to apply legal knowledge to resolve practical problems, and the ability to think creatively. From the legal profession's perspective, the 'products' of Vietnamese law schools are not yet practice-ready.<sup>524</sup> A practising lawyer in central Vietnam saw this problem from the perspective of a balance between doctrinal education and professional training:

In my view, training a qualified lawyer is just like building a house in the sense that you need two primary components: the foundation and the house. The foundation is important, but you should spend more time and resources on the house. In producing a qualified lawyer, I consider doctrinal education as the foundation and professional training to be the house. In this regard, the current Vietnamese system is unbalanced because it focuses heavily on doctrinal education.<sup>525</sup>

This is not to mention the demand created by globalisation and international integration<sup>526</sup> for 'global lawyers'. Under the pressure of globalisation, lawyers have to be able to function more effectively in an increasingly global legal marketplace.<sup>527</sup> Global lawyers, as defined by Wenzler and Kwietniewska, are legal practitioners knowledgeable in not only the law of one country but also foreign law and international law.<sup>528</sup> A global lawyer is able to effectively handle transnational and international legal matters and

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<sup>521</sup> Interview # 59.

<sup>522</sup> Above, n 18, n 19 and n 20.

<sup>523</sup> See above section 4.4.2 of this chapter.

<sup>524</sup> See, eg, Tuan Van Nguyen, 'Organization and Operation of Lawyers: Reality and Orientation for Renewal' (1997) 2 *Jurisprudence Journal* 38, 41.

<sup>525</sup> Interview # 96.

<sup>526</sup> See above section 4.3.3 of this chapter.

<sup>527</sup> Bloch, above n 8, 114.

<sup>528</sup> Wenzler and Kwietniewska, above n 3, 462–6.

address the complexity of a legal profession created by globalisation, and is expected to efficiently use at least one foreign language in their professional activities.<sup>529</sup> Vietnam is still far from training this type of lawyer, as a practising lawyer in Hue said:

It is [a] fairly long way to go for Vietnam to have a generation of global lawyers no matter how much efforts and finance the government has put in the reform. The problem lies not only in lawyers' ability to use foreign languages but pretty much in how we design and deliver legal education. The current Vietnamese system has a serious lack of training in legal professional skills and practical knowledge and I think this is the key problem.<sup>530</sup>

#### **4.5.2 Vietnamese Legal Education is Disconnected from the Legal Profession**

As can be seen from the above discussion, and unlike the situation in many other countries,<sup>531</sup> Vietnamese legal education is disconnected from the legal profession.<sup>532</sup> In Bui's opinion, although there is an increasing demand by the profession for commercial lawyers, Vietnamese law school curricula are still designed with a heavy emphasis on litigation practice.<sup>533</sup> In addition, as Vietnam becomes increasingly involved in international business transactions, there is a growing demand for lawyers knowledgeable in international trade and efficient in foreign languages.<sup>534</sup> Vietnamese legal education, however, places relatively limited emphasis on either of these skills. A law teacher in Danang said about this problem:

The relationship between legal education and the profession in Vietnam has not been closely tightened as the involvement of the profession in the law schools' education process is limited. I think law schools tend to teach their students what they have and feel important rather than what

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<sup>529</sup> Ibid.

<sup>530</sup> Interview # 95.

<sup>531</sup> The United States, England, Australia, and India are examples of this relationship. In the United States, for example, the American Bar Association has a relatively major influence on the content, teaching methods and accreditation of legal education: see, eg, A Kenneth Pye, 'Legal Education in an Era of Change: The Challenge' (1987) *Duke Law Journal* 191, 201–2. In England, legal education is heavily influenced by the Law Society and Bar Council: see, eg, Robin Handley and Damien Considine, 'Introducing a Client-Centered Focus into the Law School Curriculum' (1996) 7 *Legal Education Review* 193, cited in Giddings, above n 310, 52. In Australia, there is a close link between legal education and the legal profession, and this is believed to be an important factor affecting the development of Australian scholarship: see, eg, Chesterman and Weisbrot, above n 76, 710–13. India is also a country where legal education and legal practice are closely connected to each other. The Bar Council of India, established as a regulatory body to oversee the Indian legal education system and the legal profession, is a key driver ensuring the training of Indian lawyers in line with a lawyering career in India: see, eg, Schukoske E Jane, 'Legal Education Reform in India: Dialogue Among Indian Law Teachers' (2009) 1 *Jindal Global Law Review* 251, 259.

<sup>532</sup> Bui, above n 22, 299.

<sup>533</sup> Ibid 306.

<sup>534</sup> See, eg, Dung Tien Luu, 'On the Occasion of Vietnam Access to WTO, Think About Legal Education in Vietnam' (2007) 7 *Journal of People's Court* 10, 10–16; see also Sidel and Pham, above n 390, 6.



is required by the profession.<sup>535</sup>

At a national level, there is some recognition of the training deficit. *Resolution 48/NQ-TW* states: ‘The training and improving of legally-qualified officials and conducting legal research projects have not yet caught up with the demands of reality’.<sup>536</sup> In fact, the legal profession’s demand for practical skills training is obvious in Vietnam. However, Vietnamese legal education, a long-standing knowledge-based system shaped by ‘socialist orientation’ theories,<sup>537</sup> is insufficiently accountable to the longer-term interests of the state or the profession and has been failing to meet this demand. As Bui argues, the current legal education system has responded only marginally to the legal profession’s requirements.<sup>538</sup> Problematically, Vietnamese law schools are seen to be caught in the tension between a ‘state ideology that insists on training students to become loyal state officials and a growing social demand for professional skills and globally relevant knowledge’.<sup>539</sup> In this regard, the training of independent-thinking law graduates is not the priority of the current Vietnamese legal education system.<sup>540</sup>

A practising lawyer in central Vietnam considered the disconnection between legal education and the legal profession to be an important reason for law graduates’ lack of readiness for employment, saying that ‘[i]n other words, law school “products” have not met the requirement of the society and the profession’.<sup>541</sup>

From the law school perspective, the disconnection between legal education and the profession has been exacerbated by Vietnamese legislation forbidding teachers to practise law. Vietnamese law teachers (classified as public officials) are not allowed to be involved in litigation. This regulatory barrier has constrained law teachers in teaching students. It has limited opportunities for law teachers to learn ‘law in context’ and build up practical knowledge and professional skills. In the Vietnamese context, this deficiency is damaging their credibility in front of their students. In an increasingly dynamic and

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<sup>535</sup> Interview # 13.

<sup>536</sup> Central Committee of the Vietnamese Communist Party, above n 21.

<sup>537</sup> Bui, above n 22, 303–6.

<sup>538</sup> Ibid 299.

<sup>539</sup> Ibid 300.

<sup>540</sup> See above section 4.3.3 of this chapter.

<sup>541</sup> Interview # 95.

complex legal profession, an understanding of black letter law only is never enough for law teachers to teach students and prepare them for the profession.<sup>542</sup>

Many comments were made in the VER about teachers' ability to practise law and the connection between legal education and the profession. For example, a dean of a law school in central Vietnam said:

I think it is a serious mistake not to allow law teachers to practise law and engage in litigation. This has limited opportunities for law teachers to learn and enrich their professional skills and practical knowledge. Now being able to practise law also means that law teachers do not have many opportunities to connect practice with legal education.<sup>543</sup>

Similarly, a procurator in central Vietnam argued:

The fact that law teachers are not allowed to practise law has made legal education purely theoretical. What students learn from law school may be out of date by the time they graduate and start their job or may not be relevant to what they will be working [on].<sup>544</sup>

And here is the opinion of a judge in the central highlands of Vietnam:

I cannot see any reason why law teachers are not allowed to practise law. Practising law helps teachers bring practice into their lectures and to make teaching more interesting and practical to students. At the end of the day, students need to learn what really happens in reality.<sup>545</sup>

A practising lawyer in central Vietnam had a similar opinion, arguing that a law teacher needs to be proficient in both legal knowledge and professional skills and practising helps them to achieve both:

In my view, working as a practising lawyer will help law teachers enrich both legal knowledge and professional skills. This is necessary for their teaching career because it helps connect theory with practice. Together with legal knowledge, practical experience and professional skills achieved from practising law will make a perfect law teacher.<sup>546</sup>

In the light of a growing demand for professional skills, it seems unarguable that

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<sup>542</sup> Interview # 2; interview 67; interview 68; interview # 66; interview # 76; interview # 80; interview # 85; interview # 14; interview # 15.

<sup>543</sup> Interview # 66.

<sup>544</sup> Interview # 78.

<sup>545</sup> Interview # 62.

<sup>546</sup> Interview # 95.

Vietnamese law teachers should be permitted to practise law. This is an important reform that Vietnam should consider in the near future.

#### **4.5.3 Vietnamese Law Schools Lack Autonomy and Flexibility**

Lack of autonomy and flexibility is identified as another problem of Vietnamese law schools and legal education. Sidel and Pham, for example, maintain that '[l]egal education in Vietnam remains relatively inflexible and still over-dominated by central policy making, in need of new and original thinking if it is to improve quality as well as increase autonomy and institutional authority in training law students'.<sup>547</sup> Similarly, Nguyen believes that because of Vietnamese law schools' limited self-determination, their curricula tend to be rigid and unlikely to meet the legal profession's requirements.<sup>548</sup> At present, Vietnamese law schools have relatively limited authority in designing what and how to teach their students; in hiring, promoting or terminating faculty members; or in introducing a new curriculum. In most cases, the influence of the MOET, the MOJ and their affiliated universities on the operation and development of law schools remain significant. A vice dean of a law school in Hue said about this situation:

Most law schools in Vietnam are under the administration of a multi-disciplinary university and they have quite limited authority over their curricula, human resources and infrastructure. In our law school for example, curriculum has to be approved by Hue University; teaching and administrative staff are recruited by Hue University; and many major facilities and buildings are built and delivered by Hue University.<sup>549</sup>

In a single-party-ruling and highly centralised country like Vietnam, it is not surprising that the government imposes close supervision on the education system in order to 'shape' students' ways of thinking. In particular, the mandatory ideological courses mentioned above<sup>550</sup> are considered to be one of the instruments by which the Vietnamese Communist Party educates and produces so-called Vietnamese 'socialist' people.<sup>551</sup> In the context of a Vietnamese law school, limited autonomy is a great barrier that has

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<sup>547</sup> Sidel and Pham, above n 106, 7.

<sup>548</sup> See Quang Van Nguyen, 'Legal Education in Australian Law Schools: Some Analysis and Experience for Vietnam Legal Education in the Context of International Integration' (2012) 11 *Journal of Jurisprudence* 59, 67.

<sup>549</sup> Interview # 7.

<sup>550</sup> See above section 4.3.2 of this chapter.

<sup>551</sup> Bui, above n 22, 300–6.

constrained and slowed down the reform process, including curriculum innovation and modification.<sup>552</sup>

Nationally, universities' lack of self-determination was recognised by Chirot and Wilkinson as a major weakness of the Vietnamese education system. In their view, universities' limited autonomy is a principal impediment to the development of higher education. In reforming Vietnamese higher education, therefore, they argue that '[w]ithout a fundamental reordering of the relationship between academic institutions and the state, no level of financial resource will be enough'.<sup>553</sup> Similarly, the 2009 *U.S.-Vietnam Education Task Force Report* noted that 'Vietnamese education institutions must be able to operate with greater autonomy as well as greater accountability...'.<sup>554</sup>

Limited autonomy is not unique to Vietnamese law schools. For example, in Japan, the legal education system is heavily influenced by the bar examination. Designed and controlled by the government, the Japanese bar examination is obvious evidence of the government's involvement in legal education.<sup>555</sup> As Maxeiner and Yamanaka have argued, the bar examination's domination has made Japanese legal education reform in 2004<sup>556</sup> less meaningful and, consequently, further reform is needed.<sup>557</sup> In Europe, Germany is another civil law jurisdiction experiencing heavy government engagement in legal education through the state-governed bar examinations.<sup>558</sup> Each of the German bar examinations concentrates on the 75 per cent of required law curriculum subjects, leaving approximately 25 per cent of flexibility for law schools. Due to the importance of these examinations to legal profession pathways (for lawyers, prosecutors, judges or civil servants), German law students tend to consider the bar examinations more important

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<sup>552</sup> Interview # 8; interview # 9; interview # 14; interview # 67.

<sup>553</sup> See Laura Chirot and Ben Wilkinson, *The Intangibles of Excellence: Governance and the Quest to Build a Vietnamese Apex Research University* (Ash Institute, Harvard University, June 2009; revised January 2010) 4, cited in Sidel and Pham, above n 472, 25.

<sup>554</sup> See Ministry of Education and Training, Government of Vietnam, and US Department of State, *U.S.-Vietnam Education Task Force Final Report* (September 2009), cited in Sidel and Pham, above n 21, 26.

<sup>555</sup> See, eg, 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* (Edward Elgar Publishing Ltd, 2012) 336, 107–11.

<sup>556</sup> Maxeiner and Yamanaka, above n 449, 303–13.

<sup>557</sup> Steele and Petridis, above n 555, 107–11.

<sup>558</sup> Wenzler and Kwietniewska, above n 3, 463.

than the reputation of the law schools they attended.<sup>559</sup>

Global practice suggests that self-determination is an important factor for law schools to develop and improve their delivery of legal education. Unlike those in Vietnam, Japan and Germany, Australian law schools have enjoyed relatively 'light-touch' government regulation.<sup>560</sup> As Coper has argued, thanks to the autonomy permitted by government, Australian law schools can 'largely design their own future, constrained only by core curriculum coverage requirements and limited resources'.<sup>561</sup> Obviously, a large degree of autonomy will help law schools become more flexible in designing their curricula, hiring and promoting faculty members and introducing new teaching methodologies and law subjects. When combined, these factors all help to improve the quality of legal education.

In the current Vietnamese context, it is important that law schools have more autonomy if they are to play a part in the reform of legal education. This is also the hope of a vice dean of a law school in central Vietnam, who said:

The MOET is currently drafting a new University Regulation in which more autonomy will be given to universities. This is a growing trend in Vietnam in near future. Hopefully, law schools will be granted more authority and autonomy so that they can be more independent in reforming and innovating their education.<sup>562</sup>

#### ***4.5.4 Law Graduates Lack the Capacity to Think Independently, Creatively and Critically***

One of the most important missions of legal education is to teach students how to 'think like a lawyer'.<sup>563</sup> To a large extent, 'thinking like a lawyer' can be understood as being the ability to think independently, creatively and critically. Under current globalisation and competition pressure, it is obvious that lawyers are required to have not only a broad base of knowledge but also good critical thinking ability.<sup>564</sup> In addition to legal knowledge, professional skills and values, it is important, therefore, to teach students

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<sup>559</sup> Ibid.

<sup>560</sup> See, eg, Michael Coper, *Recent Developments in Australian Legal Education* (ANU College of Law Research Paper No 10-85, 2010) 5.

<sup>561</sup> Ibid.

<sup>562</sup> Interview # 7.

<sup>563</sup> Amsterdam, above n 51, 612.

<sup>564</sup> Lo, above n 60, 76.

how to think critically, to argue persuasively and to write effectively.<sup>565</sup>

In the Vietnamese system, however, law graduates' limited capacity to think creatively, independently and critically remains a problem. This deficiency appears to result from the combined effect of the structural issues discussed above and the 'teacher-centred' training style commonly employed in the education system. Known as a 'one-way-communication' approach, this primitive education approach allows teachers to deliver lectures, while students passively listen and take notes.<sup>566</sup> Analytical and problem-solving skills have seldom been introduced, developed or practised among students. Communication and interaction is also hardly present, partly because teachers and students are accustomed to this passive 'one way' of teaching and learning.

A practising lawyer in Cantho City maintained, during the VER, that 'the one-way communication education style in Vietnamese law schools has limited greatly the interaction between students and teachers and among students'.<sup>567</sup> He believed this is one of the 'obvious weaknesses in the current education system in Vietnam'<sup>568</sup> that has contributed to the limited learning outcomes, including students' ability to think and solve problems.<sup>569</sup> Sometimes, teachers desiring interactive education encourage students to raise questions, participate in class discussion and to criticise legal matters. However, the pressure created by the teaching of a large volume of legal doctrine, principles and basic codes does not allow time for much interaction and communication. For example, a law teacher in Ho Chi Minh City said:

As a law teacher, I am aware that students need to be taught how to think and work creatively and independently. However, under the current system, we have the pressure of delivering a large volume of legal knowledge, principles and codes to students, leaving no time for interactive and practical activities. It is a shame, but there is nothing we can do.<sup>570</sup>

Consequently, during a typical four-year legal education period, students are not given much opportunity to practise and sharpen their thinking ability by criticising,

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<sup>565</sup> Uphoff, above n 240, 325.

<sup>566</sup> Bui, above n 17, 145–7.

<sup>567</sup> Interview # 21.

<sup>568</sup> Ibid.

<sup>569</sup> Ibid.

<sup>570</sup> Interview # 5.

questioning, reflecting or debating. More often, students are required to memorise legal theories, rules and provisions. The fact that a student's performance evaluation is based primarily on 'memory ability' has forced and motivated students to try their best to 'learn by heart' what law teachers present in the lectures.<sup>571</sup>

Another factor that may affect the development of Vietnamese law students' thinking ability is their relative youth when they begin their education at law schools. Similar to other civil law jurisdictions, Vietnamese legal education is an undergraduate system admitting students directly from high schools. Unfortunately, during their education at primary, secondary and high schools, Vietnamese students are also trained in the teacher-centred education style and accustomed to a passive learning environment. It is difficult, therefore, to require them to be independent and creative when they are at university. As a law teacher in Ho Chi Minh City argued:

It is not fair to only blame Vietnamese law schools for this limitation. If you look more broadly, you can see that the problem lies with the whole education system from kindergarten to university. How can we expect our students to be active and interact with others during class if they have been educated in a system where one way communication education dominates?<sup>572</sup>

In countries with graduate legal education systems, students enter law schools when they are generally 22 or 23 years old. United States students may be even older because many of them choose to work for some time before starting their legal education.<sup>573</sup> In Vietnam, 18 is the common student age for commencing legal education. Due to their limited social knowledge and work experiences, students often struggle to understand complicated legal issues and the abstract concepts of justice and fairness.<sup>574</sup> Additionally, limited living and working experience is also a barrier that prevents law students from practising and improving their thinking ability. As a practising lawyer in Cantho said:

Vietnamese law students are quite young and lack social knowledge and life experience as most of them enter law schools directly from high schools. In my view, this is not good for legal education as studying law sometimes requires students to deal with complicated legal issues and even political problems. I think it may be the right time for Vietnam to think about the model of graduate

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<sup>571</sup> Bui, above n 17, 148.

<sup>572</sup> Interview # 19.

<sup>573</sup> Uphoff, above n 240, 323.

<sup>574</sup> Lo, above n 60, 53; interview # 20; interview 83; interview # 91.

legal education, admitting only those graduated from one degree.<sup>575</sup>

Over time, the problem of students' youth, combined with the teacher-centred education style, has contributed to the production of generations of passive Vietnamese law graduates with limited capacity to think independently, creatively, and critically.

#### **4.5.5 Lack of Training in Legal Ethics and Professional Responsibility**

The absence of professional responsibility and legal ethics knowledge from the existing curricula is another limitation of the current system in Vietnam. One possible reason for this situation is the two-stage legal education system, in which professional responsibility and legal ethics' training is delivered by the JA and other professional schools. In the view of many scholars, however, the teaching of professional training at these professional schools is ineffective.<sup>576</sup> While 'experiential learning' is widely accepted as a productive environment for teaching and learning professional responsibility and legal ethics,<sup>577</sup> Vietnamese professional schools still bear witness to the domination of a lecture-based teaching methodology.<sup>578</sup> It is hard to believe a limited interactive and non-reflective environment can effectively teach complex professional concepts to students, particularly professional responsibility and legal ethics.

Another factor contributing to the lack of professional responsibility and legal ethics at Vietnamese law schools may be the small proportion of graduates intending to follow a legal practice career. To some degree, this situation has made many people believe that professional responsibility and legal ethics knowledge is necessary only for those

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<sup>575</sup> Interview # 20.

<sup>576</sup> See above section 4.4.2 of this chapter.

<sup>577</sup> See, eg, 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 (arguing that the teaching of legal ethics in the experiential learning environment is effective and should be encouraged; and believing that the connections between skills training and ethics education will improve the teaching of both professional skills and professional responsibility); 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 (maintaining that interactive education, such as client representation, simulations and problem-solving, can help individuals enhance skills in moral analysis and build awareness of the situational pressures that can skew judgment).

<sup>578</sup> See above section 4.4.2 of this chapter.



practising law. According to some interviewees in the VER, Vietnamese law schools have not included these skills and knowledge in their curricula for this reason.<sup>579</sup>

To other participants, however, this does not satisfactorily explain the absence of professional responsibility and legal ethics knowledge from Vietnamese law schools' curricula. For example, a practising lawyer in Vinh suggested that

'[t]he mission of law school is to train students to be legally knowledgeable, practical, responsible and ethical. Therefore, I cannot see any reason not to include courses teaching professional responsibility and legal ethics in law schools curricula'.<sup>580</sup>

A law teacher in Ho Chi Minh City also expressed his view on this issue:

In fact, only a minority of law graduates have opportunities to enter professional schools for further training and become more employable. What will happen with the rest of law graduates? I think it is a serious gap when Vietnamese law schools do not include legal ethics and professional responsibility in their curricula.<sup>581</sup>

Similarly, a law teacher in Cantho argued:

Vietnamese law schools need to teach their students about legal ethics and professional responsibility whether or not their graduates will practise law. I still believe that this knowledge is beneficial to both law graduates following a lawyering career and those working in other professions.<sup>582</sup>

Learning to be responsible and ethical is something that is necessary for any employment pathway. As Cownie has maintained, law schools should teach students how to think about a wide range of values whether they follow a lawyering career or not.<sup>583</sup> In fact, skills and values students obtain at law schools are beneficial to occupations and professions other than law. 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'.<sup>584</sup> In most cases, the professional skills delivered by law schools not only help students

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<sup>579</sup> Interview # 81; interview # 79.

<sup>580</sup> Interview # 22.

<sup>581</sup> Interview # 83.

<sup>582</sup> Interview # 2.

<sup>583</sup> See Fiona Cownie, 'Alternative Values in Legal Education' (2003) 6 *Legal Ethics* 159, 171.

<sup>584</sup> Rice, above n 299, 13.

become more employable but also enable them to develop the so-called social or 'soft' skills.

In society generally, so called 'soft' skills are anything but soft. They are critical for human functioning, for example, how to empathise with others' difficulties, and recognition of social responsibilities for others. The law school, therefore, should be not only a place for legal knowledge and practical skills, but also a school of life, where students can learn the values and benefits of being human. As Matasar has pointed out, greater skills and values training would produce not only a better lawyer but also a better human being.<sup>585</sup> Consequently, many law schools around the world have included professional responsibility and legal ethics in their curricula.<sup>586</sup> It is both reasonable and important for Vietnamese law schools, therefore, to teach their students about these matters. It is argued that inclusion of professional responsibility and legal ethics knowledge in law curricula is an important reform that Vietnamese law schools should consider.

In summary, various challenges have been identified as reasons for the ineffectiveness of Vietnamese legal education. This state of affairs has led to a growing dissatisfaction with the quality of Vietnamese legal education among relevant stakeholders. Since the Vietnamese government has committed to building a society based on the rule of law, strengthening democracy and protecting human rights, training generations of lawyers who are not only knowledgeable and ethical but also professionally responsible, becomes crucial. To that end, there is an urgency to reforming Vietnamese legal education.

#### **4.6 Conclusion**

This chapter has discussed the history, current state and various challenges facing Vietnamese legal education. With less than 40 years behind it, the relatively new Vietnamese system is producing approximately 20 000 law graduates annually. In many cases, however, they have to be given further training before they can start to work. As the VER has found, this situation mainly results from a system that over-emphasises the

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<sup>585</sup> See Richard A Matasar, 'The MacCrate Report from the Dean's Perspective' (1995) 1 *Clinical Law Review* 457, 474.

<sup>586</sup> The United States, above n 18; Australia, above n 19; Canada, above n 20.

teaching of legal doctrine, rules and basic codes and lacks professional skills training and the wider dimensions of legal ethics. In addition, the fact that teaching is heavily influenced by socialist ideology where lawyers are regarded as a 'supplementary judicial force', has also contributed to the failure of the system in preparing students for the profession.

Many other challenges have been discussed in this chapter. While the disconnection between Vietnamese legal education and the profession has been a barrier to designing a suitable curriculum, law schools' limited autonomy has also contributed to the problem. Due to their lack of self-determination, law schools cannot design a curriculum to meet the legal profession's requirements. Further, law graduates' limited critical thinking ability was seen by interviewees as another challenge for Vietnamese legal education. Several reasons for this situation have been identified, notably the one-way-communication education style, the theoretical legal education system, and the relative youth of law students in Vietnam. Finally, lack of training in legal ethics and professional responsibility is a limitation that makes most Vietnamese law graduates unprepared for practice. This situation is contributed to by the two-stage approach, in which general legal education is delivered by law schools but professional training, including legal ethics and professional responsibility, is the business of the JA.

As a national judicial training school, the JA was established in Vietnam to formalise the professional training of various positions in the judicial system. JA, training however, is delivered mainly by lectures and trainees are evaluated mostly by written examinations. Consequently, the professional training delivered and claimed by the JA is in fact more about the 'theory of professional training'. This is one of the reasons for the call to reform the training of graduated lawyers in Vietnam.

The state of the Vietnamese legal profession has also been discussed in this chapter. While private legal practice was first permitted in 1987, the VBF was established only recently (in 2009) to oversee the national legal profession. Nowadays, although Vietnamese legislation tends to grant lawyers more authority and freedom, the profession still operates under the close supervision and strict control of the Vietnamese central government. Consequently, in spite of an increasing number of students studying

law, the percentage of graduates practising law remains relatively low in Vietnam.

The current state of Vietnamese legal education presented and analysed in this chapter is a partial explanation for the legal profession's ineffectiveness. As established by the VER, there has been a consistent call for reform of legal education and the training of qualified lawyers in Vietnam. Fortunately, the need for reform is widely accepted by all stakeholders — law teachers, law students, lawyers, governments, national public agencies and international donors. Chapter Five discusses this demand and explores various possibilities for the reform of Vietnamese legal education.

## CHAPTER FIVE

### REFORMING THE VIETNAMESE LEGAL EDUCATION SYSTEM: WHAT MAKES CLINICAL LEGAL EDUCATION A PROMISING OPTION?

#### 5.1 Introduction

This chapter examines interviewees' opinions, collected and analysed in the Vietnam Empirical Research (VER),<sup>587</sup> as to the urgent need for reform of the Vietnamese legal education system and explores the various possibilities for effecting that reform, having regard to international experience.

Building graduate legal education programs such as the Juris Doctor (JD) degree, reforming curriculum and teaching methodologies, incorporating professional training into law schools' curricula and adopting CLE are all discussed as potential options. In the Vietnamese setting, each of these options has its own benefits and challenges.

In the last part of this chapter, CLE is discussed as a relatively new but promising reform that Vietnamese law schools should seriously consider. The chapter's central finding, based on the VER, is that CLE is the best option for the reform of Vietnamese legal education because it has the potential to simultaneously address the various challenges facing the Vietnamese system. In short:

- (1) CLE helps address the problem of 'lack of professional skills' in law graduates;
- (2) CLE helps bridge the gaps between legal education and the legal profession in Vietnam;
- (3) CLE helps build up and strengthen students' ability to think like lawyers;
- (4) CLE helps better prepare students to be 'justice ready'; and
- (5) CLE is a better approach for teaching professional responsibility and legal ethics.

These values of CLE have been demonstrated in many countries around the world;<sup>588</sup> and they have also started to prove themselves in the Vietnamese legal education system.

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<sup>587</sup> See above Chapter Three for further details of the VER and how it was conducted.

<sup>588</sup> See above section 2.4 of Chapter Two.

The central objective of this chapter is to confirm the urgent need to reform the Vietnamese legal education system. It appears that the time may be right for Vietnam to make the most of all the global clinical movement has to offer in order to strengthen and develop its legal education system.

## **5.2 Official Recognition of the Need for the Reform of the Vietnamese Legal Education System**

In Vietnam, legal education plays a significant role in national socio-economic development. As Sidel and Pham 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.<sup>589</sup> From the perspective of the judicial system, the United Nations Development Program (UNDP) maintains:

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.<sup>590</sup>

As discussed earlier, Vietnamese legal education is seen as an ineffective system that fails to prepare students to be practice-ready.<sup>591</sup> Fortunately, the urgent need for reform has been widely recognised by the national government and relevant national agencies such as the Ministry of Justice (MOJ) and the Ministry of Education and Training (MOET).

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

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<sup>589</sup> Sidel and Pham, above n 21, 1.

<sup>590</sup> UNDP Vietnam, above n 21.

<sup>591</sup> See above section 4.5 of Chapter Four.

that all need to be addressed soon.

... that national tertiary education should be renewed in a vigorous, substantial and comprehensive manner.<sup>592</sup>

Specifically in regard to 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 the Vietnamese Communist Party, called for:

... ensuring the quantity and quality of human resources officials and civil servants who work in the legal sector by renewing the 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 the 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.<sup>593</sup>

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

... 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 ...<sup>594</sup>

The demand for legal education reform is also widely recognised among judicial officials,

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<sup>592</sup> Vietnamese Central Government, *Resolution 14/2005/NQ-CP on Substantial and Comprehensive Renewal of Vietnam's Tertiary Education in the 2006–2020 Period* (1 April 2010) <[http://www.moj.gov.vn/vbpq/Lists/Vn%20bn%20php%20lut/View\\_Detail.aspx?ItemID=17258](http://www.moj.gov.vn/vbpq/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=17258)>.

<sup>593</sup> Central Committee of the Vietnamese Communist Party, above n 21.

<sup>594</sup> Central Committee of the Vietnamese Communist Party, above n 17.

the legal profession, legal academics, and students in Vietnam, many of whom contributed to the VER. For example, a practising lawyer in Vinh City said:

There are some issues to be considered in the reform of Vietnamese legal education. First, law schools should review their curricula to ensure their students are taught what is required by the employers, particularly the profession. Second, teaching methodologies need to be innovated to help teachers deliver their lectures more effectively. And finally, the internship and externship programs must be re-designed for students to benefit and enrich their practical experience.<sup>595</sup>

Similarly, a law teacher in Ho Chi Minh City had concerns about legal education reform in Vietnam:

I am not satisfied with the way we design curriculum and deliver lectures to students and this must be changed. For example, law teachers are required to deliver a large volume of legal knowledge, principles and codes leaving limited time for other practical activities. Obviously, this has limited the interaction between teachers and students and among students which I think very significant in studying law.<sup>596</sup>

And here is the voice of a judge in central Vietnam when talking about the current two-stage legal education system in Vietnam:

I do not think it is a good idea to separate theoretical education from practical and skills training like the current two-stage legal education system is offering. In my view, it would always be better if students study legal knowledge and professional skills at the same time. The current Vietnamese system needs to be changed.<sup>597</sup>

A student in central Vietnam also expressed his view about the challenges facing Vietnamese legal education:

The current legal education system in Vietnam has been quite successful in delivering legal knowledge, but failed in the teaching of professional knowledge and skills. In addition, students often feel a gap between legal knowledge they learn at law schools and the practice of law in the real world. This situation need to be changed as soon as possible.<sup>598</sup>

In short, 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

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<sup>595</sup> Interview # 22.

<sup>596</sup> Interview # 5.

<sup>597</sup> Interview # 60.

<sup>598</sup> Interview # 37.



qualified human resources for national socio-economic development, and the need to strengthen the capacity of the legal profession.

To begin with, 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 pre-condition for strengthening social justice and improving democracy in the country. In that process, legal education plays a significant role in training and providing legally-qualified human resources. Legal education reform, therefore, will increase the likelihood of having more well-qualified lawyers, judges, procurators and the like. These people are important actors in making a rule-of-law society possible in Vietnam. As the dean of a law school in Ho Chi Minh City pointed out:

For me, a rule-of-law society is simply a society governed by the law and in order to do that Vietnam needs well-qualified law graduates to work in the judiciary system and the profession. These people will ensure the legal orders, promote social justice and strengthen democracy. In Vietnam, therefore, I believe building a rule-of-law society must start from the reform of the legal education system.<sup>599</sup>

Additionally, legal education reform is required in order to bridge the ‘gaps’ between legal education and the legal profession in Vietnam. The disconnection between legal education and the profession is widely recognised as a long-standing challenge in Vietnam that disables law graduates from being practice-ready.<sup>600</sup> This problem is also identified in *Resolution 48/NQ-TW* which states that ‘the training and improving [of] legally-qualified officials and conducting legal research projects have not yet caught up with the demands of reality’.<sup>601</sup>

Reform is consequently needed to assist Vietnam in connecting legal education with practice. This in turn will help produce generations of highly-qualified law graduates to take on various positions in national socio-economic development and international integration. As a procurator in Cantho put it:

Vietnam is currently having nearly 200 000 bachelor and master degree holders who are unemployed and I am sure many of them are law graduates. Frankly, as an employer, I am not

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<sup>599</sup> Interview # 83.

<sup>600</sup> See above section 4.5 of Chapter Four.

<sup>601</sup> Central Committee of the Vietnamese Communist Party, above n 21.

happy and satisfied with law school education because the current system has been ineffective in producing quality law graduates. It needs to be changed if we want to have more employment-ready law graduates.<sup>602</sup>

In summary, as is the case in many countries around the world,<sup>603</sup> Vietnamese legal education has failed in efficiently preparing students for the profession. Accordingly, the available options for Vietnamese legal education reform must be investigated. The next part of the chapter will discuss this issue further.

### 5.3 Possibilities for the Reform of Vietnamese Legal Education

Chapter Two of this thesis discussed some possibilities for legal education reform from the global perspective. This section looks more closely into the situation of Vietnam in the light of the views of the VER interviewees. *Table 6* below lists all of the options proposed by the VER interviewees. The following sections will discuss these options in turn.

**Table 6 – A summary of possible options for Vietnamese legal education reform**

#	Possibilities	Proposed by
1	Moving to graduate-level legal education (the JD degree)	Lawyers, law teachers, law school leaders
2	Curriculum reform	Lawyers, law teachers, students, judicial officials
3	Teaching methodology reform	Clinicians, lawyers, law teachers, students
4	Incorporating professional training into law school curriculum	Law teachers, law school leaders, clinicians
5	Adopting and incorporating CLE into the legal education process	Clinicians, law school leaders, students, judicial officials

#### 5.3.1 Moving to Graduate-level Vietnamese Legal Education?

One possibility for the reform of Vietnamese legal education would be to adopt graduate-level legal education. In fact, some Vietnamese law schools already offer graduate-level legal education – the ‘second degree’. Offered to those holding a bachelor’s degree in any discipline, the second degree is designed as a 2.5-year program delivered in five

<sup>602</sup> Interview # 80.

<sup>603</sup> Stuckey et al, above n 41, 1–2; Sullivan et al, above n 33, 4.

semesters. This form of training has been attempted by some law schools to try to diversify legal education in Vietnam. However, unlike Japan<sup>604</sup> and South Korea<sup>605</sup> where a new graduate law school system was established, Vietnamese law schools have simply modified their existing bachelor's degree curricula to fit with the 2.5-year time frame of the second-degree program. Since there is no mandatory framework curriculum from the Ministry of Education and Training (MOET)<sup>606</sup> for second-degree legal education, Vietnamese law schools tend to design their second-degree curricula based on their own interests and the availability of resources.<sup>607</sup> Nevertheless, the teaching and evaluation methodologies in the second-degree legal education are very similar to those employed in the full-time on-campus bachelor's degree.<sup>608</sup> Another common feature of the second-degree offering among Vietnamese law schools is the absence of professional skills courses from the curricula. So far, the so-called second degree has not been seen as an effective reform of legal education in Vietnam.

It should be queried whether Vietnam could follow Japan, South Korea or other countries<sup>609</sup> in adopting a JD degree as a form of graduate legal education. The VER found some interest among Vietnamese scholars in a JD legal education model. For example, a law teacher in Hanoi maintained:

Vietnam may think about adopting the JD degree for the legal education system. In many countries, the JD degree is a very good model to attract mature students to study law. I think after studying and graduating from one degree, students will be mature enough to study well at law school.<sup>610</sup>

Another practising lawyer in central Vietnam had a similar view on this issue:

It would be more effective if Vietnam could follow some other countries in offering graduate legal education to those already with a degree. I am sure that after graduating from one degree, students

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<sup>604</sup> Maxeiner and Yamanaka, above n 449, 303–13 (identifying that in 2004, 60 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 degrees provided by law schools).

<sup>605</sup> Kim, above n 62, 58–63 (identifying that in 2007, South Korea established 25 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).

<sup>606</sup> See above section 4.3 of Chapter Four.

<sup>607</sup> The VER — interviews with various law school leaders and law teachers.

<sup>608</sup> Ibid.

<sup>609</sup> Australia and China are another two examples of countries adopting graduate-level legal education. See generally, Cooper, et al, above n 102; Erie, above n 48.

<sup>610</sup> Interview # 11.

will have necessary knowledge and skills and are mature enough in order to study well in a law degree.<sup>611</sup>

A dean of a law school in Ho Chi Minh City also believed that the JD degree is needed in Vietnam:

Vietnam has been very slow in the reform or maybe we are not brave enough like Japan or South Korea to introduce graduate legal education — the JD degree. Although the second-degree model, currently offered at some Vietnamese law schools, has some commonalities with the JD degree, it has been designed and delivered in a manner similar to the Bachelor of Law degree. For this reason, the second-degree has not been very helpful in strengthening and innovating the teaching of law in Vietnam. Why not a JD model for Vietnamese legal education?<sup>612</sup>

In general, offering graduate legal education, particularly the JD degree, is an option for Vietnamese law schools to consider for legal education reform. However, Vietnam will first need to examine the experiences of, and lessons from, these countries before going any further with the JD model for legal education reform.

In Japan, for example, after more than 10 years since the establishment of new law schools, the legal education system still has many critics. 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’.<sup>613</sup> Similarly, in the view of Maxeiner and Yamanaka, there are many pedagogical and practical challenges facing the new Japanese law schools and more needs to be done.<sup>614</sup> Some others even regard the 2004 reform in Japan as a ‘failure’. Steele and Petridis, for example, argue that the reform has failed to bring about a meaningful change to the bar examination and continues to create challenges in preparing students for an internationalised legal market.<sup>615</sup> Many years since the reform, Japanese legal education is still a ‘messy’ system.<sup>616</sup> The fact that the national philosophy of legal education is dictated by the National Bar Examination presents the biggest obstacle to the continued reform of the Japanese legal education

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<sup>611</sup> Interview # 91.

<sup>612</sup> Interview # 83.

<sup>613</sup> Shigenori, above n 59, 3.

<sup>614</sup> Maxeiner and Yamanaka, above n 449, 315.

<sup>615</sup> Steele and Petridis, above n 555, 92.

<sup>616</sup> Ibid 118.

system.<sup>617</sup>

Similarly 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 have been identified.<sup>618</sup> From the perspective of economics, 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.<sup>619</sup> In fact, a common belief in South Korea has been that law students studying at the new law schools have an 'easier' route to becoming a qualified lawyer and this creates 'unfair competition' for legal jobs.<sup>620</sup>

The difference between the legal education systems in the United States and South Korea is identified as another challenge for South Korea in adopting and maintaining the JD model. While South Korean civil law legal education traditionally emphasises the teaching of a greater degree of substantive law, professional practice training is more of a focus in the United States system.<sup>621</sup> Further, South Korean law teachers employ the lecture as the main teaching methodology, whereas in the common law system of the United States teaching pedagogies are diverse.<sup>622</sup> This has in turn created barriers for the JD to be successful and to take root in South Korea.

Moreover, the delivery of professional training in the new South Korean law schools compounds the problem. As a part of the reform, the new generation of law schools in South Korea must provide students with professional knowledge and skills. Law teachers in South Korea, however, are believed not to have sufficient practical skills and knowledge to teach students.<sup>623</sup> This seems to be a common challenge among many civil law countries where law teachers are not allowed to practise law and be engaged in litigation. Although hiring practising lawyers to teach at these new law schools is an alternative, it raises another problem in that they may not have the necessary teaching skills.<sup>624</sup>

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<sup>617</sup> Ibid 92.

<sup>618</sup> Kim, above n 62, 63–9.

<sup>619</sup> Ibid 63–6.

<sup>620</sup> Ibid.

<sup>621</sup> Ibid 68–9.

<sup>622</sup> Ibid.

<sup>623</sup> Ibid.

<sup>624</sup> See Young-Cheol K Jeong, 'Korean Legal Education for the Age of Professionalism: Suggestions for More

Australia, a common law country, is also experiencing challenges with the JD degree. As Cooper et al have pointed out, not all JD courses are equal because some of them, even as graduate courses, have had the same learning outcomes as the LLB courses.<sup>625</sup> 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. It is also argued that some Australian universities might struggle to provide funding for the operation of these JD courses.<sup>626</sup> The reason is that offering professional skills training courses will cost law schools more because more resources will be allocated for organising students' practical learning activities. This thinking is seen as reasonable because types of experiential learning, such as simulations, externships, or clinics, are all expensive in comparison with traditional law classes. Further, from the perspective of Australian legal education, Cooper et al also suggest that the JD degree may increase social inequality in education. The reason is that some law schools, for financial reasons, may replace the LLB degree with the more expensive JD course. This in turn leads to a situation where students from low socio-economic backgrounds are less likely to apply for places in the JD programs.<sup>627</sup>

In general, given the similarities in legal systems, legal education and culture in Japan, South Korea and Vietnam as civil law jurisdictions, the barriers and challenges facing Japan and South Korea may well apply to the Vietnamese context if Vietnam chooses to adopt the JD model. In addition, the financial challenges and the need to find practice-familiar law teachers in Australian law schools when running a JD program are also likely to occur in Vietnam, where most law schools are public and underfunded. Further, challenges facing these countries have also demonstrated that reforming legal education is not just a matter of applying a model from other countries without carefully examining issues such as culture, economics, and the nature of the different political and legal systems. Given that the introduction of the 'second-degree' legal education program has proved to be ineffective to date, there is not much hope that a 'graduate level' model will

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Concerted Curricula' (2010) 5 *East Asia Law Review* 155, cited in Kim, above n 62, 68.

<sup>625</sup> Cooper et al, above n 102, 37.

<sup>626</sup> Ibid 38.

<sup>627</sup> Ibid 39.

address the challenges facing the Vietnamese system.<sup>628</sup> In particular, lack of professional training remains one of the major limitations of Vietnam's theoretically-centred legal education.

### **5.3.2 Reforming the Law Curriculum in Vietnam: What to Expect?**

Curriculum reform is another issue of real importance to Vietnam. This reform has been demanded by the legal profession amid the increasing competition pressure in the legal education market. There is growing demand for law schools to teach their students what the profession requires.<sup>629</sup> Additionally, Vietnamese law schools are competing with each other for new students. This competition is likely to become more challenging as the number of law schools has been increasing rapidly.<sup>630</sup> It is likely that curriculum reform in individual law schools will be one of the most immediate ways for Vietnamese law schools to distinguish themselves in order to attract more students.

Another driving force for curriculum reform can be seen as 'internal'. As discussed earlier, Vietnamese law students are currently required to study various non-law units such as Psychology, Sociology, Practical Vietnamese Language, History of Vietnamese Communist Party, Socialist Science, Marxist-Leninist Political Economics, Fundamental Vietnamese Culture,<sup>631</sup> and more. As many interviewees in the VER observed, there are too many non-law units in the current curricula and this is not strictly necessary since students are studying to obtain a *legal* qualification. They are consequently calling for reform. For example, a dean of a law school in Ho Chi Minh City maintained:

... we need to be fair to students and law schools. Vietnamese law students are required to study so many non-law units. In fact, if we exclude non-law and political units from current law school curricula, during four years of legal education, students only have about three years and two months to really study law. Therefore, we cannot expect law graduates to be employment-ready after three years of law school education.<sup>632</sup>

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<sup>628</sup> Interview # 84; interview # 66.

<sup>629</sup> The VER – interviews with various participants.

<sup>630</sup> The VER found that more than 10 new law schools were established in Vietnam from 2014–16. Overall, the number of Vietnamese law schools has tripled within the last 15 years.

<sup>631</sup> Within HCMC Law University, Fundamental Vietnamese Culture is one of the two subjects (alongside Constitutional Law) in the entrance examination for those who want to be admitted to study a second-degree legal education program: (25 July 2017) <<http://www.hcmulaw.edu.vn/>>.

<sup>632</sup> Interview # 83.

A practising lawyer in Ho Chi Minh City shared this view, arguing that:

In fact, law students in Vietnam have to spend approximately 1.5 years studying non-law courses and nearly six months for writing graduation theses and attending other required academic activities. Therefore, they have only approximately two years to really study law. This is not a reasonable amount of time, in my opinion.<sup>633</sup>

A fourth-year student at Hue University School of Law expressed a similar view about non-law units in law curricula:

There are so many general non-law units students have to take. In my view, we should shorten or even exclude these units from the curriculum, in order to give more credits for legal and other necessary practical knowledge.<sup>634</sup>

The VER identified two demands in curriculum reform: (1) increase the number of courses on commercial and international trade law; and (2) include courses teaching practical skills and professional responsibility.

Some Vietnamese law schools have reviewed their curricula to teach Commercial and International Trade Law. In particular, since 1995 when the country started negotiations to join the World Trade Organisation (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 the WTO in 2006 then meant a considerable increase in the demand for courses such as Commercial Law, International Trade Law, and Law of the WTO.

An academic department specialising in International Trade Law has been established at two principal Vietnamese law schools – Hanoi Law University (HLU) and Ho Chi Minh City Law University (HCMCLU).<sup>635</sup> The VER showed that the HLU Department of International Trade Law (under the Faculty of International Law) has become a dynamic and attractive department to many law students.<sup>636</sup> Meanwhile at HCMCLU, the

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<sup>633</sup> Interview # 93.

<sup>634</sup> Interview # 40.

<sup>635</sup> For more details about HLU, see (20 June 2015) <<http://www.hlu.edu.vn/gioithieu/>>; for more details about HCMCLU, see (14 May 2016) <<http://www.hcmulaw.edu.vn/>>.

<sup>636</sup> Interview # 50.



Department of International Trade Law (under the Faculty of International Law) has a large number of student enrolments.<sup>637</sup> Both these principal law schools have gone even further with this reform by offering a specialist Bachelor of International Trade Law, which enrolls hundreds of students every year. As 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 units teaching practical skills and professional responsibility. This reform is necessary since the 'lack of professional skills training' has been a persistent limitation of the current system.<sup>638</sup> Some law schools in Vietnam have already begun the process of this reform. For example, a vice dean of a law school in central Vietnam said about this growing trend:

In recent years, universities in Vietnam have paid more attention to practical and professional training. This has partly come from the demand of the learners and the employers. For this reason, in developing curriculum, we have tried to include more courses teaching practical knowledge and professional skills. We have established a Department for Legal Practice and Enterprise Relationships which is in charge of organising practical activities for students.<sup>639</sup>

The UNDP has also pointed out that CLE has been adopted by some Vietnamese law schools to teach students professional knowledge and practical skills.<sup>640</sup> In some law schools, professional knowledge and skills units are taught by invited judges, practising lawyers or procurators. At Hue University School of Law (HUSL), for example, the Centre for Legal Practice and Enterprise Relationships has organised various skills courses, taught by judges, procurators and lawyers, which have attracted a large number of students.<sup>641</sup> Similarly at Vinh University Faculty of Law, visiting lecturers from courts, procuracies and law firms have been significant actors in delivering professional knowledge and skills to students for the last few years.<sup>642</sup> In others, professional knowledge and skills are taught as supplementary units delivered outside the formal curricula. These units are designed as short-term training organised by law school

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<sup>637</sup> Interview # 5.

<sup>638</sup> See above section 4.5 of Chapter Four.

<sup>639</sup> Interview # 7.

<sup>640</sup> UNDP Clinical Report, above n 390.

<sup>641</sup> Interview # 27; interview # 28; interview # 67.

<sup>642</sup> Interview # 66; interview # 51.

Centres for Legal Consultancy and Short-term Training and are an increasing trend in law schools such as HLU,<sup>643</sup> HCMCLU<sup>644</sup> and HUSL.<sup>645</sup>

However, these reforms remain problematic in the Vietnamese setting, because of the challenge in deciding which units will be ‘sacrificed’ in order to leave room for new courses. A similar situation could occur with the incorporation of professional skills units into current law curricula. This is a major question whenever curriculum reform in Vietnamese law schools is discussed.<sup>646</sup>

In addition, while it seems reasonable for Vietnamese law schools to reduce the number of non-law units this reform is not seen as realistic in the context of the Vietnamese political system. The central government, led by the Vietnamese Communist Party, would find it hard to accept the reduction of many ideology-related units in law curricula. As Bui has observed, the Vietnamese legal education system has been heavily shaped by socialist theories and the Vietnamese Communist Party has been using these theories to ‘produce’ generations of ‘socialist’ lawyers.<sup>647</sup> The maintenance of these ideology units in higher education (and possibly at other levels of education) is still considered by the current central government as an essential condition to maintain and stabilise the communist regime in Vietnam.<sup>648</sup> In a heavily centralised country like Vietnam, it is difficult for law

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<sup>643</sup> Hanoi Law University, *Introduction to the Centre for Legal Consultancy and Short Term Training* (27 April 2015) <<http://tuvanphapluatdhl.vn/vi/news/Thong-bao/GIOI-THIEU-TRUNG-TAM-TU-VAN-PHAP-LUAT-TRUONG-DAI-HOC-LUAT-HA-NOI-252/>>.

<sup>644</sup> Ho Chi Minh City Law University, *Centre for Legal Consultancy and Short-term Training* <<http://tvpldtnh.hcmulaw.edu.vn/index.php/gi-i-thi-u>>. In Ho Chi Minh City Law University, this centre has recently been separated in order to establish two independent centres: (1) Centre for Legal Consultancy and (2) Centre for Short-term Training.

<sup>645</sup> Hue University School of Law, *Introduction to the Centre for Legal Consultancy and Short Term Training* (10 September 2013) <<http://www.hul.edu.vn/gioi-thieu-tt-tu-van-th-phap-luat.html>>.

<sup>646</sup> The VER – interviews with various law school leaders and law teachers.

<sup>647</sup> Bui, above n 22, 299–304.

<sup>648</sup> Ideology units such as Marxist-Leninist Philosophy, Marxist-Leninist Political Economic, Socialist Science, History of Vietnamese Communist Party, and Ho Chi Minh Thought are required for higher education students of all professions in Vietnam. Some of the contents of these units are even included in the undergraduate graduation examinations and master’s degree entrance examinations. For example, under the existing requirement in Vietnam, students expecting to study law at masters level have to take an entrance examination that may include contents of three subjects: General Theory on State and Law, Marxist-Leninist Philosophy, and Foreign Language; See also Elizabeth St George, ‘Socialist Ideology and Practical Realism: The Process of Compromise in Vietnam’s Law on Education’ in John Gillespie and Pip Nicholson (eds), *Asian Socialism and Legal Change: The Dynamics of Vietnamese and Chinese Reform* (ANU Press, 2005) 115–34 (discussing the socialist ideology impacts on the making and contents of the *Law on Education* – an Act passed by the Vietnamese National Assembly in 1998 which covers all education levels in Vietnam. It is believed that the *Law on Education* is in fact a ‘principal vehicle’ employed by the Vietnamese central government to transmit ‘socialist theory and ideology’ to students).

schools to obtain full autonomy in education, particularly in curriculum design.

Problems also remain with short-term courses (delivered outside the formal curriculum) teaching students professional knowledge and skills. Some interviewees expressed concern about the fairness of these courses because students have to pay extra fees. For example, a practising lawyer in central Vietnam argued:

For me, it is not fair for students to pay extra fees in order to take these courses. When they pay law schools' tuition fees, they are entitled to receive quality education, which includes doctrinal education and professional skills. Law schools are obliged to teach their students about knowledge and skills and prepare them for future employment.<sup>649</sup>

A law teacher in Ho Chi Minh City shared this view, maintaining that:

I cannot see why law schools are unable to include professional skills courses in the education process but deliver them outside the formal curricula. What happens with students who cannot afford to pay extra fee for taking these courses? It is not fair at all if they are left out by the current system.<sup>650</sup>

Another problem with short-term professional skills courses has been the way they are delivered. Although these courses were designed and are delivered by 'practical people' (lawyers, judges or procurators), limited practical activities have been organised for students to really 'do' practice.<sup>651</sup> Some people delivering these courses (who were also the VER interviewees) have complained that they did not have enough time for practical activities due to the requirements to deliver professional knowledge within a very tight timeframe.<sup>652</sup> Ultimately, a 'certificate of completion' seems to be what students achieve after taking these courses rather than professional skills as planned and declared by law schools.<sup>653</sup>

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<sup>649</sup> Interview # 91.

<sup>650</sup> Interview # 19.

<sup>651</sup> Interview # 57; interview # 99.

<sup>652</sup> Interview # 99; interview # 96; interview # 60.

<sup>653</sup> Ibid.

### ***5.3.3 Reforming Teaching Methodologies: More Interactive Methods?***

Given that there is not much Vietnamese law schools can do by way of curriculum reform, innovative teaching methodologies might be seen as necessary to enable better delivery of legal education. For some people, the lecture is a reasonable approach for teaching a large volume of legal doctrines, principles and basic codes in a civil law jurisdiction like Vietnam.<sup>654</sup> These teachers do not see the need for teaching-methodology reform. From the perspective of producing practice-ready law graduates, however, the lecture by itself is not an effective teaching approach.<sup>655</sup> The VER observed that Vietnamese law schools should employ interactive methodologies as a realistic way towards more effective law teaching.<sup>656</sup> As more practical professional units are added, interactive teaching methodologies should be and can be pursued more often.

It is also necessary to diversify teaching methodologies in order to meet demands for both legal knowledge and professional skills. Each methodology has its own strengths and weaknesses and is suitable for different areas of law. Therefore, some VER interviewees believed it is important that Vietnamese law teachers combine different methods in delivering legal knowledge and practical skills in the most effective manner.<sup>657</sup> In an ideal environment, law teachers give lectures on fundamental legal knowledge and then assign students to do further readings and research. Extra time resulting from lecture reduction can be allocated to other teaching and learning activities such as simulations, case analysis, seminars or clinical programs. An appropriate combination of lecture and interactive methodologies will in turn improve the teaching at Vietnamese law schools.

### ***5.3.4 Incorporating Professional Training into Law Schools' Curricula***

Another option discussed recently for the reform of Vietnamese legal education has been the incorporation of professional training into law schools' curricula. Some scholars believe that law schools are in the best position in Vietnam to teach students both legal knowledge and professional practice skills and therefore effectively prepare them for

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<sup>654</sup> Irish, above n 58, 5–10.

<sup>655</sup> Interview # 53; interview # 14; interview # 51; interview # 8; interview # 9.

<sup>656</sup> Interview # 56.

<sup>657</sup> Interview 1; interview # 18; interview # 44.

future employment. As observed earlier, proponents of this reform maintain that the current two-stage system<sup>658</sup> has not been effective in training and preparing law graduates for employment. The VER found that it is reasonable to combine both theoretical education and professional training into Vietnamese law school curricula. A law teacher in Hanoi National University Faculty of Law expressed his view about this reform:

... The two-stage legal education system is just a temporary solution in Vietnam. I strongly believe that theoretical and professional education have to be combined and allocated to one institution and law schools are in the best position for this. This is the model of the United States and it is also in compliance with the Vietnamese Law on Higher Education, providing that 'higher education provides students with knowledge and professional skills'. What we have been doing is not in compliance with the Law on Higher Education.<sup>659</sup>

A vice dean of a law school in central Vietnam had a similar opinion on the need to combine theoretical education and professional training at law schools:

... We need to include professional knowledge and skills in law schools' curricula. A common feedback from agencies, hosting our students for internships/externships and other practical activities, is that law students are good at legal knowledge, smart and understand the issue very quickly. However, they are fairly weak in practical knowledge and skills. A combination of theoretical legal education and professional training will help students study well and graduate more employment-ready.<sup>660</sup>

A VER interviewee also considered that course duration needs to be extended to ensure law schools have enough time to deliver both theoretical education and professional training.<sup>661</sup>

These VER observations were strongly supported throughout the regions, with growing demand for incorporating professional knowledge and skills into law school education in Vietnam. Law school leaders have recognised that professional knowledge and practical skills are crucially important in order for their graduates to compete with others for employment. As a head of an academic department of Hue University School of law said:

There is a growing trend in Vietnam for law schools to include the teaching of professional

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<sup>658</sup> See above section 4.4 of Chapter Four.

<sup>659</sup> Interview # 6.

<sup>660</sup> Interview # 7.

<sup>661</sup> Interview # 6.

knowledge and practical skills in their curricula. Some even deliver this knowledge and skills to students under short-term training outside law curriculum. This has first resulted from the demand from society for more employment-ready law graduates and law schools have to change themselves in order to attract more students.<sup>662</sup>

A dean of a law school in central Vietnam expressed a similar view on the issues of teaching professional knowledge and skills to law students:

It is necessary for law schools to increase the teaching of professional knowledge and skills to their students. The reason is because our law graduates tend to be good at fundamental legal knowledge but really weak at practical skills. However, it is not easy to implement this plan in Vietnam given that law teachers are having a huge pressure of delivering a large amount of legal knowledge, principles and codes to students.<sup>663</sup>

A deputy director of a law school clinic in Ho Chi Minh City also had a similar opinion on this issue. He said:

Vietnamese people have a common thinking that law schools will teach students legal knowledge and create a foundation for them to learn practical knowledge and professional skills at the Judicial Academy. In my view, however, we should not separate the teaching of legal knowledge from the training of practical knowledge and skills at law schools' education. I think a law graduate should be a complete 'product' when they come out from the law school.<sup>664</sup>

The VER interviews with different legal education stakeholders in Vietnam also showed a common opinion on the need to teach professional knowledge and skills at law schools. For example, a head of the Department of Research and Postgraduate Training of a law school in central Vietnam said:

Teaching students about professional knowledge and practical skills at law schools is an urgent need to ensure law graduates are ready for employment. However, we should have further discussion on relevant issues such as how much professional knowledge and skills are needed; what knowledge and skills to be taught; and approaches for the incorporation of knowledge and skills into law schools' education.<sup>665</sup>

A judge of the People's Court in the Central Highland of Vietnam also expressed his view

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<sup>662</sup> Interview # 67.

<sup>663</sup> Interview # 68.

<sup>664</sup> Interview # 52.

<sup>665</sup> Interview # 65.

on the issue of the combination of theoretical education and professional training:

There are two main reasons to combine theoretical and skills training in law schools. First, it is necessary for law schools to deliver both academic legal education and professional skills training. Law schools' products should be ready for employment without further education or training. Second, a combination of theoretical education and practical and skills training will help law schools grow in order to compete with those coming from abroad. Law schools will then receive more state investment and attention in order to develop.<sup>666</sup>

And here is the voice of a judge currently working in Cantho:

My view is that Vietnamese law schools should teach their students professional knowledge and practical skills, alongside theoretical education. This will be very helpful for law students to build up their knowledge, skills and confidence in order to work well in any employment environment.<sup>667</sup>

Similarly, a procurator in Cantho was also concerned about the incorporation of professional knowledge and skills into law schools' curricula, saying:

Vietnamese law schools should include professional training in their curricula because law graduates need professional knowledge and skills for their employment. Professional training is an important condition for law schools to prepare their graduates for their future career. Therefore, it is not a good idea to clearly separate law schools' education from professional training.<sup>668</sup>

And finally, a practising lawyer in Hanoi maintained:

I completely think law schools should include the teaching of professional knowledge and skills in their curricula because in addition to fundamental theoretical legal knowledge, law graduates need practical legal knowledge and skills in order to start their careers and to survive in the profession.<sup>669</sup>

However, full incorporation of all the skills and practical knowledge currently taught by professional schools into law schools' curricula is a new concept and it will not be easy for this approach to stand up in the current split academic-professional model of legal education in Vietnam.

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<sup>666</sup> Interview # 62.

<sup>667</sup> Interview # 61.

<sup>668</sup> Interview # 79.

<sup>669</sup> Interview # 76.

To begin with, the two-stage legal education system has been in place since the establishment of the Professional Training School for Judicial Positions in 1998 (later renamed the Judicial Academy in 2004).<sup>670</sup> The two-stage legal education system evolved out of the process of judicial reform that was a key factor in the improvement and innovation of the national judiciary system. It will be difficult to persuade the central government in Vietnam, at least in the next five to 10 years, to combine theoretical education and professional training in a law school. To the Vietnamese central government and other relevant agencies such as the MOJ, the MOET, the Supreme People's Court, or the Supreme People's Procuracy, a law school is a place for academic education and research which is not suitable for professional training. Further, the fact that many people working in these agencies have a law qualification that they earned in Germany, Japan, or countries within the former Soviet Union, where the two-stage system dominates, has made them believe that a law school cannot be a 'trade school'.

Additionally, the question whether Vietnam has enough resources to upgrade the current law school system in order to take on professional training is another major challenge. With more than 40 law schools operating in Vietnam and producing graduates at different levels of quality, it is almost impossible for Vietnam to have enough resources to upgrade law schools. Due to limited resources to fund higher education, the central government has been gradually withdrawing their financial support from public universities. This has left many of them in a deteriorating financial situation. Few in the VER believed that many law schools would have enough capacity to embrace the professional training mission, currently delivered by various professional training schools, given that they vary greatly in size, finances, human resources and the number of students. As a dean of a law school in Ho Chi Minh City pointed out:

... I do not think the Vietnamese central government still has much money in order to increase the financial support for higher education. The evidence is the decision to permit 14 universities to have self-determination authorisation in some areas including financial matters. Because the government is unable to find any alternative sources of finance for higher education, they have to 'kick the ball' to universities and ask them to manage themselves. For this reason, I do not think Vietnamese law schools will have a concrete source of finance for upgrading in order to take on the professional training. For me, it is almost impossible to think about a full incorporation of

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<sup>670</sup> See above section 4.4.2 of Chapter Four.



professional training into law schools' curricula.<sup>671</sup>

A practising lawyer in Ho Chi Minh City had a similar view on this issue. He maintained:

... The idea to incorporate professional training into law schools' curricula is good but it is not possible in the current conditions in Vietnam. Simply, because we cannot convert all of these 40-plus law schools into trade or professional schools.<sup>672</sup>

Further, the VER found that the full incorporation of professional training into law schools would also face strong resistance from other stakeholders, particularly those controlling and administering professional training schools in Vietnam. Currently, professional training schools operate under the administration of different national agencies including the Ministry of Justice (the Judicial Academy), People's Supreme Court (the Court Academy) and People's Supreme Procuracy (Hanoi Procuratorate University).<sup>673</sup> This is not to mention that the Lawyering Training School,<sup>674</sup> if established, would be under the control of the Vietnam Bar Federation – an organisation that has significant influence on the legal education system and the profession in Vietnam. A law teacher in Hanoi believes that because of the benefits (mainly financial profits), it will not be easy for these agencies to withdraw from legal professional training. He said:

Financial benefits were the major motivation for the establishment and operation of many legal professional training schools in Vietnam, including the Judicial Academy. The problem here lies in the 'group benefit' of some individuals and national agencies and since the benefit is big, it is not easy for them to give up the professional training.<sup>675</sup>

Importantly, controlling professional training schools also means that agencies such as the JA have the power of the 'gatekeeper' over those entering different roles in the Vietnamese judiciary system. In a heavily centralised country like Vietnam, closeness to the Vietnamese central government and the Communist Party gives these agencies considerable advantages in protecting their professional training schools.

Moreover, even supposing that Vietnamese law schools are able to overcome all of the

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<sup>671</sup> Interview # 83.

<sup>672</sup> Interview # 75.

<sup>673</sup> See above section 4.4 of Chapter Four.

<sup>674</sup> Ibid.

<sup>675</sup> Interview # 6.

challenges mentioned above, human resources could be another barrier to the effective delivery of professional training. The question of who will be responsible for teaching professional units would be another difficult question given that most law teachers are academically oriented and do not have much practical and professional experience. A dean of a law school in Ho Chi Minh City considered human resources to be the most problematic issue if all the professional training activities were combined in a law schools' education courses.

The most challenging barrier for this model to be applied in Vietnam is that law teachers do not have necessary practical knowledge and skills for professional training. Law schools would have to invite people working in practice, or recruit people with practical experience, to teach in professional courses. This is not a simple issue at all within the Vietnamese setting.<sup>676</sup>

In general, although the full incorporation of professional training into law schools' curricula has value in the reform of Vietnamese legal education, it will be complicated to implement in reality. Therefore, it is necessary to engage in more research and encourage more conversation inside Vietnam in order to find a way to overcome these challenges. In the current Vietnamese setting, it is probably more realistic and practical to *partially* include some professional knowledge and skills in law schools' curricula. This would be a way of raising the possibilities slowly, considering that current control of professional schools will likely be maintained.

### ***5.3.5. Adopting and Incorporating CLE into Law Curricula***

As an innovative methodology for teaching law, CLE has been employed to strengthen and innovate legal education in many countries.<sup>677</sup> (CLE's general strengths and advantages were discussed at length in Chapter Two.) CLE has taken root in many countries and become an integral part of the legal education process.<sup>678</sup> As will be discussed below in Chapter Six of this thesis, CLE has recently been introduced into Vietnam by some international organisations in order to address various challenges facing law schools.<sup>679</sup> In its early stage of development, CLE has made some initial

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<sup>676</sup> Interview # 83.

<sup>677</sup> See above section 2.4.2 of Chapter Two.

<sup>678</sup> Ibid.

<sup>679</sup> See below Chapter Six of this thesis.

achievements and produced a variety of reactions from Vietnamese legal education stakeholders.

Some stakeholders have realised the potential of CLE and have consequently supported the incorporation of clinical programs into law curricula.<sup>680</sup> For them, CLE can potentially help Vietnamese law schools address various challenges and prepare law graduates for employment. Others, however, have expressed strong resistance toward CLE for various reasons, including the cost and regulatory barriers associated with running and maintaining a clinical program. In addition, since CLE is a relatively new approach in Vietnam, it is not easy for law teachers, particularly those in favour of traditional teaching methodologies, to accept it.<sup>681</sup>

The next section of this chapter discusses CLE concepts and VER opinions about the desirability of CLE in the reform of Vietnamese legal education.

#### **5.4. What Makes CLE a Promising and Effective Option for Vietnamese Legal Education Reform?**

Globally, CLE has been considered to be one of the most significant legal education innovations since the case law method introduced by Langdell in 1890.<sup>682</sup> Evans et al have identified the significant value 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; 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.<sup>683</sup>

Because of its benefits and strengths, CLE can be seen as an option for reforming and

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<sup>680</sup> Ibid.

<sup>681</sup> Ibid.

<sup>682</sup> See above n 122.

<sup>683</sup> Evans et al, above n 157, 5.

innovating legal education globally.<sup>684</sup> In the Vietnamese context, CLE is a promising option for legal education reform because it can help address various challenges facing the system. Being involved for many years in the issues of legal education reform, access to justice and the rule of law in Vietnam, the UNDP has also recognised the value and potential of CLE:

Law clinics and clinical legal education are a crucially important means toward achieving important goals in Vietnamese legal education and legal and judicial reform, including a focus on practical skills; strengthening of legal dissemination, strengthening of free legal consultancy work for the poor and those seeking access to justice; working with key target groups, including the poorer and the more vulnerable, among Vietnam's population; and strengthening access to justice in Vietnam.<sup>685</sup>

#### **5.4.1 CLE Can Help Address the Problem of 'Lack of Professional Knowledge and Skills'**

CLE can help address the 'lack of professional skills' — a major problem in Vietnamese legal education. In a clinical setting, students learn professional knowledge and skills by working on legal matters and helping clients. Successful CLE is often referred to as a process of 'learning by doing', 'experiential learning',<sup>686</sup> or 'context-based education'<sup>687</sup> where students take a proactive position in the learning process. Experiential learning is a very effective environment for students to learn law in context and practise 'hands on' professional skills. In the global clinical movement, CLE programs have been designed as either general, specialised or multidisciplinary legal practices in order to help students learn professional knowledge and practice skills in different areas of law and in an increasingly effective manner.<sup>688</sup>

Acting as practising 'lawyers' in a clinical setting, law students can learn professional knowledge and skills in an effective way. Various types of professional knowledge and skills taught in CLE programs are beneficial and significant for both would-be-lawyer students and students who do not intend to practise law upon completion of their

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<sup>684</sup> See above section 2.4 of Chapter Two.

<sup>685</sup> Sidel and Pham, above n 390, 20.

<sup>686</sup> See above section 2.4.2 of Chapter Two (identifying that in a clinical setting, experiential learning can take various forms such as simulations, externships or in-house clinic).

<sup>687</sup> In a clinical setting, three terms 'learning by doing', 'experiential learning' and 'context-based education' can be used interchangeably. See, eg, Sullivan et al, above n 33.

<sup>688</sup> See above section 2.4.2 of Chapter Two.

education. For those becoming practising lawyers, professional practice skills and knowledge acquired from clinical programs are extremely useful and significant for their future careers. Such skills and knowledge will assist law graduates to comprehend their legal professional work quickly and effectively.

In the Vietnamese context, the VER found common opinions on the role of CLE in teaching students about professional skills. For example, a student in Cantho said:

CLE has been a very helpful approach for students like us to learn and practise various practical skills that we could have never achieved in other doctrinal law courses. I hope our law school offers more clinical courses so that we can have more opportunities to participate.<sup>689</sup>

Another student in Vinh shared this view, maintaining that:

Participating in CLE, I have learnt various soft skills that I think are very significant for my current study as well as for my future career. I have a feeling that CLE has filled in the gap in my education at law school.<sup>690</sup>

And here is the voice of a clinician in Hanoi:

From our observation and assessment, clinical students are far better than non-clinical students in professional skills. Also, clinical students tend to be more creative, proactive and confident when communicating and working with clients.<sup>691</sup>

Similarly, a dean of a law school in central Vietnam said:

CLE is something the Vietnamese legal education system needs to supplement doctrinal education at law schools. CLE has created opportunities for students to learn law in context and practise different useful skills and become close to employment-ready.<sup>692</sup>

In Vietnam, a growing number of students commence their legal education with no intention of practising law.<sup>693</sup> Nevertheless, skills learned and practised in the clinical setting (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 has maintained, professional skills delivered by CLE 'may better

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<sup>689</sup> Interview # 36.

<sup>690</sup> Interview # 42.

<sup>691</sup> Interview # 32.

<sup>692</sup> Interview # 4.

<sup>693</sup> See above section 4.4.1 of Chapter Four.

equip a student to practise the law or other chosen career now or at some later stage'.<sup>694</sup> These skills help students become more employable and enable them to develop so-called 'soft' or social skills which are identified as critical for being not only a better lawyer but also a better human being.<sup>695</sup>

#### ***5.4.2 CLE as a Better Approach for Teaching Professional Responsibility and Legal Ethics***

CLE can be a promising approach to the challenge of professional responsibility and legal ethics training in Vietnamese legal education. It is widely agreed that a clinical approach provides a very suitable environment to teach professional responsibility and legal ethics.<sup>696</sup> Edwards, for example, argues: '... doctrine, theory, and skills cannot be appreciated if they are introduced without engaging the pathos of the human issues that the lawyer encounters when representing clients'.<sup>697</sup> Similarly, Posner believes that representation, simulations and problem-solving are necessary for students to enhance their professional skills and build up their awareness of the reality of the legal profession.<sup>698</sup> Further, Dinerstein et al argue 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'.<sup>699</sup>

In the CLE setting, students not only learn about relevant principles of legal ethics but, more importantly, they practise acting ethically under the close and intensive supervision of practising lawyers. The externship model,<sup>700</sup> for example, often places students at private law firms under the supervision of qualified practising 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

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<sup>694</sup> See Richard Grimes, 'Reflections on Clinical Legal Education' (1995) 29 *The Law Teacher* 169, 172.

<sup>695</sup> Matasar, above n 585, 474.

<sup>696</sup> See generally, Christine Mary Venter, 'Encouraging Professional Responsibility — An Alternative Approach To Teach Legal Ethics' (1995) 58 *Law and Contemporary Problems* 287, 290–3; Moliterno, above n 573.

<sup>697</sup> See Harry T Edwards, 'The Growing Disjunction between Legal Education and the Legal Profession' (1992) 91 *Michigan Law Review* 34, cited by Barry, Dublin and Joy, above n 7, 34.

<sup>698</sup> See, eg, Posner, above n 577, 48.

<sup>699</sup> See Robert D Dinerstein et al, 'Legal Interviewing and Counseling: An Introduction' (2003) 10 *Clinical Law Review* 281, cited by Milstein, above n 1, 60.

<sup>700</sup> See above section 2.4.2 of Chapter Two.

(including client privilege), conflict of interest, undertakings and the duty not to mislead the court.<sup>701</sup>

The VER recorded many opinions concerning how CLE benefits the training of legal ethics and professional responsibility at Vietnamese law schools. As the dean of a law school in Hanoi said:

In addition to professional and practical skills, clinical students have opportunities to learn and understand different aspects of social responsibility, legal ethics, and pro bono responsibility of being a lawyer. These were learned through doing and working with clients.<sup>702</sup>

Another dean of a law school in central Vietnam had a similar view on this issue, saying that:

In a clinical setting, particularly the in-house clinic, students can learn how to work as professional lawyers and how to plan and manage their jobs. The only difference is that they are dealing with all aspects of the legal profession under close supervision of clinicians.<sup>703</sup>

Similarly, a fourth-year student in Cantho said about his experience in CLE:

I feel thankful as I was given opportunities to take part in CLE programs organised by Cantho University Faculty of Law, where I learned about professional skills, legal ethics and professional responsibility. These have proven to be very helpful to me during the placement I had during year three at law school.<sup>704</sup>

And here is what a clinician in Hanoi had to say:

In my opinion in Vietnam, an in-house clinic is even better than a law firm for students to learn professional skills, legal ethics and professional responsibility. The reason is because many law firms recruit students (through placement or externship) to do mainly non-legal jobs, for example document translation and office works.<sup>705</sup>

As shown in many countries and discussed above,<sup>706</sup> a better educational result in teaching legal ethics and professional responsibility can be achieved through a particular

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<sup>701</sup> For more discussion of issues of legal ethics and professional responsibility, see Adrian Evans, *The Good Lawyer* (Cambridge University Press, 2014), Chapters 5–8.

<sup>702</sup> Interview # 10.

<sup>703</sup> Interview # 3.

<sup>704</sup> Interview # 38.

<sup>705</sup> Interview # 29.

<sup>706</sup> See above Chapter Two.

type of CLE: the live client in-house clinic.<sup>707</sup> Designed as a small-to-medium-size law firm but not charging fees for legal services, an in-house clinic provides students with opportunities to work on real cases 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. Compared 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 educationally ethical service objectives. Because clinical teachers are not constrained by fee considerations and are able to take a broader and more holistic approach to their clients' problems than can a lawyer working in a fee-generating environment, they can model careful ethical behaviour for their students.<sup>708</sup> There are reasons, therefore, to believe that an in-house clinic is the best CLE model in preparing law students to be ethically practice-ready.

Of course, the teaching of legal ethics and professional responsibility can also be well approached through other clinical models such as simulations and street law.<sup>709</sup> In the simulations model, for example, an experienced clinician can design and select simulated cases that best demonstrate the practice when teaching students legal ethics and professional responsibility. Students participating in this form of experiential learning can also have opportunities to 'role-play' in order to practise skills and knowledge necessary for legal ethics and professional responsibility.<sup>710</sup> Similarly, street law students are working under the close supervision of clinicians to deliver legal education to various clients.<sup>711</sup> This real world experience helps students become exposed to and learn different issues of legal ethics and professional responsibility. Clinicians in the street law model can include the issues of legal ethics and professional responsibility in the training of students before having them go to communities for legal education.<sup>712</sup>

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<sup>707</sup> See above section 2.4.2 of Chapter Two.

<sup>708</sup> See, eg, Ross Hyams, 'On teaching students to "act like a lawyer": What sort of lawyer?' (2008) 13 *Journal of Clinical Legal Education* 21, 27.

<sup>709</sup> See above section 2.4.2 of Chapter Two.

<sup>710</sup> Ibid.

<sup>711</sup> Ibid.

<sup>712</sup> Ibid.



### 5.4.3 Can CLE Better Prepare Students to be 'Justice-ready'?

CLE appears to be an effective means to strengthen law students' 'social justice' awareness. When clinical students represent real clients in legal matters they are exposed to the plight of underprivileged people, injustice and social inequality. VER interviewees recognised that this exposure helps law students realise the reality of social injustice and the problems of social inequality.<sup>713</sup> With time, it is plausible that this exposure will build students' sense of social responsibility and create a desire to help people in difficult situations. Accordingly, CLE can assist in strengthening law graduates' awareness of social justice and pro bono responsibility.

In the VER, interviewees agreed that CLE could be a productive environment for teaching social justice. A dean of a law school in the Mekong Delta said:

CLE is a great environment for students to learn about and 'do' social justice. By exposing [students] to unjust [situations] and helping marginalised people, students will build up their positive attitude toward hardship and the people in need of legal assistance. More importantly, CLE will help train generations of pro bono lawyers willing to stand up for social justice.<sup>714</sup>

A clinician in Hanoi shared this view, maintaining that:

A clinical environment will inspire students to participate in pro bono activities and [in] helping community. Students will learn to understand that they are able help community in many aspects, not only by giving them money. By doing this, they also inspire others to do similar things.<sup>715</sup>

A judge in Cantho also expressed his view on this issue:

Another benefit would be that law graduates will be more aware of social responsibility and pro bono contribution of being a lawyer if they are trained in a clinical environment. CLE gives them opportunities to work and help the poor fight for justice. With time, this experience will improve their understanding and willingness to help people in need.<sup>716</sup>

A student in Hue shared her clinical experience:

CLE also helps me understand more about society and social justice. I have come to realise that there are many marginalised people in our society in need of legal services. Through CLE I have

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<sup>713</sup> The VER — interviews with various participants.

<sup>714</sup> Interview # 11.

<sup>715</sup> Interview # 29.

<sup>716</sup> Interview # 61.

learnt how to sympathise and share difficulties with others. In my view, helping others access justice is something a lawyer needs to know and do.<sup>717</sup>

It is likely that social justice education can be addressed through various clinical models such as in-house clinics, simulations, externships and street law. The literature suggests, however, that a live client in-house clinic may be the best vehicle to teach students social justice.<sup>718</sup> Quite often, in-house clinic students are working to help under-served clients under the close supervision of law teachers who are qualified lawyers.<sup>719</sup> Without this invaluable assistance, in many cases, access to justice cannot be addressed. Rice considers that educational objectives cannot be realised if clinical programs do not provide legal assistance to the poor.<sup>720</sup> This in turn reminds students about the social responsibility of being a lawyer. As William has 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 a society as a whole.<sup>721</sup>

In any society, learning to be responsible is critical for human functioning.<sup>722</sup> For example, to learn how to empathise with others' difficulties and to accept social responsibility for others is important to enable a person to grow ethically and responsibly.<sup>723</sup> The literature has shown that a well-designed law school clinical program can both deliver legal knowledge and professional skills and teach students about values and the benefits of being human.<sup>724</sup> For example, 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 notions of justice'.<sup>725</sup> The aims of CLE, therefore, should be viewed in a broad context, and not just focus only on lawyers' professional training.<sup>726</sup> Clinical education should not only be seen as a methodology, but also as a pedagogical philosophy about the

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<sup>717</sup> Interview # 45.

<sup>718</sup> See above section 2.4.2 of Chapter Two.

<sup>719</sup> Rice, above n 299, 10 (identifying from the perspective of global CLE that, in most cases, legal clinics provide legal assistance to the poor and under-served people. However, there are also taxation law or business clinics established for education purposes only).

<sup>720</sup> Ibid 12.

<sup>721</sup> William, above n 339, 13–14.

<sup>722</sup> The VER — interviews with various participants.

<sup>723</sup> Ibid.

<sup>724</sup> See, eg, Rice, above n 299; Grimes, above n 694; Tarr, above n 7.

<sup>725</sup> Rice, above n 299, 13.

<sup>726</sup> Grimes, above n 694, 172.

role of lawyers in society.<sup>727</sup>

In the context of Vietnam, a similar social-justice educational result could be achieved if a clinical approach is employed. Indeed, CLE has potential to help Vietnamese law schools prepare their students to be not only practice-ready but also ‘justice-ready’.<sup>728</sup>

#### **5.4.4 CLE can Help Strengthen Students’ Ability to Think Like a Lawyer**

As discussed above, training students to ‘think like a lawyer’ is an important mission.<sup>729</sup> To some extent, ‘thinking like a lawyer’ is the ability to think independently, creatively, and critically. This capacity can be built on and sharpened in an experiential learning environment such as CLE.

The VER found common opinions on the role of CLE in developing and strengthening students’ thinking ability. For example, a student in Ho Chi Minh City said:

I think I have grown up very much after two years participating in CLE programs. Particularly, I am more independent and logical in thinking and confident in public speaking thanks to the experience I have in different clinical activities.<sup>730</sup>

A clinician in Hanoi had a similar view on the role of CLE in developing students’ professional capacity when talking about the in-house clinic:

Our in-house clinic has been a good place for students to learn how to practise law. Working under supervision of practising lawyers, they have to deal with clients’ legal matters in a professional way. The in-house clinical experience helps students greatly in strengthening their professional skills, thinking ability and time management. I think these three aspects are the key for them to be successful in the profession later.<sup>731</sup>

A practising lawyer in Hanoi also expressed his view after a few years supervising clinical students:

From the perspective of the legal profession, I believe CLE will enable law schools to produce generations of graduates with good knowledge, creative and independent thinking ability and

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<sup>727</sup> Tarr, above n 7, 33.

<sup>728</sup> Aiken, above n 35, 241–5.

<sup>729</sup> Amsterdam, above n 51, 612.

<sup>730</sup> Interview # 49.

<sup>731</sup> Interview # 32.

[who] are professionally mature. This an important foundation for building and strengthening the legal profession in Vietnam.<sup>732</sup>

Reflection, which the literature identifies as an integral part of CLE,<sup>733</sup> is a 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 are also required to reflect on their experiences. With time, the reflection process can help students study better and mature professionally and ethically. Ledvinka et al believe that reflection is the 'magic ingredient that converts legal experience into education'.<sup>734</sup> 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.<sup>735</sup>

A clinician in Hanoi also expressed her view on this issue:

In a clinical environment, students have to be proactive, strengthen their ability for time management, and organisation. More importantly, they have very good opportunities to sharpen their thinking ability through being challenged by supervisors and writing reflective reports. For me, teaching students how to think creatively and independently is important for them to work as lawyers in the future.<sup>736</sup>

Credible educational theory asserts that there are four stages of learning, in each of which reflection is an important step.<sup>737</sup> 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.<sup>738</sup> A clinical program where

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<sup>732</sup> Interview # 77.

<sup>733</sup> See, eg, Georgina Ledvinka, 'Reflection and Assessment in Clinical Legal Education: Do You See What I See?' (2006) 9 *Journal of Clinical Legal Education* 29.

<sup>734</sup> Ibid 30.

<sup>735</sup> See James C Hathaway, 'Clinical Legal Education' (1987) 25 *Osgoode Hall Law Journal* 239, 244.

<sup>736</sup> Interview # 29.

<sup>737</sup> See, eg, D A Kolb and R Fry, 'Toward an Applied Theory of Experiential Learning' in C Cooper (ed), *Theories of Group Process* (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 conceptualisation), 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).

<sup>738</sup> Ledvinka, above n 733, 32.

reflection is graded as 'insight assessment'<sup>739</sup> will motivate students to work harder and try their best to understand the problems more comprehensively, and not just for the purpose of writing a good reflective journal for grading. In this regard, reflection is a 'critical educational tool'<sup>740</sup> which powerfully assists students to develop their professional skills, including their thinking ability.<sup>741</sup> Similarly, Adamson has pointed out:

Clinical legal education, by emphasizing critical reflection at each decisional stage of the representation process, allows students to apply past experience to future circumstances, develop their socio-professional identity, and better appreciate the multivariate dimensions of law and legal practice.<sup>742</sup>

From the 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.'<sup>743</sup>

Reflection also means that students think about their experiences in order to evaluate their performance and identify what they could have done better.<sup>744</sup> Consequently, the harder students work, the more they have to reflect, and the more quality reflections they have, the more opportunities for them to practise 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.<sup>745</sup> Further, a well-designed template of a reflective journal can help clinical teachers understand who among their students lacks insight, compassion or legal knowledge, and who will need to be further supported or intellectually challenged.<sup>746</sup> Moreover, from the perspective of the legal profession, reflection within a clinical setting becomes a way of developing a 'reflective practitioner'

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<sup>739</sup> See Ross Hyams, 'Assessing Insight: Grading Reflective Journals In Clinical Legal Education' (2010) 17 *James Cook University Law Review* 25, 25.

<sup>740</sup> *Ibid.*

<sup>741</sup> *Ibid* 31.

<sup>742</sup> See Bryan L Adamson et al, 'Clinical Faculty in the Legal Academy: Hiring, Promotion and Retention' (2013) 62 *Journal of Legal Education* 115, 133.

<sup>743</sup> See J Ogilvy, 'The Use of Journals in Legal Educating: A Tool for Reflections' (1996) 3 *Clinical Law Review* 55, quoted in Hyams, above n 739, 28.

<sup>744</sup> Adamson, above n 742, 133.

<sup>745</sup> Hyams, above n 739, 31.

<sup>746</sup> *Ibid.*

in each and every student.<sup>747</sup> With time, this will help build ‘students’ sense of responsibility, resilience, confidence, self-esteem, self-awareness, courage and humility’.<sup>748</sup>

#### ***5.4.5 CLE can Help Bridge the Gaps Between Legal Education and the Legal Profession***

As mentioned earlier, the disconnection between legal education and the legal profession has been identified as a major limitation of the Vietnamese system.<sup>749</sup> Since CLE, especially the live client in-house clinic model, may very well be the best way to learn law in context,<sup>750</sup> it could help Vietnamese law schools to effectively address this challenge. Bui argues that ‘on-the-job’ training or ‘learning-by-doing’ is the most effective and the fastest way to connect Vietnamese legal education with the profession.<sup>751</sup>

In the VER, different legal education stakeholders considered CLE to be a vehicle for law schools to connect their education with practice. A dean of a law school in Hanoi maintained:

In my view, clinical students can learn better because they can be exposed to real-world law. In CLE programs, students have the opportunities to compare what they learn in the lectures with what happens in practice and this will help them understand the law better. This is very significant when they graduate and start their career in the legal profession.<sup>752</sup>

Another dean of a law school in central Vietnam had a similar view on this issue, saying that:

CLE helps students learn better and deeper because it creates opportunities for students to link the lectures with reality of law. This is especially important in the context of Vietnam where there is traditionally a big gap between education and practice.<sup>753</sup>

And here is the opinion of a dean of a law school in Mekong Delta:

Working in a clinic, it is more important for students to learn and understand the role of people in the judiciary system and the legal profession. This helps them to build capacity and professional

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<sup>747</sup> See above section 2.4.2 of Chapter Two.

<sup>748</sup> Ibid.

<sup>749</sup> See above section 4.5 of Chapter Four.

<sup>750</sup> See above section 2.4.2 of Chapter Two.

<sup>751</sup> Bui, above n 22, 312.

<sup>752</sup> Interview # 10.

<sup>753</sup> Interview # 4.

attitude and skills and be ready for their future career. In this regard, not any other doctrinal law courses can be better than CLE.<sup>754</sup>

A clinician in Cantho also expressed her view on this issue, arguing that:

We all agree that CLE is a great environment for students to practise and learn law in context – the ‘real’ law happens in reality. It is important, in my opinion, for students to understand how the law is applied and enforced in practice rather than knowing how the law is made.<sup>755</sup>

Similarly, a student in Ho Chi Minh City said about the role of CLE in helping students learn and enrich their legal practical knowledge:

In CLE programs, I also had a chance to deepen my knowledge on various areas of law and strengthen my understanding about law in context, society and life. I think it is significant for a student like me to really understand how law works in practice because it is important for my future employment.<sup>756</sup>

The literature fully supports the VER findings. In a clinical setting, students have a strong vantage point to study and understand the real impacts of law. Brayne, Duncan, and Grimes have pointed out that ‘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’.<sup>757</sup> CLE, by linking ‘black letter’ law with real-life situations, can provide students with a deeper understanding of the application of legal knowledge.<sup>758</sup> 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 with how such learning is applied in practice,<sup>759</sup> CLE begins to bridge the gap between legal education and the legal profession.

The increasing number of countries that appear to be successful in adopting a clinical approach and incorporating it into their legal education process demonstrates that CLE is likely to be the future of global legal education. In the global clinical movement, Vietnam

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<sup>754</sup> Interview # 11.

<sup>755</sup> Interview # 30.

<sup>756</sup> Interview # 46.

<sup>757</sup> Brayne, Duncan and Grimes, above n 356, 1.

<sup>758</sup> Hyams, above n 739, 25.

<sup>759</sup> See, eg, Allen Redlich, ‘Perceptions of a Clinical Program’ (1971) 44 *Southern California Law Review* 574.

is not and should not be an exception to this common trend. The value and potential of CLE to legal education have been demonstrated around the world<sup>760</sup> and can occur in Vietnam if a clinical methodology is utilised. However, given the differences in the political, legal and social systems between Vietnam and other countries, various issues must be examined and addressed carefully when considering how to incorporate CLE into the Vietnamese system.

## **5.5 Conclusion**

From the research conducted with different stakeholders in Vietnam, it is the author's view that Vietnamese legal education has failed to prepare students to practise law. This situation urgently needs reform in order for Vietnam to strengthen the legal profession, promote a rule-of-law society and provide legally-qualified human resources for national socio-economic development. As discussed in this chapter, the demand for legal education reform is widely recognised and agreed among stakeholders in Vietnam. This was shown widely in both the existing literature and the VER.

Possibilities for Vietnamese legal education reform have also been discussed in this chapter as a part of the VER findings. Graduate-level legal education has been attempted in other countries, but Vietnam should comprehensively examine and address the challenges faced in those countries if a similar strategy is to be considered. Curriculum and teaching methodology reform should also be discussed and implemented, while recognising other considerations such as law schools' autonomy and political reluctance inside the central government. Importantly, curriculum and teaching methodology reform need to be discussed alongside the issue of law schools' autonomy and self-determination.

Another approach to reform is the full incorporation of professional training into law schools' curricula. This approach is worth considering because it could address many challenges facing the Vietnamese legal education system. However, in the current situation of the Vietnamese political system, the VER suggests that this reform might not

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<sup>760</sup> See generally, Bloch, above n 2; Sarker, above n 15; Evans et al, above n 4; Wilson, above n 8.



be realistic and practical as it would end the two-stage legal education system and therefore threaten the benefits and challenge the political power of many influential national agencies. Further, Vietnamese law schools' poor resources may not allow them to take on effectively all the professional training activities currently undertaken by various professional training bodies.

Finally, CLE has been discussed as the most promising and appropriate option for Vietnamese legal education reform. With its strengths and values, CLE has significant potential to help effectively address various challenges facing the Vietnamese system. This potential can be summarised as the capacity to address the problem of 'lack of professional skills', to teach professional responsibility and legal ethics, to prepare students to be justice-ready, to strengthen students' ability to think like lawyers; and, finally, to help bridge the gap between legal education and the profession.

As mentioned earlier, forms of CLE have been recently introduced into Vietnam by some international organisations in an effort to address various challenges facing the legal education system. Vietnamese law schools are encouraged by these organisations to adopt CLE as an innovative model of teaching law alongside other available options. Chapter Six will discuss the current situation of CLE experiments in Vietnam.

## **CHAPTER SIX**

### **CLINICAL LEGAL EDUCATION AS A MEANS TO REFORM THE VIETNAMESE LEGAL EDUCATION SYSTEM: THE CURRENT SITUATION**

#### **6.1 Introduction**

This chapter discusses the current state of clinical legal education (CLE) in Vietnam in the light of extensive VER interviews.<sup>761</sup> Following the discussion in Chapter Five on the possibilities for Vietnamese legal education reform, this chapter focuses more on how CLE – a promising approach for this reform – has been adopted and made operational in the Vietnamese setting.

In the first part of this chapter, the discussion focuses on the historical development of Vietnamese CLE. In funding a program known as the Clinical Project (2010–14), the United Nations Development Program (UNDP) has played a significant role in commencing and expanding different clinical programs in Vietnamese law schools. The chapter then presents and discusses various CLE models currently operating in Vietnamese law schools. Although CLE in Vietnam has primarily focused on community legal education, other models such as in-house legal consultancy and moot court have also commenced at different law schools. In addition, ‘community legal consultancy’ has been delivered within CLE programs of other law schools in Vietnam.

In the next part, the chapter discusses how CLE fits into Vietnamese law schools’ curricula, followed by an analysis of supervision issues in clinical programs. The chapter then turns to the matter of financing CLE in Vietnam. Since first introduced into Vietnam, CLE has been nurtured mainly by external sources of finance from international organisations. External funding may be important for CLE to be initiated, especially in Vietnam where the government and law schools may not be ready to provide finance. However, international donors’ funding is only for the short term and, if law schools do not adequately prepare themselves, CLE is likely to face challenges of sustainability. It is

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<sup>761</sup> See above Chapter Three for details of the VER and how it was conducted.

argued in the chapter that, in the long term, Vietnamese CLE must be nurtured and developed by Vietnamese resources to ensure sustainability.

The chapter concludes that although CLE has gradually proven itself to be an innovative method in teaching law in Vietnam, there is still a long journey ahead.

## **6.2 The Historical Development of Clinical Legal Education in Vietnam**

### **6.2.1 *The Introduction of CLE into Vietnam***

Regionally, most Southeast Asian countries are considered to be ‘newcomers’ in adopting a clinical approach for teaching law.<sup>762</sup> Thailand and the Philippines are the exceptions where some CLE programs have been in place for some time.<sup>763</sup> Two clinical conferences held in Phnom Penh (Cambodia) in 2005<sup>764</sup> and Manila (the Philippines) in 2007<sup>765</sup> played a significant role in commencing clinical programs in other countries in the region.<sup>766</sup> Through these conferences, various basic clinically-relevant issues were discussed by regional and global clinical experts. In addition, the Manila conference contributed to training many trainers who later became key actors in fostering clinical programs in their home countries as well as in the region as a whole.<sup>767</sup>

In Vietnam, the first proposal to use CLE as a teaching methodology was discussed in the late 1990s among legal scholars. In 1998, a legal consultancy centre was established in Hanoi National University Faculty of Law – the *Centre for Legal Research and Service* (LERES).<sup>768</sup> Although LERES focused primarily on other forms of legal training and

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<sup>762</sup> Lasky and Prasad, above n 186, 38–45; Lasky and Sarker, above n 191, 2–12; Wilson, above n 8, 263–76.

<sup>763</sup> Lasky and Prasad, above n 186, 38–43.

<sup>764</sup> Lasky and Prasad, above n 186, 40–1 (identifying that the Phnom Penh conference was known as the first Southeast Asia Clinical Legal Education Conference. There was growing interest among Southeast Asian countries in adopting a clinical approach in teaching law at university level. This was inspired by the success of CLE at regional and global levels. Organisations such as UNDP also expressed its interest in facilitating the development of CLE in the region.

<sup>765</sup> Ibid (indicating that the Manila Conference was considered to be the first Southeast Asia Clinical Legal Education Training of Trainers Workshop. Attended by various participants from countries in the region, the workshop focused on issues such as the development of clinical programs, clinical teaching methods, and administrative skills for running a clinic).

<sup>766</sup> Ibid.

<sup>767</sup> Interview # 10.

<sup>768</sup> Interview # 29; interview # 32 (indicating that LERES at Hanoi National University Faculty of Law, established under the leadership of Professors Nguyen Cuu Viet and Hoang Ngoc Giao, was one of the first

consultancy, it has also brought law teachers and students together to assist the poor, including through its own consultancy efforts and by facilitating students' required practical experience while at law school. Having received some funding from the Canadian International Development Agency (CIDA), this centre functioned partly as a legal clinic with two primary missions: (1) provision of legal services (both free and for a fee); and (2) helping law students practise law and conduct legal research.<sup>769</sup> But, perhaps most importantly, LERES served as the 'key institutional incubator for the idea of clinical legal education until it was taken up by a number of other institutions in the 2005–2006 period'.<sup>770</sup>

Although CIDA was a pioneer in encouraging a clinical legal approach in Vietnam, UNDP was the most supportive international organisation in terms of the initiation and development of CLE in the country. Through a project to support building the capacity of the Vietnamese Lawyers Association (the VLA Project), UNDP provided seed money to facilitate the establishment of legal clinics in Vietnam.<sup>771</sup> In 2008, two law schools received some modest financial support to start their clinics – Ho Chi Minh City Law University (HCMCLU) and National Economic University Faculty of Law (NEUFL).

In HCMCLU, the *Centre for Law Application and Popularisation* was established in 2006.<sup>772</sup> Its missions mainly focused on organising legal education activities to encourage students' involvement and interaction under law teachers' supervision. Students participating in programs conducted by the centre were exposed to the practice of law and to learning and practising various skills necessary for their future careers.<sup>773</sup> In December 2007, the centre hosted a national CLE training workshop. Funded by UNDP through the VLA Project, the training workshop was attended by law teachers and students from various law schools throughout the nation. For most workshop

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legal clinics in Vietnam).

<sup>769</sup> Sidel and Pham, above n 390, 5–9.

<sup>770</sup> Ibid.

<sup>771</sup> This support was a part of the project 'Strengthening the Capacity of the Vietnamese Lawyers Association' by UNDP in order to assist Vietnam in the process of judicial reform; see <[http://www.vn.undp.org/content/vietnam/en/home/operations/projects/closed-projects/democratic\\_governance/Strengthening-the-Capacity-of-the-Viet-Nam-Lawyers-Association.html](http://www.vn.undp.org/content/vietnam/en/home/operations/projects/closed-projects/democratic_governance/Strengthening-the-Capacity-of-the-Viet-Nam-Lawyers-Association.html)>.

<sup>772</sup> Ho Chi Minh City Law University, above n 417.

<sup>773</sup> Interview # 25; interview # 5.

participants this was the first time they had had an opportunity to learn about some basic clinical concepts and how to develop and maintain a CLE program.<sup>774</sup> The non-profit organisation Bridges Across Borders Southeast Asia Clinical Legal Education Initiatives (BABSEA CLE) also played an active role in this workshop through its co-directors'<sup>775</sup> facilitation of the training activities. This event and the dedication of its leaders were seen as significant foundations for the later establishment and operation of many clinical programs in Vietnamese law schools.<sup>776</sup>

In late 2008, as a result of the promulgation of Decree 77<sup>777</sup> on legal consultancy centres, the HCMCLU Centre for Law Application and Popularisation was renamed *Centre for Legal Consultancy* and started to receive some funding from UNDP. The UNDP funding, although small and used for both installation and operation, was necessary for HCMCLU to start and maintain its clinical programs for the first few years.<sup>778</sup> In 2012, the Centre for Legal Consultancy was merged with the Centre for Short-term Training to form the *Centre for Legal Consultancy and Short-term Training*. This new centre has been missioned to plan and deliver all the clinical programs of HCMCLU since then.<sup>779</sup>

NEUFL received funding from UNDP on a similar basis to establish and run clinical programs. Within NEUFL, the *Legal Training and Consultancy Centre* (LTCC) was established in 2004. Its general mission was to provide legal training to students and to deliver legal services to clients.<sup>780</sup> As the funding from UNDP for CLE was confirmed

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<sup>774</sup> The author participated in the workshop as one of the two representatives from Hue University School of Law. This was the first time the author was exposed to CLE as an innovative teaching methodology in legal education.

<sup>775</sup> Mr Bruce Lasky and Mrs Wendy Morris are the co-founders and also the co-directors of BABSEA CLE — one of the international organisations that has significant influence on the development of experiential legal education and on the clinical movement in the Southeast Asia region. See, eg, BABSEA CLE, *BABSEACLE History* <<https://www.babseacle.org/babsea-cle-history/>>; see also Wilson, above n 8, 263–4.

<sup>776</sup> Interview # 10; interview # 11; interview # 30.

<sup>777</sup> In July 2008, the Vietnamese central government issued Decree 77/2008/ND-CP which permits Vietnamese law schools to establish legal consultancy centres to deliver free legal assistance to the poor and create opportunities for students to practise law. For more details, see <[http://www.moj.gov.vn/vbpq/Lists/Vn%20bn%20php%20lut/View\\_Detail.aspx?ItemID=11749](http://www.moj.gov.vn/vbpq/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=11749)>.

<sup>778</sup> Interview # 25.

<sup>779</sup> Ho Chi Minh City Law University, above n 417.

<sup>780</sup> The primary missions of the LTCC include strengthening law students' practice skills and knowledge and providing training for the community and for enterprise leaders and managers. Quite often, students work under law teachers' supervision and guidance to deliver legal education and training to residents in rural and remote areas. Training activities are relatively flexible, involving local residents as well as local authorities.

through the VLA Project, the mission of the centre was modified and became more specific. It was stated in 2005 that the operation of the LTCC was a part of the 'renovation of training methods in law'<sup>781</sup> and a move away from heavily academic models that did not provide sufficient skills-based training.<sup>782</sup> The LTCC sought to link theory and practice and to strengthen law students' social responsibility.<sup>783</sup> In 2008, the NUEFL LTCC started receiving financial support from UNDP to expand its ongoing operations and to start clinical programs. Similar to the situation in HCMCLU, UNDP funding was crucial for NUEFL to commence CLE and later became one of the key partners in the Vietnamese clinical network.<sup>784</sup>

In addition, other international organisations such as the Norwegian Human Rights Centre (NHRC) and JUSSBUSS<sup>785</sup> (a student-dominated clinical program established inside Oslo University Faculty of Law) have contributed to the development of CLE in Vietnam. Receiving funding from the Norwegian government, NHRC has been active in Vietnam for the last 10 years in assisting the country with various issues including facilitating a rule-of-law society, promoting human rights and democracy and reforming law and the judiciary system.<sup>786</sup> Through JUSSBUSS, NHRC has assisted some Vietnamese law schools in strengthening their clinical programs, particularly by assisting prisoners and workers as their clients. With experience in street law programs from Norway, JUSSBUSS has provided HCMCLU and Hue University School of Law<sup>787</sup> with technical support to work directly with prisoners and workers in South and Central Vietnam. These clinical programs with prisoners have been very effective and are much admired by other law schools in Vietnam.<sup>788</sup> In Vietnam, approaching and working with prisoners is very

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<sup>781</sup> Sidel and Pham, above n 390, 8.

<sup>782</sup> Ibid.

<sup>783</sup> Ibid.

<sup>784</sup> Interview # 54.

<sup>785</sup> For more details about the organisation of JUSSBUS and how it operates, see (25 January 2016) <<http://foreninger.uio.no/jussbuss/english/about/>>; see also Wilson, above n 8, 320–2.

<sup>786</sup> For more details about programs and activities delivered by the Norwegian Human Rights Centre in Vietnam, see <<http://www.jus.uio.no/smr/english/about/programmes/vietnam/>>.

<sup>787</sup> For more details about legal education programs working with prisoners and workers, see <<http://www.jus.uio.no/smr/english/about/programmes/vietnam/news/legal-aid-vietnam.html>>.

<sup>788</sup> At a conference held by JUSSBUSS and the Norwegian Human Rights Centre in February 2014 in HCMCLU and the Clinical Conference held in Hanoi in November 2014 by UNDP, many Vietnamese law school representatives appreciated learning about clinical programs working with prisoners conducted by HUSL and HCMCLU. For them, it had been almost impossible to go into a Vietnamese prison to deliver legal education and consultancy services. (The author was a representative of Hue University School of Law and attended this conference to share the experiences of Hue University School of Law CLE programs working

complicated as Vietnamese authorities often consider prisons to be ‘sensitive’ places because of issues of political stability and human rights.<sup>789</sup>

### **6.2.2 The UNDP Clinical Project – an Important Milestone of Vietnamese CLE.**

As noted earlier, UNDP has been the most proactive actor in facilitating the initiation and development of CLE in Vietnam. In 2008, after a few years of assisting the Vietnamese clinical movement, UNDP decided to take another step forward by increasing its involvement in legal education reform and CLE in Vietnam. In order to create a baseline and foundation for further legal education reform and the expansion of CLE in Vietnam, UNDP hired two scholars to conduct research to assess the current situation of Vietnamese legal education and to propose solutions for improvement: Professor Mark Sidel (University of Iowa) and Professor Pham Duy Nghia (HCMC University of Economics Faculty of Law).<sup>790</sup> With long-standing research interests and experience in Vietnamese legal education and law and judicial reform, these two professors published two significant reports: *Building Clinical Legal Education in Vietnam* (2009) and *Reforming and Strengthening Legal Education in Vietnam* (2010). These two research papers provided the basis for UNDP to continue to assist in reforming legal education and developing CLE in Vietnam.<sup>791</sup>

In 2010, UNDP decided to fund a program named *Applied Research Piloting the Development of Clinical Legal Education in Vietnam* (known as the ‘UNDP Clinical Project’ or just the ‘Clinical Project’) in order to progress Vietnamese CLE.<sup>792</sup> The overall objective of the Clinical Project was to ‘[c]ontribute to the enhancement of legal education in Vietnam and thus strengthen the access to justice and rule of law in Vietnam’.<sup>793</sup> More specifically, phase 1 of the Clinical Project (2010–11) aimed to ‘[e]xplore relevance and possible applications of different means of delivering CLE and help law schools

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with prisoners. This was immediately before the commencement of the author’s PhD research at Monash University.)

<sup>789</sup> Ibid.

<sup>790</sup> Interview # 29; interview # 83.

<sup>791</sup> Ibid.

<sup>792</sup> UNDP Clinical Report, above n 390, 4.

<sup>793</sup> Ibid.

throughout the country to increase their awareness of CLE generally'.<sup>794</sup> This was then followed by phase 2 (2011–12) which focused on 'developing a curriculum and teaching materials that would enable CLE to be implemented'.<sup>795</sup> These first two phases of the Clinical Project generated significant interest from Vietnamese law schools in setting up legal clinics to deliver CLE. This interest led to the third phase (2012–14). In this final phase, the Clinical Project focused on bringing international clinical experts to work with individual Vietnamese law school clinics to strengthen CLE programs;<sup>796</sup> and on sending Vietnamese clinical teachers to various leading clinics abroad to learn and deepen their understanding of clinical pedagogy.<sup>797</sup>

During the four years of the Clinical Project, six more clinics were established (to make eight in total) among so-called 'core partner' Vietnamese law schools<sup>798</sup>. The clinics were:

- Hanoi National University Faculty of Law clinic;
- National Economics University Faculty of Law clinic;
- Trade Union University Faculty of Law clinic;
- Vinh University Faculty of Law clinic;
- Hue University School of Law clinic;
- Ho Chi Minh City Law University clinic;
- Ho Chi Minh City National University School of Economics and Law clinic; and
- Cantho University Faculty of Law clinic.<sup>799</sup>

These law schools were identified as core partners (CPs) because 'they have already established clinical models or have shown an interest in establishing a clinical model'.<sup>800</sup> Additionally, these schools also geographically represent the Vietnamese legal education

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<sup>794</sup> See, eg, Hien Thu Bui, Bruce A Lasky and Richard Grimes, 'Legal Education in Vietnam: An Overview and Future Strategic Vision' in Sarker, above n 2, 28.

<sup>795</sup> See BABSEA CLE, *Further Support for the Development of Clinical Legal education in Vietnam (UNDP II)* (Final Report, 2012), as cited in Bui, Lasky and Grimes, above n 790, 28.

<sup>796</sup> Ibid

<sup>797</sup> Ibid 29.

<sup>798</sup> UNDP Clinical Report, above n 390, 5.

<sup>799</sup> The VER found that in addition to CLE at these eight core partners, two other clinical programs were planning to operate at the Foreign Trade University Faculty of Law and the Vietnam Judicial Academy. However, only the Foreign Trade University clinical program was started as they received support from UNDP and BABSEA CLE. The Judicial Academy was unable to run its clinical program due to a lack of funding assistance.

<sup>800</sup> UNDP Clinical Report, above n 390, 4.



system, with three in the North, two in the Central region, two in the South and one in the Mekong Delta region. Under the Clinical Project, they worked collectively with each other and with BABSEA CLE (which was appointed by UNDP to provide technical support and assistance) to facilitate the development of CLE in Vietnam.<sup>801</sup>

To participate in the Clinical Project, each of these CPs was required to sign a Memorandum of Understanding (MOU) whereby various relevant issues were agreed and committed to. Specifically, in order to receive UNDP funding for clinical programs, Vietnamese law schools agreed they would:

- provide students with opportunities to practise law through different experiential learning models;
- focus their clinical programs on strengthening social justice, access to justice and legal empowerment of the poor;
- ensure that all students and law teachers must engage in clinical programs on a voluntary basis (this is believed to be a condition to enforce the social justice mission of CLE);
- make CLE an accredited (for credit) course in their curricula, or have a real plan to do so;
- agree to work openly in partnership with each other; and
- employ interactive methodologies in delivering clinical programs.<sup>802</sup>

As many VER interviewees believed, the Clinical Project has contributed considerably to the initiation and development of CLE as well as to the promotion of access to justice in Vietnam.<sup>803</sup> As in many clinical programs in other countries, Vietnamese CLE also focuses on both a social justice mission and education. During the four years of the Clinical Project, thousands of people received legal education and assistance from CLE programs conducted by Vietnamese law schools through the participation of law students and teachers. These people included ethnic minorities, people with disabilities, orphaned children, prisoners, immigration workers, high school students, low-income earners and

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<sup>801</sup> Ibid 4–7

<sup>802</sup> Ibid.

<sup>803</sup> Interview # 4; interview # 55; interview # 56; interview # 57; interview # 66; interview # 68; interview # 84.

people with HIV.<sup>804</sup> Legal assistance was delivered mainly through community legal education programs and in-house clinic activities.<sup>805</sup> Students and teachers participating in these clinical programs have had great opportunities to learn law in context, practise various professional skills and enrich their practical legal knowledge.<sup>806</sup>

Under the ‘training the trainers’ program of the Clinical Project, many law teachers and students were trained in Vietnam by experienced foreign clinicians in order to learn how to operate a clinic effectively. For example, in a two-week CLE summer school training course organised by UNDP in Cantho University Faculty of Law in 2012, clinicians from the United States, Australia, Thailand, and other countries were invited to deliver training to law teachers and students across Vietnam.<sup>807</sup> This format has since become a model to ‘familiarise Vietnamese law teachers and students with interactive teaching methods and can be used as a stepping stone to developing a fully established real-client clinic’.<sup>808</sup> In addition, some law teachers were placed (for up to four months) at some law schools abroad which had leading international clinical programs, such as Monash Faculty of Law, Griffith Faculty of Law and Newcastle Faculty of Law (Australia); CLE Foundation and BABSEA CLE and Chiang Mai Faculty of Law (Thailand); and Kwa-Zulu Natal Faculty of Law (South Africa).<sup>809</sup> These Vietnamese law teachers, after completing training programs at these selected clinics, have become key personnel in promoting and strengthening clinical programs at CPs.

In short, the Clinical Project was successful in lighting the CLE flame among Vietnamese law schools. By opening a new chapter for legal education in Vietnam, this international community initiative has brought about a fresh and positive atmosphere among some law

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<sup>804</sup> UNDP Clinical Report, above n 390, 7.

<sup>805</sup> See below section 6.3 of this chapter for a detailed discussion of the current state of Vietnamese CLE.

<sup>806</sup> The VER — interviews with various participants.

<sup>807</sup> Bui, Lasky, and Grimes, above n 794, 30.

<sup>808</sup> Ibid.

<sup>809</sup> Ibid. (The author was one among other Vietnamese law teachers sent to Monash Faculty of Law for this type of training. The four-month participation in Monash clinical programs was a productive experience for the author to learn about how to effectively organise and operate a clinical program, particularly a live client in-house clinic (in relation to which Monash is considered the leading law school in Australia and in the world). Moreover, the exposure to Monash clinical programs helped the author realise that Vietnam still has a very long way to go in adopting CLE for teaching law. Importantly, the placement at Monash’s clinics greatly inspired the author to pursue PhD research in order to explore further the clinical pedagogy and to look for better approaches for Vietnam to adopt and incorporate CLE into the legal education system.)

schools. Law school leaders, teachers and students in the country have started to realise the various benefits and values that CLE will bring to the teaching of law and that it will help law graduates to be more responsible and ethically-minded.<sup>810</sup> More importantly, through the Clinical Project, CLE has shown that it can offer a productive environment for experiential learning where students are able to practise law, learn and sharpen professional skills, and prepare effectively for their future careers. In the development of Vietnamese CLE, the Clinical Project should therefore be seen as an important milestone.

For many VER interviewees, however, what the Clinical Project contributed to CLE in Vietnam is only a first step.<sup>811</sup> Since Vietnamese CLE is still in its infancy, it has a very long journey ahead of it in order to become a common teaching pedagogy at law schools. The CLE flame in Vietnam is relatively small and it needs to be nurtured in order to expand. Whether or not CLE will develop, be sustained and become the future of Vietnamese legal education remains to be seen. But before going further to discuss the future prospects of Vietnamese CLE in the light of the VER, it is important to look at the current state of clinical initiatives in Vietnam. The next section of this chapter will examine this issue further.

## **6.3 The Current State of CLE in Vietnam**

### **6.3.1 *Forms and Models of CLE***

CLE has been implemented in Vietnam in forms such as community legal education, legal consultancy (both in-house and within communities) and through moot court initiatives. All these forms are delivered to students on a voluntary basis with no credit being awarded to participating students.<sup>812</sup> In the Vietnamese setting, each of these models has shown its advantages and value in teaching students about professional knowledge and skills. However, challenges have also been identified as barriers that constrain the development of Vietnamese CLE.

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<sup>810</sup> Interview # 4; interview # 11; interview # 25; interview # 26; interview # 29; interview # 32.

<sup>811</sup> The VER – interviews with various participants in the cities of Hanoi, Vinh, Hue, Ho Chi Minh and Cantho.

<sup>812</sup> See below section 6.3.2 of this chapter for a detailed discussion of the position of CLE in the legal education process in Vietnamese law schools.

### 6.3.1.1 Community Legal Education Programs

Known as street law in many countries,<sup>813</sup> community legal education is the most common form of CLE in Vietnam. Quite often, community legal education programs are designed and implemented by a group of students recruited by a law school to form a ‘clinic’. Clinical students work under the supervision of law teachers to choose a particular community, consult with the local authority if needed, prepare and deliver training lessons, and then evaluate and review the programs.<sup>814</sup> In Vietnam, the target audiences or clients of community legal education programs are relatively diverse, including ethnic minorities, people with disabilities, orphaned children, prisoners, immigration workers, high school students, low-income people, and people with HIV.<sup>815</sup> These often vulnerable or marginalised groups are commonly unable to afford legal services and are in need of assistance.

Working to assist these groups of people in legal matters was a part of the commitment that Vietnamese law schools made with UNDP in the Clinical Project. Through community legal education programs, these groups of people have received legal education and information in order to protect their legal rights. This education in turn has helped to promote access to social justice and to strengthen democracy in Vietnam.

Topics decided for community legal education programs are based on the needs of each client group and agreement between law school clinics and communities (in some cases consultation with local or relevant authorities is also needed). Quite often, it will take a few weeks for a clinic to prepare for a legal education ‘trip’ to Vietnamese communities. The VER has found that although Vietnamese law school clinics work with different groups of clients, they have a similar approach to each other in conducting community legal education programs. The VER<sup>816</sup> made clear the different steps to prepare and deliver legal education in communities, and is summarised in *Table 7* below.

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<sup>813</sup> See above section 2.4.2 of Chapter Two.

<sup>814</sup> Ibid.

<sup>815</sup> UNDP Clinical Report, above n 390; the VER — interviews with various participants.

<sup>816</sup> See above Chapter Three for more details of the VER and how it was conducted.

**Table 7 – Steps to prepare and deliver community legal education programs by Vietnamese law schools**

<b>Steps</b>	<b>Activities</b>	<b>Actors</b>
1	Contact and work with communities/local authorities to agree on the topics, date and time	Students, clinical teachers, communities, and local authorities.
2	Students prepare for legal education program (task allocation, lesson plan, evaluation and assessment, ...) under close supervision of clinical teachers; clinical teachers prepare teaching and learning materials and facilities (bus hiring, foods/snacks, ...)	Students and clinical teachers
3	Students practise their performance before their peers and clinical teachers (law school leaders sometime attend and provide feedback)	Clinical students
4	Travel to communities and deliver legal education as planned	Clinical students and teachers
5	Review, evaluate and assess	Clinical students and teachers and law school leaders

In the first stage, clinical students and teachers need to work with communities and relevant authorities to agree on a legal education plan. This includes issues such as places, dates and times, target audiences/clients, legal education topics, and other technical issues. Clinicians then appoint and allocate tasks for each clinical student. This is the most significant stage where students work closely with each other under the supervision of law teachers to prepare lessons plans, approaches and methodologies for lesson delivery, gaming and other activities (including role-playing and performance). It is often a time-consuming process as clinical students have to practise these teaching activities many times before their peer group, clinical teachers and, sometimes, law school leaders. Clinical teachers play a significant role in this process by providing guidance, observation, and giving feedback on students' performances in order to ensure the effectiveness and correctness of the programs delivered. Once agreed upon by clinical teachers, the legal education plans are finalised and ready to be taken to communities.

The next stage is delivery of legal knowledge in communities. Clinical students present legal knowledge, interpret legal terms, and explain legal rights and obligations to audiences using various interactive methodologies, including gaming. These teaching methods are designed and employed in a flexible way to suit each client group. For

example, more role-playing and gaming activities are utilised in teaching law to communities with low levels of literacy to ensure their understanding of the issues presented. However, with groups with a higher level of literacy, students often use more spoken language and other interactive methods such as brainstorming or question and answers. At the end of the teaching session, time is often allocated for questions, comments and, in some cases, legal consultancy activities.

After delivery, the law school clinics review and evaluate students' performances in communities. This is done after returning from a community legal education trip and in the presence of clinical teachers and students and, sometimes, law school leaders.<sup>817</sup> It is an occasion for the relevant actors in the programs to review, evaluate and draw lessons for future improvement. As a part of the review and evaluation process, clinical students are required to write a short 'report' to describe their role in the legal education trip. They are also required to reflect on what they were exposed to and learned from preparing and delivering legal education to communities. Each report is read and commented upon by clinical teachers for the purpose of students' evaluation (where applicable)<sup>818</sup> or the improvement of students' performance in the future.

#### *6.3.1.2 Legal Consultancy*

##### *(i) Types of Legal Consultancy*

Legal consultancy is another form of CLE delivered by Vietnamese law schools. Sometimes known as legal counselling programs, this clinical form allows students to work individually or collectively under law teachers' supervision to provide legal advice to clients. The VER found that legal consultancy has been delivered by Vietnamese law schools in two primary forms: in-house and in communities.<sup>819</sup>

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<sup>817</sup> The VER found that some law school leaders and managers in Vietnam are very enthusiastic about and supportive of CLE. They have expressed their willingness to adopt and incorporate a clinical approach in teaching law and are happy to join clinical students and teachers in every CLE activity.

<sup>818</sup> See below section 6.3.2 for a discussion of the position of CLE in law school curricula in Vietnam (identifying that seven law schools in Vietnam have incorporated CLE into their curricula as credited elective or mandatory units).

<sup>819</sup> The VER revealed that in Vietnamese law school clinics, legal consultancy can also be delivered through the telephone. Clinical students rotate to work at the clinic under the supervision of law teachers to receive calls from clients for legal assistance.

\* *In-house legal consultancy*: Designed similarly to the live client in-house clinic in many other countries,<sup>820</sup> the legal consultancy model in Vietnam also operates with real clients and cases. However, for reasons which will be discussed shortly, the Vietnamese legal consultancy model does not involve direct representation of clients. This model does provide legal advice and, in some cases, makes referrals for further assistance for clients. In this form, clinical students work at the clinic established within a law school campus, under law teachers' supervision, to deliver legal advice to clients. The VER found that although this in-house legal consultancy advice model can vary in quality and effectiveness, the model has been implemented in all eight CPs of the Clinical Project and that the areas for legal advice and assistance are diverse, including land law, marriage and family law, civil law, criminal law, traffic law, and more.

\* *Community legal consultancy*: In essence this form is similar to the in-house legal consultancy advice model except for the fact that it is delivered in communities.<sup>821</sup> Within Vietnamese clinical programs, community legal consultancy has often been implemented alongside community legal education activities. In many cases, law school clinics will include legal consultancy activities in their community legal education trips, divided into two sections: session 1 – legal education; and session 2 – questions, comments and legal consultancy activities. This is an effective way to attract more people from the community, particularly those with legal problems who are seeking advice, to come to legal education sessions. Hue University School of Law is an example of this approach. In delivering legal education programs to prisoners at Binh Dien prison,<sup>822</sup> a session for legal consultancy has always been included for prisoners to seek legal advice on various issues concerning them.<sup>823</sup> Similarly, clinical programs with prisoners implemented by

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<sup>820</sup> See above section 2.4.2 of Chapter Two.

<sup>821</sup> In India, community legal consultancy is also known as 'legal aid camp' and is organised by law schools for their students to practise law. While participating in legal aid camps, students work under the supervision of law teachers and the Legal Aid Board to deliver legal advice to rural people to enable them to settle disputes among themselves without representation at court. Similarly to those in Vietnam, legal aid camps are delivered alongside legal literacy camps in communities. See, eg, Frank and Ishar, above n 214, 114.

<sup>822</sup> Community legal education and consultancy programs working with prisoners were implemented at two law schools: HCMC Law University and Hue University School of Law. These programs were funded by the Norwegian Human Rights Centre and technically supported by JUSSBUSS (Oslo University Faculty of Law) in an attempt to strengthen and expand CLE activities in Vietnam. See above, n 787.

<sup>823</sup> Interview # 4; interview # 27; interview # 28.

HCMC Law University clinic have also encompassed various sessions for legal consultancy alongside legal education activities.<sup>824</sup> The practice of these clinical programs has shown that prisoners have a great interest in legal consultancy in order to address their legal problems.<sup>825</sup>

*(ii) Challenges Facing the Vietnamese Legal Consultancy Model*

In general, the operation of the legal consultancy model, both in-house and in Vietnamese communities, has been very limited. The VER found an overwhelming interest in developing and strengthening in-house legal consultancy activities. Many interviewees were of the opinion that in-house legal consultancy is the most productive CLE model for students to study law in context and to learn and practise various skills necessary for their future careers. Nevertheless, the in-house legal consultancy model in Vietnamese law schools has faced various challenges: students' capacity; law teachers' ability to practise law; law teachers' time commitment for CLE; clients' lack of trust; and the challenge of funding. These challenges are discussed further below.

As a clinician in Hanoi observed:

We have been struggling to find ways to develop our in-house legal consultancy programs. We all know the potentials that the in-house clinic will bring to develop students' professional practical skills and prepare them for their future of employment. In practice, however, various challenges have constrained and limited the operation and development of in-house clinic in Vietnam, and our law school clinic is not an exception.<sup>826</sup>

A dean of a law school in central Vietnam also expressed his concerns on the various challenges to in-house clinical activities:

I understand that there are barriers for Vietnamese law schools to operate an in-house clinic model. In fact, we have already faced some challenges such as our students' low capacity, clinical law teachers lack professional and practical knowledge and skills, infrastructure and facility for in-house clinic is poor, or trust from communities and clients. But I believe we are able to find solutions and the in-house clinic model is worthwhile to be invested.<sup>827</sup>

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<sup>824</sup> Interview # 25

<sup>825</sup> Interview # 25; interview # 53.

<sup>826</sup> Interview # 10

<sup>827</sup> Interview # 3



*\* Students' legal competence is low:* First and foremost, the legal competence of students is low and this has negatively affected the delivery of a quality service to clients. Educated in a passive learning environment with limited opportunities for learning and practising professional skills,<sup>828</sup> students are often not competent enough to work in legal consultancy programs. Even though these students, after being chosen to participate in clinic, are trained in professional knowledge and skills, in many cases it is frustrating and challenging for them to go into the real world to deliver legal assistance to clients. As a Vietnamese clinician in Ho Chi Minh City lamented:

Clinical students' limited capacity is surely one of the most important challenges that has constrained the development of the in-house clinical model in Vietnam. In many cases, students do not have necessary professional skills and practical legal knowledge to provide a quality service to clients. This is quite understandable in Vietnam where the doctrinal education system dominates.<sup>829</sup>

Similarly, another clinician in Cantho expressed her concern about the capacity of students:

I have to admit that many of our clinical students lack professional skills and practical knowledge, therefore, legal advice and service delivered by them has been of a low standard. This has negatively affected trust from the community and our law school reputation as well. And this in turn has led us go back to the question of 'how to teach our students'. Obviously, the current system in Vietnam is not effective enough in preparing a law student for the profession.<sup>830</sup>

Globally, clinical students are often able to appear and represent their clients in court. In a clinical setting, their capacity to engage in civil litigation and criminal hearing procedures by appearing in court has been provided in 'student practice rules' and become an integral part of many CLE programs.<sup>831</sup> Obviously, practical experience is a significant factor in developing law students' advocacy skills and helping them to learn about the complexities of the profession in a court setting. Needless to say, students' appearance in court often means that they will have more opportunity to protect their clients' legitimate rights and interests than would be the case if they had no opportunity

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<sup>828</sup> See above section 4.5 of Chapter Four.

<sup>829</sup> Interview # 52

<sup>830</sup> Interview # 55.

<sup>831</sup> See above Chapter Two.

to appear.

In Vietnam, however, it is almost impossible for law students to perform this role as only those people admitted by the Vietnam Bar Federation (VBF) can practise law and represent clients at court in legal matters. Vietnamese law students are not permitted to participate in litigation and appear before the courts, even in a supervised CLE setting.<sup>832</sup> This constrains law students from accessing their clients' relevant legal documents and, in some cases, from accessing their clients. This inability to engage in actual representation, even under the limited available qualified supervision, seriously limits students' ability to assist their clients.

\* *Law teachers' ability to practise law*: The fact that law teachers are not admitted to practise law has constituted another hurdle for the operation and development of the in-house clinic model in Vietnam. As a clinician in Hanoi outlined:

It is a big challenge to the in-house clinical model in Vietnam when law teachers are not allowed to practise law. Because the most important consideration in an in-house clinic is to provide quality legal advice and assistance to our client and this has to be practical, not theoretical. However, I believe that a big proportion of law teachers in Vietnam do not have much practical legal knowledge and skills because they do not practise.<sup>833</sup>

Unlike community legal education, the in-house clinic model requires clinical teachers to have good practical knowledge and skills in order to supervise their students. Importantly, their supervision plays a significant role in facilitating students' learning and helping disadvantaged people to access social justice.<sup>834</sup> It must be asked whether clinical teachers are able to teach students about advocacy skills and prepare them for the profession if they themselves do not have much professional practical knowledge and skills. Similarly, it is hypocritical and risky to require students to deliver a quality legal service if they are supervised by a clinician with limited professional knowledge and skills. A clinician in Hanoi, concerned about this problem, said:

Some law teachers do not have much practical legal knowledge and skills, therefore, I am not surprised if they do not know how to properly handle a case. How can they supervise students in

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<sup>832</sup> The VER — interviews with various participants; see also Nguyen, above n 17, 26.

<sup>833</sup> Interview # 56.

<sup>834</sup> See, eg, Evans et al, above n 4, 123–34.

This regulatory and practical barrier has provided several significant challenges in establishing and maintaining CLE in Vietnam, particularly in local versions of the in-house clinic model. First, law teachers' involvement in clinics has to be limited to general advice in the non-litigation context. Accordingly, Vietnamese law schools have to choose to place more emphasis on the community legal education model because it does not require clients' direct representation. This limitation certainly helps to explain why community legal education is a common CLE model in Vietnam. In addition, the fact that law teachers are prevented from participating in litigation and in representing their clients at court will continue to limit the depth of their supervisory capacity in a CLE setting. Not being permitted to practise law also means limited opportunities for law teachers to learn 'law in context' and build up professional skills, not to mention that the restriction adversely affects their credibility in front of their students.<sup>836</sup> Further, if in-house clinic supervisors are not granted authority to act on their clients' behalf then their participation in CLE activities will also be limited. As a result, the educational objective and social justice mission of CLE will never be fully achieved. This problem could also result in a situation where law students are reluctant to participate in clinic activities.

The practice of global CLE has revealed that these regulatory barriers are not unique to Vietnam. In India, for example, law teachers and students are not permitted to appear before court on behalf of their clients. Under the rules of the Indian Bar Council, full-time law teachers are precluded from practising law.<sup>837</sup> And since no 'student practice rules' have been promulgated, the development of CLE is also constrained in India.<sup>838</sup> A similar situation is found in Israel, where legal practice is limited to members of the Israeli Bar Association — a statutorily recognised professional guild.<sup>839</sup> In Japan, with a low lawyer/population ratio and a very strict process for training qualified lawyers, law teachers are not permitted to engage in civil litigation or criminal hearings.<sup>840</sup>

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<sup>835</sup> Interview # 29.

<sup>836</sup> See above section 4.5.2 of Chapter Four.

<sup>837</sup> Bloch and Prasad, above n 189, 176.

<sup>838</sup> Ibid 176–8.

<sup>839</sup> Efron and Ebner, above n 82, 104.

<sup>840</sup> See, eg, Andrew Watson, 'Training to be A Lawyer in Japan' (2010) 29 *The Law Teacher* 64, 64; see also Maxeiner and Yamanaka, above n 449, 307–10.

However, Australia seems to have a better legal framework for student practice. Although only admitted practitioners have the right to represent clients in court, every Australian court has an inherent discretion to control its own proceedings and to permit unqualified persons, including law students, to appear on behalf of a litigant.<sup>841</sup> This precedent offers a way forward for Vietnam in considering approaches to strengthen and develop the in-house clinical model and will be discussed further in Chapter Seven of this thesis.

\* *Teachers' time commitment for CLE activities:* Teachers' time commitment is another challenge that affects the operation of in-house legal consultancy programs in Vietnamese law schools. As shown in many other countries, in-house clinic activities are intense and demand extensive commitments of time and effort by clinicians and students.<sup>842</sup> The VER found that most Vietnamese law teachers already have a significant teaching load and other law school commitments,<sup>843</sup> leaving limited time for clinical supervision. A clinical teacher in HCM City had concerns about this issue:

We lack supervisors in order to supervise and guide clinical students in in-house clinical activities. Law teachers are extremely busy with their teaching and research commitments, leaving no time for them to supervise clinical students and follow a case. Sometimes, following a case requires teachers and students to come to the site for investigation and make consultation with other people but it is almost impossible with many of our law teachers.<sup>844</sup>

A similar challenge faces many doctrinal law teachers who have become involved in clinical programs. In the current situation of Vietnamese CLE where most young clinicians do not have much practical experience and professional skills, established doctrinal law teachers need to play a significant role in ensuring the quality of in-house

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<sup>841</sup> See, eg, Susan Campbell and Alan Ray, 'Specialist Clinical Legal Education: An Australian Model' (2003) 3 *International Journal Of Clinical Legal Education* 67, 74.

<sup>842</sup> Because in-house clinic activities are intensive and time-consuming, students often have to devote a lot of their time to clients: researching, preparing documents, and more. Also for this reason, students taking an in-house clinic unit will often take one or two substantial law units in the same semester. Particularly in the United States, many students often spend a whole semester on clinical activities, including in-house clinic.

<sup>843</sup> The VER found that a Vietnamese law teacher can have up to more than 1000 teaching hours per academic year. In addition, they have quite a lot of other law school commitments. These may include: all-staff conference held once a year, monthly key staff meeting, quarterly key staff meeting, monthly mandatory seminars organised by academic departments, activities organised by the Vietnamese Communist Party and Communist Youth Union, activities organised by the Student Association, and more. All of these combined demand a considerable amount of time from teachers and other staff.

<sup>844</sup> Interview # 52.

clinic services.<sup>845</sup> For many doctrinal law teachers, however, teaching and research on doctrinal law subjects are their top priority because these affect their academic reputations and positions at law school as well as their livelihoods. Most of their time at law school is consequently devoted to teaching and research. Many of them even teach extra time or as overtime at other universities in order to ensure an adequate income.<sup>846</sup> This extra work has resulted in a situation where doctrinal law teachers do not have enough time for clinical activities. Indeed, some of them seem not to be particularly serious and enthusiastic about CLE, given that many clinical activities are designed and delivered on a voluntary basis. A clinical student working in an in-house legal consultancy program at Hue School of Law said:

It is not always easy to obtain assistance from doctrinal law teachers in order to deliver legal advice to clients. They are often very busy with their out-of-town teaching trips and we are unable to get in touch with them.<sup>847</sup>

Another student in Vinh University Faculty of Law clinical programs was also concerned:

It seems that some doctrinal law teachers are not enthusiastic and serious in supervising students in clinical programs, especially those delivered outside law curriculum. To them, those clinical activities are designed for entertaining students, not for teaching and learning.<sup>848</sup>

\* *Clients' lack of trust:* The in-house clinic model in Vietnam has also faced the challenge of clients' lack of trust. For many Vietnamese clients, law students are not yet qualified to practise law, and consequently are unable to provide quality legal advice. A clinician in Ho Chi Minh City said about this challenge:

A problem in the development of the in-house legal consultancy model in Vietnam is that people do not really trust students' capacity. Even when we told them that students are working under the close supervision of law teachers and qualified lawyers, in many cases things did not get

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<sup>845</sup> The VER – interviews with various clinicians, students and doctrinal law teachers in Hanoi, Vinh, Hue, Cantho and Ho Chi Minh City.

<sup>846</sup> Most public universities and law schools in Vietnam are underfunded. This has resulted in various problems, including low salaries for teachers, big class sizes, faculty members working extra time and overtime, poor study materials in libraries, and poor infrastructure and learning facilities. Consequently, working extra time and overtime is something very common among Vietnamese law teachers (and maybe teachers of other disciplines) in order to ensure their livelihoods. See, eg, interview # 83 with a dean of a law school in Ho Chi Minh City (he was concerned about the low investment from the state budget in public universities. He believes that due to lack of a budget for public universities, the Ministry of Education and Training had to agree to give 14 universities in Vietnam the right of self-determination, including in relation to financial issues).

<sup>847</sup> Interview # 37

<sup>848</sup> Interview # 42.

better.<sup>849</sup>

Another clinical teacher in Cantho was also concerned about clients' trust, saying that:

For in-house clinic, I think the biggest challenge is that not many clients come to us because they may not trust our students' ability. It is quite a common understanding among Vietnamese that 'free service is not quality'. Therefore, the in-house clinical activities have been very limited and have not met our expectation.<sup>850</sup>

In addition, clinical students' low competency level (mentioned above) has also contributed to clients' lack of trust. In many cases, legal advice provided by students does not satisfy clients' demands. As mentioned previously, clinical students are unable to represent their clients before court but can provide only general advice or make referrals for clients to obtain further assistance. Over time, these factors may have negatively affected clients' trust in clinical programs and in the students involved because they may think that a law school clinic is not a reliable place to protect their legitimate rights and interests, compared to law firms' own initiatives. As there are some other places for clients to go for legal assistance, law schools' in-house legal consultancy may not be their favoured place. A clinician in Cantho said about this issue:

Local bar associations and law firms have already created their own channels for in-house legal consultancy which provide free legal assistance to community. Similarly, some legal agencies have legal aid programs targeting poor and vulnerable communities. I understand that these programs been in place for many years and communities know how they work and where to find legal assistance. Therefore, I believe Vietnamese law schools should focus on the community legal education as their typical model.<sup>851</sup>

\* *Financial Challenges:* Finance is another important challenge that has constrained the development of the in-house clinic model in Vietnam. In comparison with other CLE models, the in-house clinic is more expensive as law schools have to invest in infrastructure, facilities, offices, staff salaries, and more. The VER discovered that due to limited financial capacity, most Vietnamese law schools are often unable to provide their clinics with a convenient office plus other necessary facilities and equipment for in-house clinical activities. In most cases, clinics have to share office space with other academic

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<sup>849</sup> Interview # 52.

<sup>850</sup> Interview # 58.

<sup>851</sup> Interview # 55.

departments in a law school. In addition, because of financial constraints, law schools are unable to pay enough to hire qualified lawyers to supervise their students in in-house clinical activities. These factors, when combined, have greatly challenged the development of the in-house clinical model in Vietnam. A dean of a law school in Central Vietnam, concerned about this challenge, said:

I think finance is another major challenge to Vietnamese CLE in general and the in-house clinical model in particular. We all know that in-house clinical activities are time-consuming and costly. Therefore, in the context of underfunded Vietnamese law schools, it is a huge hurdle for the in-house clinical model to survive if we are unable to find alternative sources of finance.<sup>852</sup>

Similarly, a vice dean of a law school in Hanoi also saw finance as a barrier for the operation and development of the in-house legal consultancy model in Vietnam, saying that:

The in-house clinic model is not suitable to Vietnam due partly to the financial challenge. Most Vietnamese law schools have been under-funded and it is not easy for them to look for alternative sources of funding to maintain their in-house legal consultancy programs once external budget ends.<sup>853</sup>

### *6.3.1.3 Moot Courts*

In general, moot court is a form of experiential learning that gives students opportunities to learn and practise advocacy skills.<sup>854</sup> As a form of simulation, moot court allows students to role play different parts in a trial or hearing, thereby helping them practise and understand the knowledge and skills required for each role. If well designed and delivered, moot court can also create a productive environment for participating students to practise and sharpen their ability to think logically and critically, both of which are crucial for their future careers.<sup>855</sup>

Moot courts have been implemented by some Vietnamese law schools under their clinical programs. Quite often, a group of clinical students are selected to prepare and perform in moot courts under the supervision and support of law teachers and judicial officials such

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<sup>852</sup> Interview # 66.

<sup>853</sup> Interview # 54.

<sup>854</sup> The VER — interviews with various participants.

<sup>855</sup> Ibid.

as judges, procurators and, possibly, practising lawyers.<sup>856</sup> The VER indicated that, depending on the availability of resources and learning objectives, moot courts are offered from two to four times per academic year by Vietnamese law schools. For example, within Cantho Faculty of Law clinical programs, two or three moot courts are organised a year,<sup>857</sup> while four moot courts are commonly delivered by Hue School of Law CLE programs.<sup>858</sup>

In addition, moot court competitions have been recently organised in Vietnam for law schools to compete with each other and with teams from other countries.<sup>859</sup> These competitions have created a productive environment for developing and nurturing moot court as a CLE model in Vietnam. Together with learning opportunities for students, many Vietnamese law schools now see moot court competitions as an opportunity to introduce themselves to the public and attract attention from potential students and their families.<sup>860</sup> Moot court is also considered to be a reform in teaching methodologies of Vietnamese law school in response to community demands.<sup>861</sup>

In practice in Vietnam, however, moot court tends to be a performance acted by clinical students in accordance with a pre-determined script. The VER found that learning opportunities for students are often very limited as they are not often required to be creative and reflective during the moot court. Students need only focus on the roles they play in the moot court, giving no, or only limited, consideration to other objectives, as the final sentence or solution has already been established beforehand.<sup>862</sup> Nevertheless, moot court is one of the most favoured CLE activities among Vietnamese law schools. As a dean of a law school in Hanoi said:

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<sup>856</sup> The VER — interviews with various participants in Hanoi, Vinh, Hue, Ho Chi Minh City and Cantho.

<sup>857</sup> Interview # 84.

<sup>858</sup> Interview # 28; interview # 27.

<sup>859</sup> In 2009, LAWAS (The Law Association for Asia and Pacific), in collaboration with HCMC Law University, organised an International Moot Court Competition in HCMC Law University campus. This was participated in by different teams from other Asian and Pacific countries, including the United States and Australia. Since 2013, an International Humanitarian Law Moot Court Competition has been organised on an annual basis to create opportunities for Vietnamese law students to learn and sharpen their advocacy knowledge and skills. This event has been sponsored and supported technically by the International Committee of the Red Cross (ICRC).

<sup>860</sup> The VER — interviews with various law school leaders, teachers and clinicians in Hanoi, Vinh, Hue, Ho Chi Minh City and Cantho.

<sup>861</sup> Interview # 83.

<sup>862</sup> Ibid.



From my observation, Vietnamese law students lack opportunities to be exposed to the practice of law application and learn about practical skills. We now try to fix this problem by organising moot courts and other practical activities. I am confident that moot courts will help our students study law better and, more importantly, they can imagine what they are going to do in the future after law school.<sup>863</sup>

A clinician in Cantho also said in relation to the focus on moot court of her law school CLE programs: 'From [the] Cantho Faculty of Law perspective, community legal education and moot court will still be our two main focuses in [the] near future in creating opportunities for students to learn practical knowledge and skills'.<sup>864</sup>

#### *6.3.1.4 Experiential Learning Through Externships is not Considered to be CLE in Vietnam*

The VER acknowledged that externships have been employed by many Vietnamese law schools in order to expose students to the real world of law and enable them to learn professional knowledge and skills. Since the beginning of legal education in the country in the 1970s, Vietnamese law schools have ensured their students have some exposure to legal practice and various judicial agencies, by their attending, observing and sometimes participating in activities.<sup>865</sup> But Vietnamese law schools and teachers have never considered these externship experiences to be a form of CLE. This may be due partially to the fact that externships have a much longer history than that of CLE in Vietnam. Vietnamese law schools have been employing externships as a primary measure for their students to learn the practice of law without being aware that it is a form of CLE until recently, when the clinical pedagogy was introduced into Vietnam.<sup>866</sup>

The VER revealed that Vietnamese law schools and their faculty members' knowledge about CLE is limited. Many VER interviewees believed that community legal education is the primary and, in some cases, may be the only form of CLE.<sup>867</sup> Limited or no exposure to international clinical experience has also contributed to this problem. It is understandable therefore that many participants in the VER thought externships to be

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<sup>863</sup> Interview # 10.

<sup>864</sup> Interview # 55.

<sup>865</sup> The VER – interviews with various participants.

<sup>866</sup> Interview # 11; interview # 51; interview # 66.

<sup>867</sup> The VER – interviews with various participants.

something different from CLE. In fact, since the introduction of CLE into Vietnam, externships have continued to be offered to students by different Vietnamese law schools, separately from many clinical programs. Nowadays, most law schools in the country continue to depend on externships as a primary measure for their students to learn and practise professional knowledge and skills.<sup>868</sup> Nevertheless, for many reasons, the externships model in Vietnam has not been effective in preparing students to be practice-ready nor effective in creating a productive experiential learning environment for students.

To begin with, the experiences that students can observe and sometimes participate in vary widely because host institutions are very diverse in Vietnam. Students looking for an externship placement often have a wide range of options, including law firms, judicial agencies (courts, procuracies, departments of justice, office of public notary, or bureau of civil law enforcement), business groups, companies, administrative agencies and the like. Accordingly, the knowledge and skills that Vietnamese law schools expect their students to learn and practise during the externships do not focus only on the legal profession. In fact, externship students have opportunities to learn knowledge and practise skills of various professions, depending on which institution they choose to have their externship with. To some degree, a wide range of options for externships is good for students to plan for their future careers, which are also different from student to student. However, from the perspective of the legal profession, students doing externships in institutions other than a law firm, tend not to have the best opportunity to learn how to practise law.

In addition, due to the ineffectiveness of the current legal education system in Vietnam, students do not have enough knowledge and skills to perform well during their externships. Trained under the one-way-communication style and doctrinally-focused legal education system, students often do not meet the requirements of the host institutions.<sup>869</sup> Accordingly, host institutions often hesitate to allocate work tasks to externship students because they do not trust students' capacity – another important reason that makes student externships ineffective. In many cases, host institutions worry that students' involvement in their business may undermine the legitimate rights and

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<sup>868</sup> Ibid.

<sup>869</sup> Interview #33; interview #55; interview #73; Interview # 78.

benefits of their clients.<sup>870</sup> In other words, students often do not have many opportunities to really 'do' but merely 'observe' other people 'doing' and this has limited their learning outcomes.

Further, interviewees in the VER believed that problems occur because of the lack of seriousness of law schools in organising and delivering externship programs. In their view, law schools should be the most important actors in planning and designing externships programs, including working closely with host institutions to discuss and finalise a detailed program of activities and monitoring students during their externships. However, Vietnamese law schools have failed to do this job adequately. They often make a general agreement with host institutions in regard to students' externships with no more than a general expectation about students' performance. Quite often, the connection and collaboration between law schools and the host institution is relatively limited during the externships. Law schools tend to depend on the host institutions for externship activities, supervision, assessment and provision of feedback. A procurator in central Vietnam had concerns about this problem:

I have a feeling that law schools do not take student externships as seriously as they should. They often depend totally on host organisations for designing a plan of activities, providing supervision and conducting assessment of students' performance. Some law schools even do not keep in touch with host organisations to see how their students are doing.<sup>871</sup>

A judge in Cantho city had a similar view, saying:

Law schools need to design a detailed plan of activities for students during the externships as well as setting out their expectations. Based on that, we as host institutions will know how to organise and allocate work to students. I do not think law schools are currently doing a good job of this matter.<sup>872</sup>

Finally, the attitude of externship students and the host institutions (supervisors) is another challenge. Many VER interviewees believed that because law schools are not serious in delivering externships, students and supervisors are quite easy-going with each other and this has undermined the quality of the externships.<sup>873</sup> For example, some

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<sup>870</sup> Ibid.

<sup>871</sup> Interview # 78.

<sup>872</sup> Interview # 61.

<sup>873</sup> Interview #33; interview #55; interview #73; Interview # 78.

students will still be able to get a good evaluation and feedback from the supervisors without fully attending the externship. As said above, some supervisors are afraid that students' involvement will interfere with their normal business activities, therefore, they tell students not to come; but they still sign the externships diaries so that students are able to hand them in to law schools as a proof of externship participation.<sup>874</sup> In other cases, students often feel bored and do not have many opportunities to learn and practise practical skills because they are not allocated work tasks. They become less motivated to participate and therefore do not attend in the externship as they should do.<sup>875</sup> At the end, they may complete the entire externship period but do not achieve much in the way of learning outcomes.

In short, although widely employed by Vietnamese law schools to create experiential learning environments for students, the VER process concluded that externships, as currently offered by Vietnamese law schools, have proven ineffective. The problems do not lie in the externship programs themselves, but in the way Vietnamese law schools plan, organise and deliver the activities; and also in the absence of effective measures to collaborate with host institutions in relation to supervising students and assisting them in learning professional knowledge and skills. It is possible that different relevant stakeholders are not aware that externships are an important form of CLE that are delivered effectively by law schools around the world; and therefore, these stakeholders are not sufficiently serious and do not invest enough resources in the model. Accordingly, in the future development of CLE in Vietnam, reforming the externship model to make it a better form of experiential learning must be an issue for consideration. This need will be discussed further in Chapter Seven of this thesis.

### ***6.3.2 The Position of Clinical Programs in Law Schools' Curricula***

As a new teaching methodology, CLE still struggles to find a way to survive and develop in Vietnamese law schools. The VER found that CLE in Vietnam has been designed and delivered both on a volunteer basis and as an accredited unit. Quite often, law schools in Vietnam start their clinical programs as voluntary activities. However, the commitment

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<sup>874</sup> Ibid.

<sup>875</sup> The VER – interviews with various participants.

made by some Vietnamese law schools with UNDP in the Clinical Project<sup>876</sup> has motivated and encouraged law schools to design and include CLE in their curricula. In late 2014, the UNDP Clinical Report identified that of the eight law school core partners (CPs), three included CLE in their curricula as a compulsory unit, four others offered CLE as an elective unit and one still organised CLE as volunteer activities.<sup>877</sup> In practice, however, the VER found that each of these law schools (except Hanoi National University Faculty of Law) has a combination of credited and voluntary CLE activities. This section begins by discussing those CLE programs where participation is voluntary.

#### *6.3.2.1 CLE as a Volunteer Activity*

The operation of eight law school clinics in Vietnam is based mainly on a team of clinical teachers and groups of volunteer students, subject to the availability of resources and student demand. The number of students selected differs from school to school. For example, Hue University School of Law commonly admits about 50 students per academic year to work in clinic.<sup>878</sup> At Vinh University Faculty of Law, the CLE team often has 30–40 students.<sup>879</sup> Among eight law school clinics, HCMC Law University admits the largest number of students with approximately 100 participating in its clinical programs,<sup>880</sup> whereas Cantho Faculty of Law has the lowest number of clinical students at 15–20 per academic year.<sup>881</sup>

Volunteer students working in these clinics are known as CLE students or teams. In Cantho University Faculty of Law, for example, this group is named ‘CLE Team’ and is responsible for a range of activities such as in-house legal consultancy, community legal education or consultancy, moot court and other simulated activities. Sometimes they also represent their law schools in legal competitions (such as moot court competitions,

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<sup>876</sup> See above section 6.2.2 of this chapter.

<sup>877</sup> The UNDP Clinical Report, above n 390, 7 (identifying that among eight law schools adopting a clinical approach, Hanoi National University Faculty of Law is still the only law school that struggles to find a way to include CLE in its curriculum. The other seven law schools have offered CLE as both voluntary and credited units).

<sup>878</sup> Interview # 27; interview # 28.

<sup>879</sup> Interview # 31.

<sup>880</sup> Interview # 25.

<sup>881</sup> Interview # 26.

mentioned above).<sup>882</sup> Students do not obtain any academic credit for their participation in clinical activities designed outside the curriculum. Nevertheless, the demand from students in Vietnamese law schools for this voluntary type of CLE is relatively high.<sup>883</sup> For example, a dean who is also the director of the clinic of a law school in Hanoi said about students' demand for CLE:

Students at my school really hunger for CLE activities. I am not surprised about this because I understand CLE is fun, interesting, and beneficial to students. The only problem has been that our clinic is unable to take more students due to our poor facilities and limited human resources. Therefore, I hope Vietnam will invest more in the development and expansion of clinical programs among Vietnamese law schools so that more learning opportunities will be made available for students.<sup>884</sup>

Another dean of a law school in central Vietnam expressed his similar view on this issue:

It is a common situation in Vietnam that there is a big demand from students to participate in clinical activities. For example, in our last recruitment, there were 450 applications while we only had 50 spaces. Because of this, only a limited number of students have the opportunity to be exposed to clinical activities and become better in practical knowledge and skills.<sup>885</sup>

And here is the voice of a student at Vinh University Faculty of Law:

I believe students are very much interested in clinical programs because they find CLE interesting. They can learn and practise many beneficial practical skills that they can never obtain in any other law courses. As a student participating in clinical programs at my school, I highly recommend other students to take part in CLE.<sup>886</sup>

Various reasons explain the high demand from Vietnamese law students for voluntary clinical activities. Primarily, for many Vietnamese law students, CLE is a new and interesting way to study law. In the Vietnamese education system, students do not have much chance to interact with their peers and teachers because a one-way communication style dominates. The passive education environment at law schools has bored students and made them less motivated.<sup>887</sup> CLE offers students opportunities to interact with their

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<sup>882</sup> Interview # 30.

<sup>883</sup> The VER — interviews with various law school leaders, clinicians and clinical students in the cities of Hanoi, Vinh, Hue, Ho Chi Minh City and Cantho.

<sup>884</sup> Interview # 10.

<sup>885</sup> Interview # 4.

<sup>886</sup> Interview #42.

<sup>887</sup> See above section 4.5 of Chapter Four.

teachers and classmates and to participate in the real world of applied law. In a clinical setting, students often feel that they are able to express themselves, study more effectively and even stay away from quite often tedious lectures in many doctrinal law courses.<sup>888</sup>

For any student, one of their top priorities and concerns is their future prospect of employment. Therefore, they work hard to best prepare themselves for their future careers. For example, a student at Hue School of Law said about his clinical experience:

Clinical students have very good opportunities to really participate in real legal education and consultation at communities. Through CLE activities, I have learned and practised various practical skills such as public speaking, time management, group working, client interviewing, lecture, or even how to design a power-point presentation. These skills are beneficial to me as a student as they help me study better, and I believe that they are necessary for my future employment as well.<sup>889</sup>

Vietnamese law students hunger for professional knowledge and skills because law schools' curricula do not offer education and training in this area. Students also understand that professional knowledge and skills will help differentiate them in competing for employment. Consequently, many students are willing to pay extra tuition fees in order to take skills courses offered by law schools outside their curricula. These are often known as short-term skills courses organised and offered by Centres for Legal Consultancy and Short-term Training established under some Vietnamese law schools.<sup>890</sup> Some students choose to attend law firms from year two or three of law school in order to observe and learn professional practice skills from practising lawyers.<sup>891</sup> This has often been done through individual arrangements between students and law firms.

Finally, some students prefer to learn professional knowledge and skills in a non-assessed environment, such as voluntary CLE. Working on a voluntary basis, many

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<sup>888</sup> See above section 5.4 of Chapter Five.

<sup>889</sup> Interview # 40.

<sup>890</sup> The VER – interviews with various participants.

<sup>891</sup> Interview #17 with a law teacher at Hue University School of Law. She herself was one of a number of students completing a placement at a law firm while studying at law school. As did many others, she recognised that law school did not teach students necessary professional knowledge and skills, therefore, she decided to obtain them from a law firm. She believed that studying doctrinal law subjects at law school alongside learning skills at a law firm helped her a lot in the success of her current teaching career. In the context of Vietnamese legal education, she recommended law students follow a similar approach.

students have chosen to stay with the clinics for several years (from year one or two to year four) in order to maximise their clinical participation and learning opportunities. Some law graduates also come back to work in the clinic after they have found a job. They would like to continue to learn and practise skills and, at the same time, they are able to help new clinical students to learn and grow up professionally and ethically. Here is the voice of a clinical law graduate in Cantho University Faculty of Law:

I used be a student working in Cantho Faculty of Law CLE Team. You could say that I was the first generation of Cantho clinical students when CLE was introduced into Vietnam. My experience with CLE was great as I learned a lot of valuable practical knowledge and skills that have helped me in my current job. Now I decide to go back to work at Cantho Faculty of Law clinic in order to continue to learn more, but more importantly, to help younger generations of clinical students.<sup>892</sup>

In short, students have welcomed CLE offered by Vietnamese law schools as voluntary activities. These voluntary clinical programs have created very good opportunities for students to practise and learn professional knowledge and skills. They have also brought about a new and productive environment for teaching and studying law in Vietnam.

#### *6.3.2.2 The Incorporation of CLE into the Law Curriculum*

The VER also made clear that in addition to voluntary activities, CLE has begun to be included in the legal education process as elective or mandatory units at some Vietnamese law schools. *Table 8* below provides a summary of CLE units offered for credit by Vietnamese law schools (the table was derived from the VER<sup>893</sup> and the UNDP Clinical Report<sup>894</sup>). Accrediting and including CLE in the legal education process might be one of the solutions for Vietnamese law schools to address challenges facing the development of CLE, including the financial problem.<sup>895</sup> However, adopting and incorporating CLE into law school curricula is not a simple mission in the heavily doctrinal Vietnamese legal education system. Students are required to study a large volume of substantial law and non-law politically ideological units,<sup>896</sup> leaving limited for-credit room for experiential learning activities like CLE. The doctrinal legal education system has also affected the design and delivery of CLE units in Vietnamese law schools.

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<sup>892</sup> Interview # 38.

<sup>893</sup> See above Chapter Three for further detail of the VER and how it was conducted.

<sup>894</sup> UNDP Clinical Report, above n 390.

<sup>895</sup> See below section 7.5 of Chapter Seven.

<sup>896</sup> See above Chapter Four.



**Table 8 – Summary of clinical legal education programs offered as accredited (for credit) units by Vietnamese law schools**

#	Law School	Name of CLE unit	Accredited			Students taking CLE unit	
			<i>Required</i>	<i>Elective</i>	<i>Number of credit</i>	<i>Number of students</i>	<i>Year of student</i>
1	Trade Union University Faculty of Law	Lawyering Practice Skills	X		2	200	1 <sup>st</sup>
2	National Economic University Faculty of Law	Legal Practice for Law Graduated Program		X	2	100-120	2 <sup>nd</sup>
3	Vinh University Faculty of Law	Legal Practice Training		X	3	1000	1 <sup>st</sup>
4	Hue University School of Law	Professional Practice	X		2	800	4 <sup>th</sup>
5	HCMC Law University	Lawyering Practice Skills	X		2	1400-1500	4 <sup>th</sup>
6	HCMC National University School of Economics and Law	Lawyering Practice Skills		X	2	300	2 <sup>nd</sup>
7	Cantho University Faculty of Law	Legal Practice		X	2	400	3 <sup>rd</sup>

In general, the VER showed that CLE units offered by Vietnamese law schools tend to be theoretically oriented, with a lot of learning done through conventional lectures.<sup>897</sup> These so-called clinical units have created only limited ‘real world’ opportunities for students to practise law. For example, the Legal Practice unit offered by Cantho Faculty of Law has been designed to encompass three sections. Section one, which is called ‘Knowledge about Community Legal Education’, teaches students about knowledge and skills and delivering legal education in communities. In section two, students learn about the knowledge and skills necessary to work in an in-house legal consultancy program. In handling these first two sections, teachers often employ a range of interactive teaching methodologies, including brain-storming, role playing, gaming, question and answer, and lecture. In fact, these two sections account for two-thirds of the total credit hours of the unit and are relatively similar to doctrinal law units where students learn knowledge *about* skills, not skills themselves. It is not until the third section of the unit that students are given some opportunities to practise the knowledge and skills they have learned from the first two sections. Indeed, most of the practice occurs either in class with simulated cases and clients, where students are acting different roles in a case. Sometimes, the practice section happens either in the clinic with real cases (subject to the availability of clients) or in communities during law schools’ community legal education and consultancy programs.<sup>898</sup>

The situation is very similar in Hue University School of Law Clinic<sup>899</sup> and in Trade Union University Clinic.<sup>900</sup> These two law schools have designed and delivered clinical units consisting of both theoretical and practical components. Meanwhile, Vinh University Faculty of Law offers CLE as an elective unit within its curriculum with a relatively large number of students. In this law school, the CLE unit has also been designed to include two parts: theoretical education and practical training.<sup>901</sup> However, as in other law schools, the CLE unit at Vinh Faculty of Law still contains more theoretical education than practical skills.

HCMC Law University is another Vietnamese law school which has incorporated CLE into its

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<sup>897</sup> The VER — interviews with various Vietnamese law school leaders, clinicians and students.

<sup>898</sup> Interview # 55.

<sup>899</sup> Interview # 53.

<sup>900</sup> Interview # 10.

<sup>901</sup> Interview # 57.

curriculum as a mandatory unit. Designed as a two-credit subject and titled Lawyering Practice Skills,<sup>902</sup> the unit teaches students knowledge about various CLE forms, including community legal education and consultancy, in-house legal consultancy, simulations, and externships. Also, in the unit, students have opportunities to learn and practise different skills necessary for a legal career such as client interviewing, communication, legal research and writing, public speaking, and more.<sup>903</sup> However, one of the major challenges of HCMC Law University is the vast number of students whom the clinic has to accommodate. Because of this, the CLE unit of HCMC Law University has to focus on theoretical (or doctrinal) education rather than practical and professional training.<sup>904</sup> Of course, this means that such a clinic is not really a clinic at all.

In short, it has been a great effort for some Vietnamese law schools to include CLE in their curricula as either a compulsory or elective component of the education process. However, law schools in Vietnam and their faculty members are apparently still heavily influenced by the current system, where doctrinal education dominates. Consequently, the design and delivery of the so-called CLE courses in Vietnamese law schools is not yet completely aligned with international experience and standards. So-called clinical courses (or units) offered by Vietnamese law schools are, in essence, a more primitive form of CLE as commonly understood elsewhere in the world. As a result, students participating in these courses have not been exposed to fully developed CLE and, therefore, their learning opportunities have been limited.

In countries like the United States, Australia or South Africa, taking a clinical unit often means that a student will spend most of their time working in the clinic to deliver legal services to clients under the close supervision of clinicians (the in-house live client clinic); or the student works at a law firm or relevant agency under the supervision of practising lawyers (the externship model). Clinical experience will help expose students to the real world of law, and help them practise professional skills and grow up ethically. In practice in Vietnam, however, the VER shows that clinical students do not often have a similar experience. Rather, they are primarily taught about the theory of skills and knowledge about relevant legal professions. For example, different modules were designed to teach students skills necessary for client

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<sup>902</sup> Interview # 25.

<sup>903</sup> Interview # 46; interview # 49.

<sup>904</sup> Ibid.

interviewing, legal reasoning, legal writing or legal advice giving and consulting. However, it is quite problematic because these modules were delivered in a lecture-based manner and students do not have much opportunities to really ‘act’ and practise what they have learned in order to understand and master the skills.

Furthermore, Vietnamese law schools and their faculty members have limited exposure to international CLE, particularly the in-house clinic model. To many clinicians and doctrinal law teachers, *community* legal education or street law seems to be the best representation of CLE. It is not surprising, therefore, that some of the people interviewed thought CLE is community legal education, and nothing more. This is truly a misconception as CLE embraces different forms of activities. Moreover, clinicians around the globe all agree that in-house live client clinic is the best model of CLE in terms of teaching students the law in context and promoting social justice.<sup>905</sup> In the Vietnamese setting, if we really need one model to represent CLE, this thesis considers that the live client in-house clinic should be that model, not community legal education. The misconception about clinical pedagogy has also demonstrated that Vietnamese CLE is still at a very early stage of development.

Unfortunately, the VER found that the live client in-house clinic model does not yet exist in Vietnam. The in-house legal consultancy model, currently run by some Vietnamese law schools, seems to have some similarities with the live client in-house clinic in the sense that it deals with real clients in real cases. However, due to the barriers and challenges discussed above,<sup>906</sup> the in-house legal consultancy has not been an effective model for teaching professional skills, or for serving the community. Nevertheless, there are possibilities to strengthen and innovate the in-house legal consultancy model and transform it into the live client in-house clinic. Chapter Seven of this thesis will discuss this issue further.

### **6.3.3 Views on CLE Supervision and the Status of Clinicians in Vietnamese Law Schools**

Despite the introduction of clinical methodology into Vietnam in the 1990s, there has still been no teacher specialisation in CLE. The VER found that not one single Vietnamese law teacher

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<sup>905</sup> See above section 2.4.2 of Chapter Two.

<sup>906</sup> See above section 6.3.1 of this chapter.

teaches only CLE. It seems fair to say that one distinguishing feature of Vietnamese clinicians is that they are originally doctrinal law teachers. Quite often, law schools choose some doctrinal law teachers (most of whom are young and enthusiastic) and give them some training in CLE before they begin to teach and supervise students in clinical programs. Another typical characteristic to be noted is that Vietnamese clinicians never consider teaching in clinics as their primary focus. For example, here is what a deputy director of a clinic in Ho Chi Minh City had to say:

I am very enthusiastic about CLE and have been involved in clinical activities since I was a student. However, I think I will soon hand it over to other younger and more energetic teachers as I am very tired thinking about the position of CLE in law curriculum and clinical teachers at law school.<sup>907</sup>

Although they are involved in clinical programs, Vietnamese clinicians still consider their teaching and research in doctrinal law subjects to be their priority and consequently devote more time and effort to that; CLE is a secondary or auxiliary activity. To some degree, this will affect clinical supervision and CLE in Vietnam as a whole. The literature shows that supervision plays a key role in the success of a clinical program.<sup>908</sup> If clinicians do not invest a considerable amount of their time and effort in supervising students, then that will likely harm the success of clinical programs.<sup>909</sup>

Another issue is the involvement of doctrinal law teachers in clinical supervision. The VER found that in many Vietnamese CLE programs in law schools, particularly in-house and community legal consultancy, doctrinal law teachers still play an important role. This involvement is good in the sense that clinical students and clients can benefit from doctrinal law teachers' in-depth legal knowledge. In many cases, doctrinal law teachers' participation can help address clients' legal problems effectively. However, the involvement of doctrinal law teachers in clinical supervision sometimes makes the process longer as other clinicians and students have to wait for legal advice from doctrinal law teachers in order to help clients solve their problems. In Vietnam, given that doctrinal law teachers often have very heavy teaching loads and other law school commitments, their time and effort for clinical supervision is

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<sup>907</sup> Interview # 52.

<sup>908</sup> Evans et al, above n 4, 123–34.

<sup>909</sup> Ibid.

limited.<sup>910</sup>

In general, because CLE has not yet become an integral part of the legal education process in Vietnam, the description of ‘clinician’ is not a recognised or tenured position at law schools. It seems that many law schools have included CLE in their curricula because they want to try a new teaching pedagogy that has been proven to be effective in many other countries. Equally importantly, these trials have been funded and supported by international organisations which have financial capacity and clinical experience. To many law school leaders, the success and future of CLE in Vietnam is uncertain. Their experimentation with CLE may not be that important because they have ‘nothing to lose’.

#### **6.3.4 *Financing Vietnamese Clinical Programs***

CLE was brought into Vietnam by international organisations with the aim of strengthening legal education and promoting access to social justice. For more than 10 years, CLE has survived in Vietnam on external financial support, most notably from CIDA, UNDP, BABSEA CLE and the Norwegian Human Rights Centre. Vietnam is not unique in its initial reliance on external funding as many other countries have also depended on external financial sources for starting up their clinical programs. Wilson says that most of the new clinical programs overseas started with foreign donors’ funding.<sup>911</sup> This is because law schools and governments abroad are rarely willing to commit funds for the development of CLE.<sup>912</sup> In Vietnam, the VER revealed that while these sources of funding have proven to be significant for establishing clinical programs in law schools, there is a major issue of sustainability.

Quite often, funding from international organisations provides ‘start-up’ financial support as a means of ‘breaking the ground’, but this money is not available indefinitely.<sup>913</sup> It is important, therefore, that Vietnamese law schools use this funding wisely, maximise the benefits and prepare well for sustainable clinical programs into the future.

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<sup>910</sup> See above section 6.3.1 of this chapter.

<sup>911</sup> Wilson, above n 9, 424.

<sup>912</sup> Ibid.

<sup>913</sup> Ibid 424–7.

In Vietnam since November 2014, when the UNDP Clinical Project ended, law school clinical programs have struggled to develop and to be sustainable. The VER discovered that most of the law schools<sup>914</sup> that were formerly core partners in the Clinical Project have had to shrink their clinical programs due to the shortage of money.<sup>915</sup> Fortunately, some law school leaders have recognised the values of CLE and are willing to provide some limited funding for maintaining some clinical activities.<sup>916</sup> For example, a dean of a law school in the Mekong Delta region said:

Our law school has been providing some funding to support CLE since the beginning of the program in 2010. After the Clinical Project ended in late 2014, our law school had to increase the funding in order to maintain our CLE activities. I understand that some other law schools in Vietnam are doing the same.<sup>917</sup>

A clinical teacher of a clinic in central Vietnam also said about the funding from his law school for a CLE program:

Our dean is very interested in clinical methodology and he really wants to maintain and develop CLE at our law school. For this reason, I believe that some financial support from our law school for CLE will continue for many years to come. This limited amount of money is significant for keeping CLE activities 'alive' while waiting for a long-term financial strategy.<sup>918</sup>

However, even with this limited funding, law schools have still had to cut their clinical programs considerably. For example, rather than planning for four to five trips to communities for legal education, a law school in central Vietnam can now only afford one trip per semester.<sup>919</sup> And in-house legal consultancies have sometimes been limited to advice-only, with an add-on referral service.<sup>920</sup>

These realities have forced Vietnamese law schools to seek alternatives in sources of finance

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<sup>914</sup> These include Vinh University Faculty of Law, Hue University School of Law, HCMC School of Economics and Law, HCMC Law University and Cantho University Faculty of Law.

<sup>915</sup> The VER – interviews with various clinical teachers, directors and deputy directors of different Vietnamese law school clinics.

<sup>916</sup> The VER revealed that some Vietnamese law schools have started to provide funding to operate and maintain their CLE programs after the completion of the UNDP Clinical Project. For example, Cantho University Faculty of Law provides approximately 3000 US dollars per academic year; HCMC Law University provides 5000 US dollars; HCMC School of Economics and Law and Hue University School of Law each provide 3000 US dollars; and Vinh University Faculty of Law provides about 2000 US dollars).

<sup>917</sup> Interview # 84.

<sup>918</sup> Interview # 53.

<sup>919</sup> Ibid.

<sup>920</sup> Ibid.

and in delivery approaches. Hanoi National University Faculty of Law clinic (known as LERES) is probably a special case as it has not received funding for clinical activities from the law school from the beginning.<sup>921</sup> After the end of the Clinical Project, in order to maintain CLE, LERES had to integrate clinical activities into other projects with which it is involved. For example, in the project building the capacity of women in remote areas, there is a legal education component to enhance women's legal awareness and understanding of their rights. A group of clinical students was recruited to participate in this project. They were trained by LERES before being brought to community to deliver legal education to women. The whole process was conducted in a manner similar to other community legal education programs that they had carried out before.<sup>922</sup>

A similar approach has been employed by HCMC School of Economics and Law Clinic (HCMCSEL Clinic). Since the end of the Clinical Project, HCMCSEL Clinic has been involved in projects providing legal assistance to immigrants from other provinces to Ho Chi Minh City. This involvement has given clinicians and students of HCMCSEL Clinic opportunities to maintain their clinical programs.<sup>923</sup> For them, incorporating clinical activities into other projects is a solution to address the shortage of funding and thereby maintaining and developing CLE.<sup>924</sup>

In short, although some law schools have allocated limited budgets for maintaining some clinical activities, this support is so small that few people believe clinical programs in Vietnam can continue to develop and be sustained. VER interviewees were pessimistic. Even limited law school clinical funding is important to prevent CLE from vanishing but it may come under pressure in the near future. Vietnamese CLE will then be facing an existential challenge and it may come to an end.<sup>925</sup> Vietnamese law schools may have to wait for another external source of funding. The VER found that many law school leaders and clinicians still hope to have another project like the Clinical Project to support the development and sustainability of Vietnamese CLE, building on the foundation of achievements already brought about by the

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<sup>921</sup> Interview #56.

<sup>922</sup> Ibid.

<sup>923</sup> Interview # 52.

<sup>924</sup> Ibid.

<sup>925</sup> Ibid.



Clinical Project. A vice dean of a law school in central Vietnam said:

I think the Clinical Project has finished a bit early because CLE has just been seeded in Vietnam. It will need more support in order to develop and sustain. I hope there will be another external source of funding to support Vietnamese law schools to strengthen and develop their CLE programs.<sup>926</sup>

A clinical teacher in Hanoi expressed her similar view on another project to support CLE in Vietnam:

I think it is reasonable for the UNDP Clinical Project to end as it has considerably supported Vietnamese law schools in developing and incorporating CLE into law curricula. However, I believe UNDP should continue to accompany Vietnamese law schools in maintaining and developing this innovative model of legal education. Alternatively, seeking for a similar project to continue what we have been doing is necessary for Vietnamese CLE.<sup>927</sup>

For them, CLE in Vietnam is still just like a new-grown tree; more support and care is needed in order for the tree to grow and become strong. Otherwise, the existence of the tree is threatened. Accordingly, finding alternative sources of funding remains crucial for CLE to be maintained and developed in Vietnam. This will be discussed further in Chapter Seven of this thesis.

## 6.4 Conclusion

Introduced into Vietnam only recently, CLE has gradually proven to be a productive pedagogy for teaching law and has shown its potential for the reform of Vietnamese legal education. Because of this experience, CLE has received positive reactions from different Vietnamese legal stakeholders, including law school leaders, teachers and students, practising lawyers, and judicial officials. However, CLE remains in a very early stage of development in Vietnam and there are serious barriers to its development and sustainability. The future success of Vietnamese CLE is uncertain. Chapter Seven of this thesis will discuss the possibilities for CLE in Vietnam in the light of these realities. It will focus on the various options to address the challenges facing Vietnamese CLE and will anticipate the future of Vietnamese legal education as a whole.

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<sup>926</sup> Interview # 68.

<sup>927</sup> Interview # 56.

## CHAPTER SEVEN

### THE FUTURE POSSIBILITIES OF CLINICAL LEGAL EDUCATION IN VIETNAM

#### 7.1 Introduction

This chapter addresses the future possibilities of clinical legal education (CLE) in Vietnam, with a range of issues to be considered in turn. These include the most suitable CLE model for Vietnam; measures to be taken in order to improve clinical supervision; the accreditation and inclusion of CLE in law curricula; and financing CLE programs in Vietnam. Unless these issues are addressed successfully and comprehensively, CLE will have little capacity to develop and take root in Vietnam.

The central position of this chapter, informed again by the Vietnam Empirical Research (VER)<sup>928</sup> and by the insights of the global clinical movement, is that successfully adopting and incorporating CLE into the Vietnamese legal education system remains a lengthy and challenging process.

#### 7.2 Clinical Models: What Will Work Best in the Vietnamese Setting?

Globally, CLE has been delivered in different forms, notably live client in-house clinic, externships, community legal education, and simulations.<sup>929</sup> In Vietnam, the VER revealed that most of these clinical models (except the live client in-house clinic model) have been implemented by different law schools.<sup>930</sup> This section explores the future possibilities of these different models in Vietnam.

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<sup>928</sup> See above Chapter Three for a detailed discussion of the VER and how it was conducted.

<sup>929</sup> See above section 2.4.2 of Chapter Two.

<sup>930</sup> See above Chapter Six.

### **7.2.1 *Is Community Legal Education the Most Suitable Option in Vietnam?***

Each Vietnamese law school with a clinical program has delivered community legal education in different communities.<sup>931</sup> To many Vietnamese clinicians, community legal education is the most suitable clinical model to be implemented in Vietnam. For example, a deputy director of a clinic in Ho Chi Minh City said:

I definitely think community legal education is the most suitable CLE model in the current situation of Vietnam. It is not complicated for us to prepare and implement given that our students and teachers are competent, enthusiastic, and interested in this model. Community legal education is also a practical and essential form of CLE if we look from the community's perspective.<sup>932</sup>

Another deputy director of a clinic in the Mekong Delta expressed her similar view on a potential clinical model in Vietnam:

From my own experience after many years supervising clinical students, I believe community legal education has more advantages in the Vietnamese setting, when compared with other models. It is not difficult to implement and more importantly, it costs law school less.<sup>933</sup>

A clinical teacher at Hanoi National University Faculty of Law clinic (LERES) had a similar opinion about community legal education:

I believe community legal education will still remain as the most appropriate model in the Vietnamese setting now and for many more years to come. Because first, Vietnamese communities often have a big hesitation to come to our in-house clinic for legal assistance. Therefore, it is better for us to come to them and in this regard, community legal education is a suitable model. Second, through community legal education programs, local people will know better about us and our clinical programs, and they may come to our clinic later when needed. In this regard, the community legal education programs can play as a bridge connecting law schools with communities.<sup>934</sup>

In general, the VER identified several reasons to consider community legal education as the most appropriate clinical model in the current Vietnamese setting. First, community legal education is a 'safe' and uncomplicated model for both clinical students and teachers.<sup>935</sup>

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<sup>931</sup> Ibid.

<sup>932</sup> Interview # 52.

<sup>933</sup> Interview # 55.

<sup>934</sup> Interview # 56.

<sup>935</sup> Interview # 28; interview # 52; interview # 55; interview # 56; interview # 58.

Students and clinicians in community legal education programs often have quite a lot of time to prepare for a trip to communities. Importantly, legal education is delivered through clinical students and has been practised many times under the close supervision of clinicians. Sometimes, law school leaders and doctrinal law teachers are also able to observe students practising and provide comments and suggestions for improvement.<sup>936</sup> This approach contrasts greatly with a common in-house clinic model where students and supervisors do not often know who will come to them and for what legal problems the clients seek assistance.

Secondly, community legal education is not very expensive to implement or maintain within Vietnamese law schools' budgets.<sup>937</sup> Quite often in Vietnam, students and teachers can use the resources already available at law school, such as classrooms, library, the internet, and even open spaces, to plan and prepare for community legal education activities. In addition, law school clinics often receive support and assistance from various relevant local partners in legal education programs. Law school partners in community legal education programs such as local authorities, high school authorities, prison managers, directors of orphanages children villages, or managers of business parks are often willing to provide assistance and share a part of the expenses with law schools in preparing and delivering CLE programs.<sup>938</sup>

Thirdly, community legal education seems to be a practical and realistic model in Vietnam because it does not involve direct representation of clients.<sup>939</sup> As discussed in Chapter Six, the fact that Vietnamese law students and teachers are not allowed to engage in litigation has so far posed a major hurdle to running an in-house clinic in Vietnam.<sup>940</sup> Participants in community legal education however, do not have to worry about their formal legitimacy in delivering general legal information and knowledge. As long as students are trained, well prepared and closely supervised, they are able to deliver legal education in an effective manner as planned.

Finally, with a community legal education model, students can learn and practise a range of

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<sup>936</sup> See above Chapter Six.

<sup>937</sup> Interview # 52; interview # 55.

<sup>938</sup> The VER — interviews with various law school leaders, clinicians and clinical students.

<sup>939</sup> Interview # 28; interview # 56.

<sup>940</sup> See above Chapter Six.

beneficial skills necessary for their future careers. Participating in community legal education programs, students can benefit from various practical skills such as communication, public speaking, presentation, interviewing, and legal research.<sup>941</sup> Of course, when it comes to questions of learning professional knowledge and skills, an in-house clinic would be a better option, especially in the context of preparing law students for the profession. However, at least students in community legal education programs have better opportunities than non-clinical students in exposing themselves to some of the world of law, and this can encourage them to gain practical knowledge and practise some professional skills.

### ***7.2.2 Could the Clinical Approach be Employed in Teaching Doctrinal Law Units?***

Another possibility for the future of Vietnamese CLE, as supported by the VER, might be the incorporation of clinical approaches into the teaching of doctrinal law subjects.<sup>942</sup> Specifically, law teachers could employ different interactive methods such as simulations, role-playing, or real clients and real cases to teach doctrinal law subjects. For example, within a doctrinal law subject, students could be required to conduct interviews with real clients or draft a letter on a client's behalf based on a real case. Similarly, moot courts could be effectively used in teaching some core units such as family law, civil law, criminal law or criminal procedure. In addition, simulated sessional meetings of the Vietnamese National Assembly could provide a good opportunity to use interactive methods in teaching constitutional law or law on the organisation and operation of national assembly.

In the current Vietnamese setting, teaching doctrinal law units using clinical approaches would be practical and uncomplicated. This option would not require considerable curriculum reform, a process which is relatively complicated and challenging in Vietnam.<sup>943</sup> With this approach, Vietnamese law schools would not need to add clinical units to their curricula, but would need to train their teachers in how to employ clinical methodologies to teach doctrinal law subjects. Equally importantly, doctrinal law teachers would need to have a working understanding of CLE and be willing to use it. Furthermore, incorporating clinical methods

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<sup>941</sup> The VER — interviews with various law school leaders, clinicians and clinical students.

<sup>942</sup> Interview # 53; interview # 84; interview # 26.

<sup>943</sup> See above section 5.3 of Chapter Five.

into the teaching of doctrinal law subjects would not be expensive as it would not involve real clients or the delivery of legal services. Neither would it require more investment from law schools. Law teachers and students could still use all the provided materials and facilities to foster interaction in their doctrinal law classes.

However, resistance from faculty members to this approach is possible. In particular, many established law teachers would find it hard to shift from traditional methods, which they have long been used to, to even basic forms of clinical pedagogy – a teaching methodology of which they have limited or no knowledge and which they may not be comfortable in using. Additionally, clinical approaches (either real, simulated or role playing) are time-consuming and this might make many law teachers afraid that they do not have enough time for transferring legal knowledge to students. In this regard, the leadership of law schools would remain critically significant in planning a long-term transition in teaching methodologies. In the meantime, they would need to continue to demonstrate to law teachers, students and other stakeholders the value and benefits of CLE in order to gain more of their support.

### ***7.2.3 Measures for Improving In-house Legal Consultancy Programs and Transforming Them into the Live Client In-house Clinic Model***

Globally, the live client in-house clinic has been demonstrated to be the best model for teaching professional knowledge and skills, social justice, professional responsibility and legal ethics.<sup>944</sup> In the development of CLE in Vietnam, it is important therefore to find a way to improve the operation of the in-house legal consultancy model<sup>945</sup> and gradually move to a live client in-house clinic in the longer term. Different participants in the VER believed that a live client in-house clinic model would add even greater value to a reformed Vietnamese legal education system.<sup>946</sup> To that end, the existing in-house legal consultancy programs, currently operated by some Vietnamese law schools, would need to be redesigned.<sup>947</sup>

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<sup>944</sup> See above Chapter Two.

<sup>945</sup> See above Chapter Six.

<sup>946</sup> The VER – interviews with various clinicians in Hanoi, Vinh, Hue, Ho Chi Minh City and Cantho.

<sup>947</sup> See above section 6.3.1 of Chapter Six.

The VER identified issues to be considered when redesigning the in-house legal consultancy model in Vietnam. These include accrediting the in-house legal consultancy programs as a part of law schools' education process;<sup>948</sup> recognising clinicians' position and treating them equally to other teachers at law school;<sup>949</sup> and involving qualified lawyers in clinical supervision.<sup>950</sup> In order to make all this happen, law schools would need to seek alternative sources of funding for clinical programs in general and for in-house clinical activities in particular.<sup>951</sup> Obviously, an in-house clinical program cannot be maintained and developed without a stable source of funding.

#### ***7.2.4 Redesigning Externship Programs to Achieve Better Learning Outcomes***

Externships appear to be another realistic approach for the future of CLE in Vietnam. The VER revealed that externships have been offered by many law schools in Vietnam to expose students to the practice of law. However, this form of practical activity has not been included in the clinical programs run by Vietnamese law schools. For many reasons,<sup>952</sup> externships have to date proven ineffective in Vietnam and need to be redesigned in order to achieve better quality learning outcomes.

First, in the current Vietnamese context, externships should be one of the most practical and promising clinical models. So far as many Vietnamese law schools are concerned, externships could be affordable because quite often externship host institutions will provide all the facilities, equipment and supervision. Law schools would need to contribute a part of the expenses but at least they would not have to worry about infrastructure and supervision in these programs.

Secondly, if well designed and delivered, externships can be an effective way to expose students to the world of law, to learn practical knowledge and to practise various professional skills. In the current Vietnamese setting where the in-house legal consultancy model has been

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<sup>948</sup> See below section 7.3 of this chapter.

<sup>949</sup> See below section 7.4.1 of this chapter.

<sup>950</sup> See below section 7.4.3 of this chapter.

<sup>951</sup> See below section 7.5 of this chapter.

<sup>952</sup> See above section 6.3.1 of Chapter Six.

constrained by other challenges,<sup>953</sup> externships should be an alternative on which law schools could depend to increase the practical component of the education process. In particular, externships can help avoid the problems of the regulatory barrier (preventing law teachers from engaging in litigation), clients' lack of trust, law teachers' time commitment, and could also help the problem of students' perceived low capacity,<sup>954</sup> all discussed in Chapter Six.

Thirdly, externships can also assist students in planning and preparing for their future careers. For many Vietnamese students, the future of employment may not be so clear given that law schools' education is too doctrinally and academically oriented.<sup>955</sup> Externships give students opportunities to expose themselves to different legally-relevant professions and their requirements.<sup>956</sup> And externship students are able to learn and practise various skills within a professional working environment.

There are, however, some considerations in redesigning the externships model in Vietnam. To begin with, law schools and relevant host institutions need to work closely with each other to design appropriate working plans for externships students. These working plans need to be detailed and include issues such as the activities students are involved in, supervision, total hours required and expected learning outcomes. Importantly, students and supervisors – the two main actors involved – have to be clear about what they are supposed to do and what law schools' expectations are. In addition, each working plan should be unique, given that working tasks, requirements and activities are different among the host institutions. For example, students doing externships at courts should have a different plan of activities from those at procuracies, or from those placed at law firms. In this regard, the professional knowledge and skills that students learn during their externships are likely to be different as well.

Additionally, it is critically important for students to be assigned real work during their externships. Quite often, observation is useful but not enough for students' understanding of real-world practice. As discussed earlier, host institutions are hesitant to allocate work to externship students and this has led to a situation where the students merely observe others

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<sup>953</sup> Ibid.

<sup>954</sup> Ibid.

<sup>955</sup> See above Chapter Four.

<sup>956</sup> Interview # 54; interview # 84.



working.<sup>957</sup> Consequently, student learning can be very limited. However, to be fair to the host institutions, in many cases a primary reason for their not allocating work to students is students' incompetence. As a judge in Hanoi said about this problem:

Working in a case requires of students a lot of things, including confidentiality, competence, and enthusiasm. In many cases, however, students coming to our court for externship were not trained properly and many of them did not know where and how to start the job. It is quite risky in this case for us to allocate work to them.<sup>958</sup>

A practising lawyer in Hue shared this view, saying:

Many students doing externships at my firm seem to be a blank paper as they do not know anything about practising law. As their supervisors, we almost have to start from the beginning by teaching them legal knowledge and basic professional skills.<sup>959</sup>

Further, there should be close collaboration between law schools and externship host institutions in supervising students. Obviously, the primary supervision task rests with host institution officials, but law schools still need to consult and keep in frequent communication with these officials in order to update students' progress. This will also help law schools and the host institutions address any problems occurring during an externship, quickly and effectively.

Finally, students' reflection on what they are doing, thinking and observing needs to be included in the externship process. To a large extent, reflection is an important component that makes CLE stand out from other forms of education. From the perspective of both the law schools and the host institutions, students' reflections are a source of reference for the improvement of the clinical education process as a whole.

In summary, various participants in the VER considered that the adoption of clinical pedagogy for teaching law in Vietnam will be a long and slow process. Different solutions can be appropriate at certain points on that journey. Accordingly, the simpler and easier models should be considered and implemented in the short term to assist CLE to get underway. In the

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<sup>957</sup> See above section 6.3.1 of Chapter Six.

<sup>958</sup> Interview # 59.

<sup>959</sup> Interview # 99.

longer run, when conditions have hopefully improved and CLE is more supported, Vietnam should consider more demanding approaches.<sup>960</sup>

### **7.3 The Position of CLE in Vietnamese Law School Curricula: Voluntary, Elective or Mandatory?**

The place of CLE in law schools' curricula should also be investigated when discussing future possibilities for CLE in Vietnam. It must be asked whether it is desirable to incorporate CLE into law curricula as a formal elective within Vietnamese legal education. While credited clinical units will help students earn academic credit for the time and effort they spend on work in clinical programs, maintaining CLE as voluntary activities may also be important to create more flexible learning opportunities for students.

Globally, CLE has been offered as either a mandatory or an elective unit. In the United States, for example, many law schools require their students to complete at least one clinical unit in order to graduate.<sup>961</sup> The United States is one of only a few countries<sup>962</sup> where live client in-house clinical courses are offered in almost all law schools.<sup>963</sup> Meanwhile, most clinical programs in Australia are offered as elective units. Many Australian students choose to take these units because they want to learn and practise professional skills and enjoy an innovative way of learning law, rather than purely by way of lecture-based classes.<sup>964</sup>

In Vietnam, the debate is even more basic. The VER found wide differences of opinion about whether CLE should even be offered as a credited unit (elective or compulsory) in law schools' curricula. For example, a clinician in Cantho said:

If conditions permitted, law schools should design CLE as a course in law curriculum, but we should consider whether to have it either an elective or required course. In my view, either way should be good

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<sup>960</sup> The VER — interviews with various law school leaders, clinicians and students.

<sup>961</sup> Bergman, above n 10, 109.

<sup>962</sup> McQuoid-Mason, Ojukwu and Wachida, above n 160, 25 (indicating that live-client law clinics also operate in nearly all law schools in South Africa a country where).

<sup>963</sup> Joy, above n 256, 320.

<sup>964</sup> See, eg, Adrian Evans and Ross Hyams, 'Independent Evaluation Of Clinical Legal Education Programs: Appropriate Objectives And Processes In An Australian Setting' (2008) 17 *Griffith Law Review* 52, 53; Simon Rice, 'Prospects for Clinical Legal Education in Australia' (1991) 9(2) *Journal of Professional Legal Education* 155, 158–9; see also Giddings, above n 11, 9–14.

as long as students are able to earn credits when they participate in clinical activities.<sup>965</sup>

Another clinician in Hue shared this view, saying that:

In my view, if law schools have good resources and infrastructure, they can think about designing CLE as a mandatory course. Then all students are required to take this course in order to learn practical knowledge and skills. However, if law schools are not well prepared and do not have enough resources (human, finance, or studying materials ...), CLE should only be offered as an elective course.<sup>966</sup>

This view was also shared by another clinician in Hanoi:

I believe CLE should be designed as a course in law curriculum given its values to legal education and law students. But when it comes to the question of should it be an elective course or mandatory course, I think it will depend on each law school's interest, capacity and other conditions.<sup>967</sup>

However, a clinician in Vinh had a slightly different position on this issue, maintaining that:

I think CLE should be included in law curriculum as a compulsory course because I believe knowledge and skills delivered by this course are essential and beneficial to all students, whether or not they are following a lawyering career.<sup>968</sup>

According to the VER, the consensus is that formal incorporation of clinical programs into law curricula is important for the development of CLE and to help Vietnamese law schools address many challenges.<sup>969</sup> First, it is believed that the financial challenge of running clinical programs would be partially addressed if CLE is offered as a unit in the law curriculum.<sup>970</sup> In this case, students would have to pay a tuition fee for taking clinical units and law schools would be able to use this as a source of finance for CLE. In Vietnam, some international donors have been relatively successful in inspiring law teachers and students toward clinical pedagogy. Consequently, there is an increasing number of Vietnamese students expecting to participate in clinical programs.<sup>971</sup> Many law teachers in Vietnam have also expressed their interest and enthusiasm in learning and using clinical methodologies to teach law.<sup>972</sup> Making CLE a formal

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<sup>965</sup> Interview # 55.

<sup>966</sup> Interview # 53.

<sup>967</sup> Interview # 56.

<sup>968</sup> Interview # 57.

<sup>969</sup> Interview # 29.

<sup>970</sup> Interview # 84; interview # 29.

<sup>971</sup> See above Chapter Six.

<sup>972</sup> The VER — interviews with various participants.

part of the curriculum, therefore, could well be an appropriate and sustainable option that Vietnamese law schools should consider.

Secondly, if CLE becomes a formal part of law curricula, whether as a compulsory or an elective unit, students will likely be more inspired and motivated by grading and assessment. Some Vietnamese law schools have so far offered CLE as both credited units and voluntary activities.<sup>973</sup> When participating in voluntary clinical programs, students seem to want to have interesting experiences, learn practical skills and stay away from lecture-based units at law school.<sup>974</sup> However, taking clinical programs without any grading and assessment pressure seems a poor way to learn the law. If not coming under some pressure from an appropriate assessment structure, students may not be motivated to perform well in a clinical setting.<sup>975</sup> In the VER, many interviewees also believed that formal for-credit clinical courses will help students study more effectively because they have to work hard and compete with each other for a good grade.<sup>976</sup>

Thirdly, Vietnamese clinical teachers can also benefit when CLE becomes a formal part of law schools' curricula. A formal for-credit clinical course may mean that the clinical teacher's position at the law school could be strengthened both financially and politically. As has occurred in many countries, clinicians are sometimes considered as 'secondary' faculty members and receive unequal treatment from law schools and other faculty members.<sup>977</sup> In many cases, clinicians have to sign short-term contracts in order to teach students and these contracts do not give them an opportunity to participate in law schools' governance.<sup>978</sup> This

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<sup>973</sup> See above Chapter Six.

<sup>974</sup> Interview # 35; interview # 36; interview # 37, interview # 42; interview #43; interview # 44.

<sup>975</sup> See, eg, John Goldring, *Report on A Study Tour of Canada to Examine Clinical and Practical Elements of Legal Education in Canadian Law Schools* (Macquarie University, 1986) 14.

<sup>976</sup> The VER – interviews with various law school leaders, clinicians and students.

<sup>977</sup> See, eg, Nina W Tarr, 'In Support of a Unitary Tenure System for Law Faculty: An Essay' (2003) 30 *William Mitchell Law Review* 57, cited by Todd A Berger, 'Three Generations and Two Tiers: How Participation in Law School Clinics and the Demand for "Practice-Ready" Graduates Will Impact the Faculty Status of Clinical Law Professors' (2014) 43 *Washington University Journal of Law and Policy* 129, 129; Peter A Joy and Robert R Kuehn, 'The Evolution of ABA Standards for Clinical Faculty' (2008) 75 *Tennessee Law Review* 183, 188–90; see also Giddings, above n 233, 318 (identifying that Australian law schools tend not to recognise legal practice experience as important for academic work. Accordingly, clinical teachers do not often have the same status as other academics at law schools); Maisel, above n 14, 402–7 (indicating a similar situation in South Africa, where clinicians are hired to work in CLE programs on different tracks from regular law faculty members and, therefore, they are treated unequally).

<sup>978</sup> Adamson et al, above n 742, 125.

unequal treatment may be a reason why law teachers hesitate in devoting their time and efforts to CLE. In order to better teach students and serve the community, clinical faculty members need longevity and job stability with an established position at law school.<sup>979</sup> If this unequal treatment continues, then it is likely that contracted law teachers will feel less committed to clinical pedagogy and will concentrate instead on a substantive law area for teaching and research.

As will be discussed in section 7.4.1 below, recognition of clinicians' position at law school might constitute an important condition for the improvement of clinical supervision and CLE in Vietnam as a whole. Indeed, this step would have to be taken alongside the incorporation of CLE into law curricula. In this regard, the design of CLE as a formal (for-credit) part of law curricula would create opportunities for clinical teachers to develop their scholarship and their teaching careers. In addition, when CLE is included in law schools' education process, clinicians' teaching hours would be counted and then there is a chance that clinicians' work would be properly paid. All of these developments, when combined, would support the position of clinical teachers at law school.

Finally, the design of CLE as a formal part of legal education is also a crucial factor in fostering the development and sustainability of Vietnamese CLE. The VER interviews showed that if law schools only offer CLE as a voluntary activity, both clinical teachers and students might not be serious enough in the roles they play and this would harm the longevity of clinical programs.<sup>980</sup> With reference to sustainability, Giddings has argued that 'clinical programs often face a tenuous existence unless they are recognized as an integral part of the legal education project'.<sup>981</sup> This has been clearly shown in the Vietnamese context. After the end of the Clinical Project in 2014, with no external clinical funding available, all core partner law schools had to considerably shrink their voluntary CLE programs.<sup>982</sup> Of great significance is that seven law schools (among eight core partners) have turned to accredited clinical units for maintaining CLE programs.<sup>983</sup>

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<sup>979</sup> Ibid 123.

<sup>980</sup> Interview # 29; interview # 40; interview # 41; interview # 57.

<sup>981</sup> Giddings, above n 233, 306.

<sup>982</sup> See above section 6.3 of Chapter Six.

<sup>983</sup> Ibid.

In summary, CLE is likely to have more opportunities to develop and sustain itself if it becomes a formal part of the legal education process. It is therefore suggested in this chapter that Vietnamese law schools should formally include CLE in their curricula in order to teach their students about practical knowledge and professional skills.

## **7.4 Supervision in Clinical Programs: Possibilities for Improvement**

Supervision plays a key role in the success of any clinical program.<sup>984</sup> In Vietnam, it is important, therefore, to explore possibilities to overcome any challenges facing clinical supervision<sup>985</sup> for the better development of CLE. Possibilities discussed in this section, informed by the VER findings, should be seen over the long term and in the context of law and judicial reform in Vietnam.

### ***7.4.1 Clinicians Need to be Recognised as Tenured Teachers in Law Schools***

As demonstrated in other countries, CLE will not be sustained and take root without competent, enthusiastic and committed clinicians.<sup>986</sup> Clinicians are key to ensuring the quality of service delivered to the community and the education delivered to students. In the VER, the status of clinicians was repeatedly listed by different participants as one of the most important supporting conditions for the development of Vietnamese CLE.<sup>987</sup>

In Vietnam, recognition of clinicians' positions might be the next step that law schools need to take for the improvement of clinical supervision, and for the development of CLE as a whole.<sup>988</sup> This can be done by creating tenure for those teaching CLE. Similarly to clinical teachers in other countries,<sup>989</sup> Vietnamese clinicians need to be sure that what they are doing is

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<sup>984</sup> Evans et al, above n 4, 129–34.

<sup>985</sup> See above section 6.3.3 of Chapter Six.

<sup>986</sup> Evans et al, above n 4, 123–34.

<sup>987</sup> Interview # 68; interview # 66; interview # 53; interview # 28; interview # 55; interview # 56; interview # 57; interview # 58.

<sup>988</sup> Interview # 4; interview # 10; interview # 29; interview # 61. Different participants at the follow-up discussions held in Cantho and Hue also agreed that recognition of clinician's positions at law schools is necessary for the development and sustainability of CLE in Vietnam.

<sup>989</sup> In countries such as the United States, Australia, South Africa, Canada, Chile or England, most clinicians enjoy

recognised by the law school and other faculty members. They need to be treated equally with other law teachers when it comes to the issues of promotion, work load or salary. It was considered likely by VER interviewees that a tenured position would help Vietnamese clinicians to be more responsible and devote more of their time, efforts and enthusiasm in supervising students as well as in developing CLE.<sup>990</sup> In addition, recognising clinicians' positions should help encourage and strengthen clinical scholarship at law schools, which is another important condition for nurturing CLE.<sup>991</sup> As with other law teachers, clinicians need a supportive environment for their professional and academic development.

Of course, recognition of clinicians' position has to be achieved alongside the incorporation of CLE into law curricula as a credited unit and the granting to law teachers of the right to practise law. These issues are discussed in sections 7.3 and 7.4.4, respectively, of this chapter.

#### ***7.4.2 Doctrinal Law Teachers' Involvement in Clinical Supervision***

The VER revealed that doctrinal law teachers (that is, teachers teaching a core law unit) play an important role in clinical supervision in Vietnam.<sup>992</sup> Particularly in the in-house legal consultancy model, clinical teachers and students often have to seek assistance from doctrinal law teachers in order to deliver a quality legal service to clients. In the current Vietnamese setting, this situation is likely to continue given that many clinicians lack practical legal knowledge and professional skills and that the involvement of practising lawyers in CLE remains limited. It is believed that until Vietnamese clinical teachers are admitted to practise law, doctrinal law teachers will continue to be an important part in the success of many clinical programs in Vietnam.<sup>993</sup>

Accordingly, it is suggested that Vietnamese law schools make more formal arrangements for doctrinal law teachers' participation in CLE. Importantly, the time they spend supervising

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equal treatment to doctrinal law teachers from law schools. They have tenured positions, participate in school governance, and have all the equal rights and duties that other faculty members at law schools have.

<sup>990</sup> The VER — interviews with various participants.

<sup>991</sup> Ibid.

<sup>992</sup> See above section 6.3 of Chapter Six.

<sup>993</sup> The VER — interviews with various clinicians in Cantho, Ho Chi Minh City, Hue, Vinh and Hanoi.

clinical students needs to be counted as teaching hours and they should be paid for extra work.<sup>994</sup> In addition, collaboration between doctrinal law teachers and clinical teachers needs to be encouraged and made more common, in order to promote better clinical supervision. For example, doctrinal law teachers with good practical knowledge and professional skills can work with and help young clinicians in co-supervising students in in-house legal consultancy activities.<sup>995</sup> Similarly, young clinicians limited in practical knowledge and professional skills could focus initially only on supervising students conducting community legal education programs, leaving more in-house clinic supervision to doctrinal law teachers.<sup>996</sup> In the current situation in Vietnam, the VER indicated that these approaches are likely to help improve clinical supervision and strengthen CLE.

#### ***7.4.3 The Involvement of Practising Lawyers in Clinical Supervision***

The VER found that increasing the involvement of practising lawyers in CLE programs would be another way to improve clinical supervision in Vietnam. In this proposal, external lawyers could independently supervise or co-supervise (with law teachers) clinical students. At present, this option seems to be realistic for Vietnamese CLE. Since law schools, the JA, the Vietnam Bar Federation and local bar associations<sup>997</sup> are major stakeholders in the training of qualified lawyers,<sup>998</sup> collaboration among them ought to be productive in the development of CLE in Vietnam. The involvement of practising lawyers in clinical supervision would be likely to increase students' learning opportunities as they are able to learn not only from real cases and clients but also about client-handling from their lawyer-supervisors. Lawyers' practical legal knowledge and professional skills are very helpful for clinical supervision and for CLE as a whole.

In the current Vietnamese setting, lawyers' involvement in clinical supervision becomes even more significant for the development of CLE. Given that Vietnamese law teachers are not admitted to practise law, they might not always have enough practical knowledge and

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<sup>994</sup> Interview # 52; interview # 56; interview # 57.

<sup>995</sup> Interview # 39; interview # 42; interview # 58.

<sup>996</sup> Ibid.

<sup>997</sup> See above section 4.4 of Chapter Four for a discussion of the Vietnamese legal profession.

<sup>998</sup> See above section 4.4.3 of Chapter Four.



professional skills in order to provide students with quality supervision. This was revealed by the VER in the practice of CLE, particularly in the operation of the in-house legal consultancy model in Vietnam.<sup>999</sup> Indeed, lawyers' involvement in CLE should result in various benefits. On the one hand, it would help Vietnamese law schools address the regulatory barriers which prevent law teachers from practising law. Overcoming this challenge also means that CLE, particularly the in-house clinic model, would have more chance to develop and be sustained in Vietnam.<sup>1000</sup> On the other hand, lawyers' involvement would create opportunities for the local bar associations to participate in legal education reform, thereby strengthening the training of qualified lawyers in Vietnam. As the VER made clear, this is something law firms, local bar associations and the Vietnam Bar Federation are interested in.<sup>1001</sup>

In an ideal setting, law teachers would work closely with practising lawyers to supervise students in clinical activities. In addition, law teachers could also learn practical knowledge and professional skills from working with these lawyers; and lawyers would be able to learn teaching skills from law teachers too. In this mutual way, they can supplement and support each other towards better clinical supervision. It is worthwhile in Vietnam, therefore, to consider the option of enlisting local lawyers in the supervision of clinical students. Equally importantly, the training of external clinical supervisors is significant for Vietnamese law schools to sustain and develop their clinical programs, given that law teachers are still limited in practicing law and being engaged in litigation. However, it is also important for Vietnamese law schools to work closely with local bar associations and individual lawyers to resolve in detail a number of related issues, including how practising lawyers co-supervise students, how law schools are going to pay external supervisors or what position at law school the external supervisors should have.

#### ***7.4.4 Law Teachers Should be Permitted to Practise Law and Engage in Litigation***

The use of external supervisors for clinical programs, especially for in-house clinic activities (discussed above), is necessary in the current Vietnamese system. In the longer term, however,

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<sup>999</sup> See above section 6.3 of Chapter Six.

<sup>1000</sup> The VER — interviews with various clinicians in Hanoi, Hue, Vinh, Ho Chi Minh City and Cantho.

<sup>1001</sup> The VER — interviews with various practising lawyers in Hanoi, Hue, Vinh, Can tho and Ho Chi Minh City.

clinicians from within law schools ought to be a key sustainable source for clinical supervision. In order to make this happen, Vietnamese law teachers would need to have good practical legal knowledge and professional skills so that they could deliver effective supervision in CLE programs. Accordingly, granting law teachers the right to practise law would be a key reform.

Indeed, many Vietnamese law teachers were able to practise law before 2004. Prior to that date, they were also members of local bar associations and teaching and practising law were promoted and provided a concrete foundation for a close relationship between the legal profession and legal education. However, since the *Ordinance of Public Officials* came into force in 2004 (followed by the *Law on Public Servants* which came into force in 2010), law teachers are considered public officials and are no longer able to engage in litigation as practising lawyers.<sup>1002</sup> Many VER interviewees saw this as a backward step for the legal profession and the judiciary system in Vietnam.<sup>1003</sup> From the perspective of legal education reform and CLE development, granting law teachers the right to practise law is a necessary step that Vietnam needs to take.

Research conducted by Dong A Law Firm in 2012 indicated the need for law teachers to be admitted to practise law because it is beneficial for the whole legal education system. In this research, participants interviewed were of the opinion that law teachers should be permitted to practise law. For example, the general secretary and also the vice president of the Vietnam Bar Federation (lawyer Do Ngoc Thinh) stated, on behalf of the Vietnam Bar Federation, that:

The Vietnam Bar Federation agrees with the view of the Ministry of Justice that the government should allow law teachers to practise law. We are currently taking advantage of all the resources of our society to develop our team of Vietnamese lawyers to meet the requirements of our country. Law teachers' knowledge and skills will contribute to high quality of legal services. Law teachers are those who have both legal knowledge and skills, as well as litigation knowledge and foreign language skills therefore, they can contribute significantly to the

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<sup>1002</sup> See article 4 of the *2012 Amendment to the 2006 Law on Lawyer* (Vietnam), providing different circumstances where a person is not allowed to work as a lawyer, including public servants of Vietnam <[http://www.moj.gov.vn/vbpq/lists/vn%20bn%20php%20lut/view\\_detail.aspx?itemid=28217](http://www.moj.gov.vn/vbpq/lists/vn%20bn%20php%20lut/view_detail.aspx?itemid=28217)> and article 4 of the *2008 Law on Public Servants*, concerning the definition of public officials of Vietnam <[http://vanban.chinhphu.vn/portal/page/portal/chinhphu/hethongvanban?class\\_id=1&mode=detail&document\\_id=81139](http://vanban.chinhphu.vn/portal/page/portal/chinhphu/hethongvanban?class_id=1&mode=detail&document_id=81139)>.

<sup>1003</sup> The VER — interviews with various Vietnamese law teachers, lawyers and judicial officials.

development of quantity and quality of practising lawyers in Vietnam.<sup>1004</sup>

Similarly, Nguyen Minh Hang (head of the Civil Litigation Department of the Judicial Academy) has pointed out:

The training and teaching of law in Vietnam is currently considered by other countries to be too theoretical and academically oriented. The reason is that the teaching staff do not have sufficient practical knowledge and skills. We have to fix the problem from the root, which is to allow law teachers to interact with the practice through practising as a lawyer. Allowing law teachers to practise law not only improves the quality and quantity of the lawyers, but also helps blend academic expertise into legal education and training.<sup>1005</sup>

A judicial official (the senior procurator Vo Van Them of Appeal Institute III Supreme People's Procuracy) also expressed his view on this issue:

I support law teachers to practise law because it will be beneficial to both the education system and the legal profession in Vietnam. However, lawmakers should pay attention to creating a legal framework to avoid conflicts with the provisions of the law on public servants.<sup>1006</sup>

The VER also found overwhelming interest among participants on the issue of law teachers practising law. Some interviewees were opposed, but not many. Opponents to law teachers practising law believed that if law teachers engage in teaching and practising at the same time then their efforts could end with failure for both.<sup>1007</sup> To them, law teachers need to devote a great deal of their time and efforts in teaching and research, leaving limited time for clients. Another reason for not allowing law teachers to practise law, according to some people, is because the demand for lawyers in Vietnam is low. They believe that the current number of lawyers in Vietnam is more than enough to serve clients and therefore there is no need for more.<sup>1008</sup>

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<sup>1004</sup> Dong A Law Firm, *Law teachers to practise law: Is it possible?* <[http://luatsudonga.org.vn/index.php?option=com\\_content&view=article&id=188%3AAlam-giang-vien-kiem-luat-su-duoc-khong&catid=1%3AAnha-dat&Itemid=46&lang=vi](http://luatsudonga.org.vn/index.php?option=com_content&view=article&id=188%3AAlam-giang-vien-kiem-luat-su-duoc-khong&catid=1%3AAnha-dat&Itemid=46&lang=vi)>.

<sup>1005</sup> Ibid.

<sup>1006</sup> Ibid.

<sup>1007</sup> Interview # 12; interview # 23; interview # 83; interview # 86; interview # 92; interview # 98; interview # 100.

<sup>1008</sup> Ibid.

However, most participants in the VER stood on the other side — supporting law teachers’ legal capacity to practise law. They believed that permitting law teachers to engage in litigation would benefit the legal education system. Accordingly, these participants found it difficult to see why the ability to practise should not be returned to Vietnamese law teachers.

For example, a teacher at a law school in Hue observed:

The fact law teachers are not allowed to practise law has constrained legal education in Vietnam. This has made most law teachers purely academic and limited in practical knowledge and professional skills. It is quite ridiculous to me that law teachers are required to prepare students for the profession but they themselves are not good at professional knowledge and skills.<sup>1009</sup>

Similarly, a vice dean of a law school in Hanoi suggested:

Vietnam should permit law teachers to practise law and be involved in litigation because this will benefit legal education and students. The limitation, if needed, should be vested in the hands of law schools because law schools should be in a better position to oversee and control law teachers’ time and commitment. Outside law schools’ time and obligations, law teachers can do whatever they want if the law allows.<sup>1010</sup>

And here is what a practising lawyer in Ho Chi Minh City had to say:

I totally support law teachers to practise law because I believe lawyering is a free profession. Why can’t law teachers practise law when lawyers are allowed to teach at law schools? And given that law teachers’ practice will greatly benefit the legal profession and legal education, Vietnam should change the law to make this happen.<sup>1011</sup>

In Cantho, a judge also had a similar view on this issue:

It is a big disadvantage for law teachers when they are not allowed to practise law. Maybe the Vietnamese government thinks that lawyering is an important career and requires a person to devote 100 per cent of his/her time and effort. In my view, we should forbid only governmental officials to practise law. Since law teachers are not governmental officials, they should be permitted to practise law, as long as the teaching and practising do not conflict with each other.<sup>1012</sup>

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<sup>1009</sup> Interview # 70.

<sup>1010</sup> Interview # 69.

<sup>1011</sup> Interview # 75.

<sup>1012</sup> Interview # 61.

In general, the consensus is that practical legal knowledge and professional skills that law teachers ‘earn’ from practising law would make their teaching more ‘real’ and practical. Such knowledge and skill could potentially help bridge the gaps between legal education and the profession, something already identified as a longstanding limitation in Vietnam.<sup>1013</sup> In addition, law teachers’ practising law could also help strengthen the legal profession as it creates a competitive environment. A competitive legal professional environment would force the local bar associations and individual lawyers to broaden their capacity to serve clients better. From the perspective of CLE, permitting law teachers to engage in litigation would also help foster the adoption of a clinical pedagogy among Vietnamese law schools.<sup>1014</sup>

Indeed, many participants in the VER believed that the practice restriction will be lifted and Vietnamese law teachers will be back in the legal profession in the near future.<sup>1015</sup> To them, there is no reason to continue the prohibition since the Vietnamese legal education system needs teachers who are not only sound in legal doctrine but also competent in professional practice skills.<sup>1016</sup> It is therefore suggested that allowing law teachers to practise law will be a significant contribution to better clinical supervision and will assist the strengthening of CLE in Vietnam as a whole.

## **7.5 Financing CLE: the Roles of International Organisations, Law Schools, the Vietnam Bar Federation and Local Bar Associations, the Central Government and Relevant National Agencies**

The availability of adequate finance should be considered as another important matter for the future development of CLE in Vietnam. Since CLE is relatively expensive, any new ideas about teaching methodologies, subject content or course duration will tend to be unrealistic without a stable and concrete financial source.

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<sup>1013</sup> See above section 4.5 of Chapter Four.

<sup>1014</sup> Interview # 40; interview # 43; interview # 55; interview # 57.

<sup>1015</sup> The VER — interviews with various Vietnamese law school leaders, teachers, practising lawyers, clinicians and judicial officials.

<sup>1016</sup> Ibid.

Running a CLE program, especially a live client in-house clinic, is costly<sup>1017</sup> because it involves a high ratio of teachers to students.<sup>1018</sup> Consequently, these high costs have caused even sympathetic critics to be cautious about expanding CLE.<sup>1019</sup> Moliterno, for example, argues that CLE will not survive in the long run due to the expense associated with the running of live client in-house clinics.<sup>1020</sup> Similarly, Tushnet considers eliminating live client in-house clinics as a way to reduce the cost of legal education.<sup>1021</sup> Some others believe that, due to its labour-intensive and costly nature, CLE cannot be effectively implemented outside the developed countries.<sup>1022</sup>

The VER recorded some views that CLE would not be successfully adopted and incorporated into the Vietnamese legal education system due to its high costs. For example, a dean of a law school in Ho Chi Minh City said:

CLE is very costly and because of this, I believe it is very hard to implement in Vietnam, where 95 per cent of law schools' budget is from students' tuition fees and this has proved very limited for law schools to fund CLE activities. The American or Chinese can do it because they are rich.<sup>1023</sup>

A law teacher in Hanoi also expressed his views about this issue:

I do not think Vietnamese law schools can provide a long-term and stable source of funding for maintaining and developing CLE programs after international financial assistance ends. Running CLE programs will cost law schools much more than other doctrinal law classes therefore, if law schools are unable to find some alternative sources of funding, CLE will finish.<sup>1024</sup>

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<sup>1017</sup> Nolan, above n 311, 200; Stuesser, above n 311, 120–3; Giddings et al, above n 147; see also Amsterdam, above n 51, 617.

<sup>1018</sup> In the United States, the common ratio of lecturer and students in legal clinics is 1:8, while in most other countries this ratio ranges from 1:3 to 1:12. In China, the ratio is up to 1:30 according to the Committee on Chinese Clinical Legal Education Guidelines. This means that one lecturer could only supervise a maximum 12 students (or 30 students in the case of China) and if we compare this with a lecture-based class where a law teacher could accommodate hundreds of students we could imagine how costly it is for running a legal clinic. See, eg, Chemerinsky, above n 311, 595; Pepe D Steven, 'Clinical Legal Education: Is Taking Rites Seriously A Fantasy, Folly, or Failure' (1985) 18 *University of Michigan Journal of Law Reform* 307, 336; Maisel, above n 14, 390–1; see also Cecily E Baskir, 'Legal Education in China: Globalizing with Chinese Characteristics' in Sarker, above n 2.

<sup>1019</sup> Joy, above n 256, 309.

<sup>1020</sup> See Moliterno, above n 577, cited in Hugh Brayne, Nigel Duncan and Richard Grimes, *Clinical Legal Education – Active Learning In Your Law School* (Blackstone Press Limited, 1998) 268.

<sup>1021</sup> See, eg, Mark V Tushnet, 'Scenes from the Metropolitan Underground: A Critical Perspective on the Status of Clinical Education' (1984) 52 *George Washington Law Review* 272, 273, cited by Joy, above n 256, 309.

<sup>1022</sup> Wilson, above n 9, 430.

<sup>1023</sup> Interview # 83.

<sup>1024</sup> Interview # 50.

However, while CLE is certainly a relatively expensive teaching methodology, arguably it is worth the investment given the invaluable strength it brings to legal education. Evans believes that CLE, especially the live-client clinical process, is the best approach for teaching law as a whole and ought to be taken into consideration as a principal criterion when ranking global law schools.<sup>1025</sup> Adamson et al share this view, maintaining that CLE is an essential component of a sound and complete legal education.<sup>1026</sup> Additionally, Wilson argues that ‘the costs of implementing an effective and diverse clinic are not beyond the means of any law school, particularly if international funding is provided for the start-up costs associated with creating a law office within, or associated with, a law school’.<sup>1027</sup> The practice of global CLE development has revealed that the provision of financial assistance at the beginning as the ‘seed money’ for clinical programs is possible in many countries.<sup>1028</sup>

Globally, although financial support may come from different sources other than the student themselves, it remains crucial for any ongoing clinical program. In Australia, for example, government funding has been a principal financial source and a major driving force for the development and sustainability of CLE for more than 40 years.<sup>1029</sup> In the United States, funding for the operation of legal clinics is mainly through each university’s regular budget.<sup>1030</sup> In Canada, some law schools receive funding from Legal Aid to support the operation of legal clinics, but most have to establish their own clinical fund from the university budget and other sources.<sup>1031</sup>

In Vietnam, CLE has been depending primarily on external funding through international

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<sup>1025</sup> See Adrian Evans, 'An Australian Perspective' in Hugh Brayne, Nigel Duncan and Richard Grimes (eds), *Clinical Legal Education – Active Learning In Your Law School* (Blackstone Press Limited, 1998), 268.

<sup>1026</sup> Adamson et al, above n 742, 132.

<sup>1027</sup> Wilson, above n 9, 430.

<sup>1028</sup> Ibid 424–7 (identifying five major international donors which fund various clinical programs in different areas around the world. In addition to these financial supporters, there are potentially other international organisations willing to support the establishment and development of clinical programs. Obviously, these donors’ supports will be limited to providing financial assistance as ‘seed money’ for ‘starting up’ the programs. More importantly, law schools receiving funding have to seek alternative sources of finance to sustain their clinical programs).

<sup>1029</sup> Giddings, above n 233.

<sup>1030</sup> See, eg, Giddings et al, above n 147, 15–16.

<sup>1031</sup> See, eg, Douglas D Ferguson, *Report on Canadian Clinical Legal Education Conference and Founding Meeting of The Canadian Association on Clinical Legal Education* (Faculty of Law, The University of Western Ontario, 2010) <[http://www.nyls.edu/institute\\_for\\_information\\_law\\_and\\_policy/wp-content/uploads/sites/139/2013/07/Ferguson.pdf](http://www.nyls.edu/institute_for_information_law_and_policy/wp-content/uploads/sites/139/2013/07/Ferguson.pdf)>; see also Giddings, above n 147, 16.

projects with limited contribution from law schools.<sup>1032</sup> To date, there is no real foundation for sustainability. As discussed earlier, funding from international sources operates only as ‘seed money’ to establish clinical programs<sup>1033</sup> and in the near future, if universities are unable to find other sources of finance, these clinics are likely to cease to exist. In this regard, looking for alternative sources of funding will be the key for Vietnamese law schools to maintain and develop their CLE programs. The following sections will look at the future possibilities of funding for Vietnamese CLE.

### **7.5.1 *International sources of funding***

Whether we want it or not, international financial assistance will continue to play a significant role in the development of Vietnamese CLE for many years to come, given that alternative financial sources are limited. Vietnamese CLE is at an early stage of development and, as is the case in other countries, it needs time to grow, be recognised and to be accepted as a part of legal education. International organisations successfully started up clinical programs in Vietnam but they did not prepare effectively for their withdrawal.<sup>1034</sup> Specifically, CIDA, UNDP and JUSSBUSS did not have follow-up review activities in order to identify how law schools in Vietnam could continue to maintain and develop their clinical programs.<sup>1035</sup> In the Clinical Project, for example, despite the MOUs between UNDP and law schools clearly stating that core partners have to contribute to the development of CLE during and after the Clinical Project, no specific plans or activities were elaborated. The Clinical Project’s end was also relatively sudden. The speed surprised the core partners and most law schools were not well prepared for this.<sup>1036</sup>

Accordingly, it was considered important by the participants in the VER for Vietnamese law schools to continue to look for clinical funding from international sources.<sup>1037</sup> Vietnam will

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<sup>1032</sup> See above section 6.3.4, of Chapter Six.

<sup>1033</sup> See above Chapter Six.

<sup>1034</sup> The VER – interviews with various participants in Hanoi, Vinh, Hue, Ho Chi Minh City and Cantho.

<sup>1035</sup> See above section 6.2.2 of Chapter Six.

<sup>1036</sup> During the 2014 UNDP Clinical Conference, representatives from different Vietnamese law schools believed that the Clinical Project would continue for a few more years in order to strengthen CLE and prepare for a smooth transition to law schools in Vietnam. But, in fact, the Clinical Project officially ended after this conference.

<sup>1037</sup> Interview # 53; interview # 57; interview # 84.



need to use any new international funding wisely given that such support will be limited and is unlikely to last long. Specifically, the VER found that new clinical projects should focus on how to develop human clinical resources in Vietnam.<sup>1038</sup> Human resources are key because they contain the elements of enthusiasm and experience and these things don't come to an end after international funding ceases. Additionally, any new financial assistance focused on human resources will need to focus on planning for a smooth transition after that external funding ends. It seems likely that, sooner or later, Vietnamese CLE will have to be developed and sustained by Vietnamese resources alone.

### ***7.5.2 Funding from the Vietnamese Legal Aid Budget***

The VER found that the national legal aid budget is another possible source of funding for Vietnamese CLE. This would require law schools to collaborate closely with different agencies in charge of legal aid programs in Vietnam.

Under the current Vietnamese system, the Ministry of Justice (MOJ) is the most important agency that administers the national legal aid budget. Through the Bureau of Legal Aid (under the MOJ), this budget is allocated to 63 provinces and cities throughout the nation for legal aid programs.<sup>1039</sup> At the local level, the Departments of Justice are in charge of planning and delivering annual legal aid activities through institutions known as *Centre[s] for Legal Aid*. There are currently 63 of these Centres established among 63 provinces and cities in Vietnam.<sup>1040</sup> The *2006 Law on Legal Aid* (Vietnam)<sup>1041</sup> provides that Centres for Legal Aid (hereinafter Centres) are primary institutions that deliver free legal assistance to individuals and organisations in need. In addition, other organisations such as the Vietnam Trade Union, Vietnam Women's Union, or Vietnam Farmers' Union also have some budget for legal aid activities which target their members.

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<sup>1038</sup> The VER — interviews with various Vietnamese clinicians and law school leaders and managers.

<sup>1039</sup> Vietnam Legal Aid, *The History of Legal Aid in Vietnam* <<http://trogiupphaply.gov.vn/lich-su-phat-trien>>.

<sup>1040</sup> Ibid.

<sup>1041</sup> The *Law on Legal Aid* (Vietnam), approved by the National Congress in 2006, has created a legal foundation for legal aid activities in Vietnam. For more details about this law and its coverage, see <[http://moj.gov.vn/vbpq/lists/vn%20bn%20php%20lut/view\\_detail.aspx?itemid=15078](http://moj.gov.vn/vbpq/lists/vn%20bn%20php%20lut/view_detail.aspx?itemid=15078)>.

In this national context, close collaboration by law schools with Departments of Justice might present those law schools with the opportunity to explore alternative sources of clinical funding.<sup>1042</sup> Based on the annual legal aid plans of Departments of Justice, law schools and Centres could work together to design and implement legal aid programs that allow students and clinicians' participation. Working tasks in legal aid programs could be allocated based on the conditions and strengths of each partner. In addition, Centres and law schools could make agreements on detailed legal aid plans, including content, target audiences and clients, objectives, budget, and timelines, with law schools implementing the programs using their human resources.<sup>1043</sup> Further, integration of clinical activities into legal aid programs conducted by other organisations such as the Vietnam Trade Union, Vietnam Women's Union, or the Vietnam Farmers Union could be another option for law schools to consider.

These partnerships are potentially possible given that all the parties have similar interests. On the one hand, a partnership with Departments of Justice and other organisations in delivering legal aid would help law schools to partially address the challenges of financing CLE. On the other hand, they are also likely to expose clinical students to a broad range of legal issues and practice, as legal aid programs conducted by these organisations do not limit themselves to any specific clients and areas of law. These legal aid programs could also benefit from students and clinicians' knowledge and skills for better delivery of legal service to their target audiences.

There are, however, some limitations in accessing legal aid for clinics. The legal aid budget is a great potential source for Vietnamese CLE but the role of central government and other relevant national agencies, particularly the Ministry of Education and Training (MOET) and the MOJ, remain critically significant. Under the Vietnamese system, there would be little opportunity for CLE to succeed without strong political willingness from central government and these ministries, based on strong personal relationships with law school deans. The need for leadership by deans is therefore very important.

In the development of CLE, as demonstrated in some other countries, government policies on

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<sup>1042</sup> Interview # 84; interview # 57; interview # 66; interview # 68.

<sup>1043</sup> Ibid.

higher education and legal aid have also been a major influence.<sup>1044</sup> In Vietnam, these policies are often made or advised by the MOJ and MOET. At present, the MOJ is the most important national agency assisting the central Vietnamese government in planning and implementing law reform strategies. Accordingly, policies made or advised by the MOJ have a significant influence on Vietnamese legal education. For example, the establishment of the JA has changed greatly the training of lawyers and other positions in the judiciary system.<sup>1045</sup> This has also led many people, including some law teachers and students, to believe that the mission of law schools is to provide doctrinal and academic education only. Since the MOJ is ‘close’ to the central government and the Vietnamese Communist Party – the highest level of decision-making in the country – the VER considered it prudent to take into consideration the MOJ’s role, and the attitude of its officials, in adopting and developing CLE in Vietnam.<sup>1046</sup>

Similarly, for most Vietnamese law schools, the MOET controls various important issues such as curricula and financial resources for research and infrastructure.<sup>1047</sup> Although the MOET is not directly involved in the design of teaching methodologies at law schools, its role in this area remains important in policy making for higher education. For example, commencing in 2010, the MOET required all Vietnamese universities to accept an accreditation system in relation to training.<sup>1048</sup> Under this new system, students are assessed not only on their final examination results but also on other academic activities such as assignments, group work, class participation and presentations. Consequently, Vietnamese law teachers have had to change and modify their teaching methodologies in order to adapt to include types of CLE within the current curriculum.

It is important, therefore, for Vietnamese law schools to work closely with the MOJ and MOET. Many Vietnamese law school leaders and teachers believe that if these agencies understand the values of clinical pedagogy and are supportive, then CLE will have more chance to develop

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<sup>1044</sup> Giddings, above n 233 (identifying that in Australia, throughout more than 40 years of historical development of clinical legal education, government policies on higher education and legal aid have been an important factor in developing and sustaining clinical programs).

<sup>1045</sup> See above Chapter Four.

<sup>1046</sup> The VER – interviews with various participants.

<sup>1047</sup> See above section 4.3.1 of Chapter Four.

<sup>1048</sup> See above section 4.6.3 of Chapter Four.

and be sustainable in Vietnam.<sup>1049</sup> Accordingly, the involvement of the MOJ and MOET would likely attract more resources and provide motivation for the development of CLE in Vietnam. And it is necessary to repeatedly encourage the central government, the MOET and MOJ to take a proactive and responsible leadership role in legal education reform and in the implementation of CLE. Together with law school deans, these agencies should be the main actors responsible for legal education and law reform in Vietnam.

Challenges remain, however. The central government, the MOET and MOJ have not so far been involved in Vietnamese law schools' clinical programs and personal relationships with law school deans are underdeveloped.<sup>1050</sup> Many people believe that these national agencies have not even been aware of clinical programs occurring in Vietnam.<sup>1051</sup> This was revealed in a recent document issued by the Prime Minister – Decision 549/QĐ-TTg concerning the approval of *General Project of Building Hanoi Law University and Ho Chi Minh City Law University into Two Principal Legal Institutions in Vietnam Training Legal Officials* (The General Project).<sup>1052</sup> Although various issues, resolutions, programs and activities are identified and proposed for enhancing the capacity of these two law schools and strengthening legal education in Vietnam,<sup>1053</sup> no single reference to experiential learning or CLE appeared in the document. The question as to whether or not these national agencies will support the

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<sup>1049</sup> At the UNDP Clinical Conference in 2014, participants (including deans, vice deans, law teachers and students) from different Vietnamese law schools raised their concerns about the necessity to closely collaborate with the central government, the MOET and the MOJ. In their view, if the MOJ, MOET and central government are fully aware of the role of CLE in legal education reform, then they will be supportive. This is considered to be a good time for them to act as CLE has gone global and opportunities for international assistance, collaboration and experience sharing are in place.

<sup>1050</sup> Hanoi Law University is an exception because it is under the direct administration of the MOJ. The Rector of Hanoi Law University is appointed by the Minister of Justice, therefore, he has a very close relationship with the MOJ. Unfortunately for Vietnamese CLE, Hanoi Law University is a Vietnamese principal law school without a clinical program.

<sup>1051</sup> The VER – interviews with various Vietnamese law school leaders and clinical teachers; this opinion was also commonly shared by the different participants at the 2014 UNDP Clinical Conference.

<sup>1052</sup> The *General Project of Building Hanoi Law University and Ho Chi Minh City Law University into Two Principal Legal Institutions in Vietnam Training Legal Officials* (the General Project), advised and designed by the MOJ, was based on a number of resolutions by the Vietnamese Central Committee Communist Party. For example, two key documents are *Resolution 48/NQ-TW* issued in 2005 on the *Strategy of Legal System Development* and *Resolution 49/NQ-TW* issued in 2006 on the *Strategy of Judicial Reform to the Year 2020*. The project constitutes a major part of law reform strategy in Vietnam. For more details, see section 1.III of the Decision 549/QĐ-TTg <<http://thuvienphapluat.vn/archive/Quyết-dinh-549-QĐ-TTg-phe-duyet-De-an-tong-the-xay-dung-Truong-Dai-hoc-Luat-vb180505.aspx>>.

<sup>1053</sup> The General Project, above n 1052 (identifying that in the period of 2013–20, approximately 117 million US dollars will be allocated to HLU and HCMCLU for building their capacity and strengthening and innovating legal education).

incorporation of clinical pedagogy into Vietnamese law schools' curricula therefore remains unclear,<sup>1054</sup> even if the case for such intervention is strong. Until that involvement occurs, other issues such as regulatory barriers or the provision of finance to run clinical programs are unlikely to be effectively addressed.

### **7.5.3 Law Schools' Budgets**

Law schools' budgets should also be seen as at least a partial financial source for CLE in Vietnam. There is some basis for believing that law schools should reallocate their priorities and provide some funding for running clinical programs. To begin with, law school is the first and also the last legal education stakeholder to hold responsibility for their 'products' — law graduates. Therefore, it is the responsibility of law schools to innovate the teaching of law in order to produce quality graduates. In this regard, CLE appears to be one of the most promising options and is a worthy law school investment. CLE might also help some Vietnamese law schools strengthen their competitive capacity against others in attracting new students, especially in the light of a rapid growth in the number of law schools and the overall unemployment rate in Vietnam.<sup>1055</sup>

It is true that some law schools in Vietnam have already provided budgets for their CLE programs both during and after the Clinical Project.<sup>1056</sup> The VER recorded that as these law schools have come to realise the values of CLE, they also see the need to maintain and develop clinical programs to benefit students' learning.<sup>1057</sup> Over time, as more benefits of the clinical approach are perceived and proven, it is likely that more Vietnamese law schools will be willing to allocate some of their budget for clinical programs. Also, law schools should become

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<sup>1054</sup> In 2014, a delegation led by the Vietnamese Minister of Justice (Mr Ha Hung Cuong) toured selected Australian law schools. The stated aim was to seek opportunities for collaboration with Australian law schools in legal education and judicial reform. There were approximately 15 people in the delegation, including the Dean of HLU, the JA's Deputy Director and the MOJ officials in charge of judicial reform programs. At the meeting with representatives from Monash University Faculty of Law, the Minister and the Dean of HLU expressed their interests in learning about Monash University's experience in developing CLE programs for Vietnamese law schools. The participants also discussed the potential collaboration on CLE between Monash University Faculty of Law and Vietnamese counterparts. It is nearly four years now since the meeting; however, there is no further progress or discussion on this issue among the relevant people. (The author was one among three Vietnamese students at Monash University Faculty of Law to participate in the meeting.)

<sup>1055</sup> See above Chapter Four.

<sup>1056</sup> See above section 6.3.4 of Chapter Six.

<sup>1057</sup> Interview # 28; interview # 52; interview # 53; interview # 66; interview # 84.

aware that they will have to be one of the primary actors in the development of Vietnamese CLE; and any CLE which becomes a formal course for credit in law curricula will receive tuition fees paid by students.<sup>1058</sup> If the clinical units are well designed, effectively delivered and beneficial to students, then there is no reason for students to hesitate in paying tuition fees. Law schools' reputations for these things make them sustainable. It is therefore suggested in this thesis that Vietnamese law schools need to be courageous and stand on their own financial feet in order to maintain and develop their clinical programs.

#### ***7.5.4 The Role of the Profession and Law School Alumni***

Collaboration with local bar associations or seeking assistance from clinical alumni might be another possible way for Vietnamese law schools to deal with financial challenges. In a clinical setting, practising lawyers can provide law students with free supervision, support fundraising and organise seminars on clinically-relevant topics.<sup>1059</sup> Collaboration with lawyers can also potentially benefit clinical programs in the development of objectives for client service, pedagogy, institutional structures and finances.<sup>1060</sup> Financially, for example, the engagement of local lawyers in clinical programs could help reduce associated costs because many such lawyers are willing to provide free supervision through pro bono programs. In addition, there would be a chance for these lawyers to provide financial support or encourage their firms to do so if they are aware of CLE benefits to legal education and the legal profession.<sup>1061</sup>

The Vietnam Bar Federation and local bar associations have been interested in reforming the training of qualified lawyers. Importantly, this reform must start with law schools' education, as law graduates will influence the core of the work of the whole legal system and

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<sup>1058</sup> Ibid.

<sup>1059</sup> The VER — interviews with various practising lawyers in Hanoi, Vinh, Hue, Ho Chi Minh City and Cantho.

<sup>1060</sup> The establishment and development of the Southern Communities Advocacy Law Education Service (SCALES) at Murdoch University is an obvious example of the role of lawyers in facilitating clinical programs. Chris Shanahan, a barrister, had much influence in the establishment and early development of SCALES. See, eg, Giddings, above n 7, 289–90; see also Alicia E Plerhoples and Amanda M Spratley, 'Engaging Outside Counsel in Transactional Law Clinics' (2014) 20(2) *Clinical Law Review* 379, 383–96 (discussing how the engagement of outside lawyers helps legal clinics deals with the various objectives, including client service, pedagogy, institutional arrangements, and financial matters).

<sup>1061</sup> Plerhoples and Spratley, above n 1060, 391; see also, Maisel, above n 14, 397–8 (identifying, based on South Africa's experience, that law firms can potentially contribute to the development of clinical programs at law schools by providing pro bono legal services or by making donations to legal clinics).

profession.<sup>1062</sup> In this regard, a quality legal education system is a pre-condition for a strong legal profession in Vietnam. Since clinical approaches have great potential for reforming Vietnamese legal education, local bar associations might be willing to assist law schools in developing CLE, as evidenced by the VER.<sup>1063</sup>

Indeed, practising lawyers have already been engaging in clinical programs run by Vietnamese law schools. Importantly, practising lawyers' participation in CLE programs has been free of charge.<sup>1064</sup> They have delivered seminars on professional knowledge and skills to students and supervised students in community legal education and in-house legal consultancy activities. With clinical experience and knowledge, these lawyers will be key persons in encouraging and attracting more participation in CLE from the legal profession. Given the pre-2004 historical relationships between local bar associations and law schools,<sup>1065</sup> there are concrete grounds to believe that some lawyers will contribute to the development of CLE in Vietnam.

Similarly, seeking support from law school alumni, especially those with clinical experience, will also be an important consideration for the development of CLE. The VER showed that, quite often, law graduates with clinical experience tend to be more willing to support CLE than those without this experience.<sup>1066</sup> This is quite understandable because clinical experience helps law graduates better understand the value of CLE to legal education as well as to preparing a law student for the profession. The VER also found some clinical alumni returned to assist law schools in CLE programs or even to work as clinicians.<sup>1067</sup> Participating in law schools' clinical programs, these clinical alumni are acting as mentors or supervisors, depending on their capacity and experience.

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<sup>1062</sup> See Nisreen Mahasneh, 'Legal Education in Jordan: Prospects and Challenges' in Sarker, above n 2, 131.

<sup>1063</sup> Interview # 77; interview # 56; interview # 52.

<sup>1064</sup> The VER – interviews with various Vietnamese practising lawyers.

<sup>1065</sup> See above section 7.4.4 of this chapter (indicating a close relationship between law schools and the profession in Vietnam before 2004 when law teachers were admitted to practise law and were members of local bar associations).

<sup>1066</sup> Interview #29; interview # 31; interview # 38; interview # 56.

<sup>1067</sup> Interview # 29; interview # 31; interview 33; interview # 38.

## 7.6 Conclusion

This chapter has discussed various possibilities for the future of Vietnamese CLE. Based on the VER, suggestions have been made for various directions for Vietnamese law schools to follow in addressing the challenges that face the adoption and incorporation of CLE in law curricula. These include choosing appropriate CLE models; designing CLE programs as accredited subjects in law curricula; improving clinical supervision; and using different approaches to financing CLE programs.

In the context of a currently ineffective Vietnamese system which is failing to prepare law students for the profession, the VER generally affirmed CLE as an appropriate educational strategy for the future. As the global advancement of CLE progresses, this opinion is widely and increasingly held among different legal education stakeholders in Vietnam. However, the success and long history of CLE elsewhere will not necessarily guarantee a similar result in Vietnam, given the differences in social, political and legal systems.

The future of Vietnamese CLE therefore will depend on how law schools (especially their deans) central government, relevant national agencies, and other legal education stakeholders in Vietnam regard and adopt clinical approaches in teaching law. It is recognised in this thesis that the adoption and incorporation of CLE into Vietnamese legal education is a long and challenging process given the persistence of traditional doctrinal legal education in the country. Accordingly, the issues discussed in this chapter need to be considered comprehensively and addressed in a combined and coordinated strategy in order to create sustainable opportunities and conditions for CLE to develop. Chapter Eight will conclude this thesis and provide various recommendations for the future success of CLE in Vietnam.



## CHAPTER EIGHT

### SUMMARY OF THESIS CONTRIBUTIONS, RECOMMENDATIONS AND CONCLUSIONS

#### 8.1 Introduction

This chapter brings together all the research findings presented in the previous chapters in order to summarise the contributions of the thesis, propose recommendations for improving clinical legal education (CLE) and strengthening legal education in Vietnam as a whole, and to draw together the thesis conclusions.

In the context of the recent introduction of CLE to Vietnam in response to the demand for legal education reform, this thesis interrogates the principal research question of *whether the future of Vietnamese legal education should be traditional, clinical or a combination of both*. In the light of the current, arguably ineffective, Vietnamese legal education system and the urgent need for reform, it is hypothesised that *clinical legal education may be an appropriate option for such reform*. The research question and the hypothesis were explored and examined through a review of the literature and the conduct of empirical research.

#### 8.2 Summary of Research Findings and Thesis Contributions

The research findings of the thesis from Chapter Four to Chapter Seven are summarised here.

##### 8.2.1 Findings about the Legal Education System and the Legal Profession in Vietnam

*First*, the Vietnamese Empirical Research (VER) found that Vietnamese legal education is a relatively new system, with the first law school (Hanoi Law University) established in 1976. The current approximately 40-year-old civil law legal education system in Vietnam comprises more than 40 law schools and produces about 20 000 law graduates annually. These law schools, together with a number of legal professional training schools (the Judicial Academy, Hanoi Procuratorate University and the Court Academy), have created a two-stage Vietnamese

legal education system. However, the current system, with a dominant lecture-based teaching methodology, focuses heavily on doctrinal legal education and lacks professional training. Consequently, in most cases, law graduates need further training before they can actually commence employment.

*Secondly*, the VER found that the Vietnamese legal profession has had approximately 30 years of historical development, with private practice first permitted in 1987. Previously, all legal consultancy, advice or assistance had to go through state arrangements. The Vietnamese Bar Federation (VBF), the highest national regulatory governing body of the legal profession, was established in 2009. At the local level, bar associations have been established in 63 provinces to oversee and govern legal professional activities within a geographical area. After law school education, a Vietnamese law graduate will need approximately 24 months of training to become a qualified lawyer. This includes 12 months of professional training at the Judicial Academy, followed by another 12 months practice as a probationary lawyer at a law firm. The VBF has exclusive authority to license those who have successfully passed the bar examination to practise law. The VER also found that even though a growing number of students choose to study law at higher education level, only a small proportion of law graduates continue on to practise law. This partially explains the current low lawyer/population ratio in Vietnam at approximately 1:10 000 – one of the smallest ratios in the region and in the world. Accordingly, the VBF is seeking to achieve a target of 18 000–20 000 qualified lawyers by 2020, a target set by the Vietnamese central government.

*Thirdly*, the VER found Vietnamese legal education faces various challenges, including law graduates' lack of professional knowledge and lack of skills necessary to function effectively as lawyers; the disconnection of legal education from the legal profession; law graduates' limited ability to think 'like a lawyer'; lack of training in legal ethics and professional responsibility; and law schools' lack of autonomy and flexibility in designing law curricula and delivering legal education. These limitations can explain the ineffectiveness of the current Vietnamese system in efficiently preparing law graduates for the profession. This has led to dissatisfaction among public agencies, the legal profession itself and business and industry about the low quality of legal education and law graduates.

### **8.2.2 Findings about the Demand and Approaches for Vietnamese Legal Education Reform**

*First*, participants in the VER considered the Vietnamese legal education system to be in need of urgent reform. This widely-held opinion has several dimensions: the need to build a rule-of-law society in Vietnam; the demand to promote national social-economic development; and the need to build and strengthen the capacity of the Vietnamese profession. In the context of international economic integration, these national priorities have been an important motivation for different reforms conducted by the Vietnamese central government, including political reform, judicial and law reform, and legal education reform. Legal education reform is expected to have a wide and significant impact on the whole Vietnamese political, legal and social system because it helps train generations of law graduates to take on various positions in government, the judicial system, business and industry, and in the legal profession.

*Secondly*, participants in the VER identified various options to approach educational reform, including moving to a graduate legal education model (a JD degree); general curriculum reform; teaching methodology reform; fully incorporating professional training into law school curricula; and the adoption and incorporation of CLE into the Vietnamese legal education system. While each of these options has its own strengths and benefits, challenges remain that need to be comprehensively and effectively addressed. Importantly, the research has suggested that each of these approaches is interrelated with the others and therefore cannot be implemented alone. One single measure by itself is unlikely to effectively address all the challenges facing the Vietnamese system.

*Thirdly*, an overwhelming number of participants in the VER considered CLE as appearing to be the most promising and effective option for legal education reform because it has the best potential to enable Vietnam to address most of the challenges facing the current system. Importantly, the VER found that CLE can work in a civil law country like Vietnam. This was demonstrated by the successful implementation of various clinical programs in Vietnam by different law schools.

*Fourthly*, the research found only a minority of participants considered that CLE cannot be implemented in the current Vietnamese environment. These people believe that CLE is too

expensive to be adopted and incorporated into the Vietnamese system. To them, CLE may be suitable only for law schools in some wealthier countries. In addition, they maintained that the fact that law teachers and students are not allowed to practise law and litigation is a major barrier to the development and sustainability of CLE in Vietnam. However, some participants in the VER also suggested various solutions to help address the concerns raised.

### ***8.2.3 Findings about the Current Situation of CLE in Vietnam***

*First*, the research found that a basic form of CLE was introduced into Vietnam by international non-government organisations in an attempt to strengthen and innovate legal education. The VER also indicated that Vietnamese law schools, teachers and students have been inspired by the different benefits flowing from, and the values inherent in, various clinical programs organised and delivered in Vietnam.

*Secondly*, the VER found a great interest in CLE among Vietnamese law schools, teachers and students. Law teachers have been relatively enthusiastic and active in participating in different CLE programs organised by law schools. To them, CLE is a supplementary component within the current theoretical legal education system in Vietnam. Student demand for participating in CLE programs is high and increases every year, especially when CLE has gradually shown itself to be an innovative and interesting approach for teaching and learning law in Vietnam. Different law schools in Vietnam are interested in developing and expanding their clinical programs in order to create more learning opportunities for their students. This was confirmed by various law school leaders and managers who participated in the research interviews.

*Thirdly*, while CLE has resulted in positive changes in teaching and studying law in Vietnam, it is still at an early stage of development. This is particularly so in relation to community legal education, simulations, the under-resourcing of externships, over-use of doctrinal approaches in so-called clinics, pro bono activity, poor supervisor training, lack of credibility for clinical teachers and unstable funding. These challenges are not surprising: CLE is new in Vietnam, with only approximately 10 years of history. The continuing challenges also confirm that Vietnam still has a long way to go in the process of adopting and incorporating CLE into the

legal education system.

#### ***8.2.4 Findings about the Conditions Supporting CLE in Vietnam and the Future Possibilities of the Vietnamese Clinical Movement***

In spite of the various difficulties facing Vietnamese CLE, the VER found some important supporting conditions for the future possibilities of clinical methodology in Vietnam.

*First*, it is important to identify a clinical model that is forward looking in the current Vietnamese setting. In this regard, community legal education seems to be a satisfactory immediate option for Vietnamese law school clinics. In the period of the next five to 10 years, community legal education is still likely to be an appropriate CLE model, among others, that Vietnamese law schools will employ to teach their students practical knowledge and skills. In comparison with in-house clinical activities, community legal education is cheaper and less intensive to implement and develop in Vietnamese law schools.

*Secondly*, other approaches, including the use of clinical methodologies in teaching doctrinal law subjects and redesigning the externship model, are worth considering. While teaching substantive law subjects using clinical approaches seems to be practical and relatively uncomplicated to implement, redesigning the externship model will require close collaboration among legal stakeholders. In particular, law schools need to work closely with different externship-hosting institutions in order to design programs, supervise students, and conduct assessments in every externship program. Externships, if well designed and effectively delivered, appear to be a productive and practical CLE model in Vietnam currently and for many years to come, enabling law schools to expose their students to the real world of law in order to enrich their practical experience and skills.

*Thirdly*, it is even more important for Vietnamese law schools to improve the effectiveness of in-house clinical activities. Obviously, a live client in-house clinic should be a CLE model that Vietnamese law schools aim to achieve because it best represents the clinical methodology in teaching law. The current in-house legal consultancy model, organised and delivered in some Vietnamese law schools, is a good start for Vietnam to build and strengthen the live client in-

house clinic model. Given the similarities between these two models in the clinical movement, it should be possible for Vietnamese law schools to develop the legal consultancy model and gradually offer live client in-house services.

*Fourthly*, it is worth considering the integration of CLE into law curricula in Vietnam in order to help address the various concerns raised by some VER participants about the development and sustainability of Vietnamese CLE. These concerns include financial matters, insufficient resources and regulatory barriers. If these so-called key issues are addressed effectively, then CLE will have a better environment in which to develop and be sustained in Vietnam.

*Fifthly*, attention must also be given to strengthening the training of clinical supervisors, granting them tenure and allowing them to practise law. These considerations are significant not only to the development and sustainability of CLE but also for the innovation of legal education generally in Vietnam. Practical knowledge and skills obtained from practising law will help law teachers to teach students better and to prepare them more effectively for their future careers. This will help bridge the gaps between legal education and the legal profession in Vietnam. Specifically in a clinical setting, efficient training in the practice of law will ensure clinicians have enough knowledge, practical experience and professional skills to deliver effective supervision. Meanwhile, tenured positions establish a good foundation and create more motivation for clinicians to concentrate on their work as clinical supervisors.

*Finally*, innovative methods to secure both general and CLE funding of law schools are needed, most likely involving collaboration between the law schools and the legal profession. In addition, other significant and sustainable sources of funding for CLE should be possible once CLE becomes an integral part of the education process and legal education reform has become a national priority. Such other sources could include funding obtained from international donors, a national legal aid budget, and tuition fees.

### **8.3 Recommendations**

On the basis of the research findings and in the light of the global clinical movement, this section proposes recommendations for maintaining and developing CLE as well as for

strengthening and reforming the legal education system in Vietnam.

### ***8.3.1 Raising the Understanding and Awareness of Relevant Stakeholders***

It is important to raise the awareness and understanding of government, relevant public officials and law school leaders about the likely significant role of CLE in reforming and strengthening Vietnamese legal education. Arguably, if these actors become fully aware of the value and benefits of clinical pedagogy, then they will support the adoption and incorporation of CLE. In particular, law schools running CLE programs need to explain to, and show, the central government and relevant national agencies (such as the Ministry of Justice and the Ministry of Education and Training) the benefits of CLE in innovating and strengthening legal education. This can be done by organising workshops and conferences to bring people from these agencies to discussions and seminars on various relevant clinical topics. Law schools can also create opportunities for students to talk directly with people from government and relevant agencies about their clinical experience and how CLE benefits their study at law school. As has been demonstrated in Vietnam, increased support from the central government and relevant national agencies also means that more resources will be allocated to the development of CLE and legal education reform.

### ***8.3.2 Promoting the Establishment and Development of the Vietnamese CLE Association***

A CLE Association is important as a vehicle for Vietnamese law schools interested in clinical pedagogy to collaborate, share and learn from each other in order to foster the adoption and incorporation of CLE into the legal education process. A Vietnamese CLE Association, when established, will also be a significant collaborative mechanism for the expansion and standardisation of clinical programs in Vietnam. In addition, a CLE Association will also help Vietnamese CLE connect with the global clinical movement and learn from the experiences of other countries, particularly those which have already developed and incorporated CLE for some considerable time and which have similar conditions and systems to Vietnam.

### ***8.3.3 Promoting and Developing Global and Regional Collaboration in CLE***

International collaboration is important for the development and promotion of CLE in Vietnam. Since Vietnamese CLE is at an early stage of development, practical support, lessons and experiences from other countries which have been successful (and those which have failed) in adopting and incorporating a clinical approach into legal education are critically important. In particular, Vietnam should learn from the experiences of other civil law countries, such as China, Japan, Germany or Chile, in order to overcome the various challenges discussed earlier (such as the regulatory barrier, the tenure and position of clinicians at law school, and the various approaches to incorporating CLE into law curricula). Meanwhile, the experiences of other leading CLE countries such as the United States, Australia, the United Kingdom and South Africa will help Vietnam to address the problems of financing clinical programs and of how to develop and maintain a live client in-house clinic model. Collaboration at global and regional levels will also be important for the development of the global clinical movement generally and this in turn will benefit each individual member country.

Accordingly, Vietnam should also take the opportunities of international collaboration to train and build capacity for CLE development. As demonstrated in the UNDP Clinical Project (see Chapter Six), the ‘train the trainer’ program was reasonably effective thanks to the support and assistance from international organisations and foreign clinical experts. A similar training program should be considered in the future when conditions allow, especially when further international support becomes available. The training can be delivered either in Vietnam by visiting foreign clinicians or abroad by sending Vietnamese law teachers overseas.

### ***8.3.4 The Need for Clear and Locally Acceptable Definitions of Clinically-relevant Concepts***

In the development of CLE in Vietnam, it is critically important to have a common understanding among relevant Vietnamese stakeholders on clinically-relevant definitions and concepts. This can be achieved through workshops and conferences organised to bring together representatives from law schools, government and relevant national agencies. In some cases, the participation of international clinicians may also be needed in order to explain and clarify some clinical concepts and definitions. Many definitions and concepts already



standardised and commonly understood in the global clinical movement (for example, a 'legitimate clinic') should be explained so as to be acceptable in the local Vietnamese setting.

### ***8.3.5 Diversifying Financial Resources to Establish, Maintain and Strengthen CLE***

Whether they want such a role or not, a law school should be the first and also the last actor responsible for its 'products' — law graduates. Accordingly, all law schools need to invest in the development of CLE in order to innovate and strengthen legal education. In addition, Vietnamese law schools should be the primary actors in seeking financial resources for CLE by collaborating with different stakeholders domestically and internationally. Domestically, the legal aid budget will be a potential channel for Vietnamese law schools to resource their clinical programs. Globally, the clinical movement has created opportunities for a newcomer like Vietnam to step forward to seek international collaboration and potential assistance for its CLE programs.

### ***8.3.6 Strengthening Students' Supervision in a Clinical Setting***

There are a number of considerations for strengthening clinical supervision — one of the keys to the success of a CLE program. First, law teachers need to be permitted to practise law and be engaged in litigation. This matter is one of national policy and legislation, therefore it should be dealt with at the national level by agencies such as the Vietnamese central government, the National Assembly, the Vietnam Communist Party, and the like. Secondly, clinicians need to be properly recruited and trained so that they can deliver quality supervision in a clinical setting. Thirdly, doctrinal law teachers' involvement in CLE programs needs to be recognised and the hours teachers spend in supervising clinical students need to be counted as teaching load. And lastly, it is also very important to give clinicians tenure to ensure their status and equal treatment at law school. This concern should be addressed through close collaboration among law schools, the Ministry of Justice and the Ministry of Education and Training.

### ***8.3.7 The Establishment of an Association of Vietnamese Law Schools***

In the light of legal education reform and the global clinical movement, it is important to consider the establishment of an Association of Vietnamese Law Schools. Such an association is important to enable Vietnamese law schools to collaborate, share with and learn from each other in order to strengthen and innovate the teaching of law. The association, when established, will also be an effective mechanism through which Vietnam can standardise its legal education system, strengthen law schools' collective voice to gain more independence and autonomy in delivering the training of law, and foster international collaboration in legal education. To some degree, an Association of Vietnamese Law Schools may be expected to create a solid foundation for collaboration in different clinical programs organised among its law school members. In addition, such an association may also help Vietnam join the wider international community of legal education to learn and share lessons and experience. This will in turn benefit CLE and the legal education system in Vietnam as the whole.

### ***8.3.8 Fostering Collaboration Between Law Schools and the Profession in Vietnam***

Collaboration between law schools and the legal profession is a key factor for the development and innovation of legal education. The legal profession is a productive environment in which law students may expose themselves to a diversity of legal practices, learn professional skills and grow ethically and professionally. In the Vietnamese setting, where law teachers are not currently permitted to practise law and litigation, such collaboration is also critically important in facilitating the development and sustainability of CLE. Therefore Vietnamese law schools interested in developing CLE need to work closely with the Vietnamese Bar Federation (VBF) and local bar associations in order to involve practising lawyers in clinical programs.

From the perspective of the legal profession, the VBF and local bar associations should increase their involvement in law schools' education processes because an effective legal education system will ensure a strong legal profession. More importantly, since CLE has great potential to contribute to the strengthening and innovation of Vietnamese legal education, the VBF and local bar associations should assist law schools to develop and maintain CLE programs. It is a win-win situation because ultimately both law schools and the profession in

Vietnam will benefit from CLE.

### ***8.3.9 The Vietnamese Central Government and Relevant National Agencies Need to Support and Assist the Development and Expansion of CLE Among Vietnamese Law Schools.***

Reforming legal education is one of the important components of the judicial reform process in Vietnam. Importantly, legal education reform has a significant impact on different aspects of Vietnamese society, therefore the central government and relevant national agencies (such as the MOJ and MOET) should regard CLE as an opportunity for strength and innovation in the teaching of law in Vietnam. Accordingly, they should support the development of CLE and assist law schools in adopting and incorporating clinical approaches into the education process.

Government support and assistance could focus on:

- (1) delegating law schools more autonomy and privileges in designing and reforming curricula and in delivering legal education;
- (2) encouraging lobbying of the Vietnamese Communist Party and National Assembly for new legislation to grant law teachers the right to practise law and to be involved in litigation;
- (3) allocating finance to law schools through the legal aid budget for developing and expanding CLE programs;
- (4) working with law schools in relation to giving clinicians tenure and ensuring their equal position and treatment in law school; and
- (5) allocating a budget to send Vietnamese law teachers and clinicians abroad for higher education and research on CLE.

### ***8.3.10 CLE Needs to be Integrated into the Law Curriculum***

For the long-term development of CLE and in order to create motivation for both clinical teachers and students, CLE needs to be included in law curricula as either a mandatory or an elective formal unit. The choice very much depends on each particular law schools' interests, conditions and how they view CLE, but it is not sufficient to have clinical programs as mere

voluntary activities. CLE, once it becomes a formal for-credit unit, will also help law schools deal, at least partially, with the financial challenge of running a clinical program.

#### **8.4 Limitations of the Research**

One of the limitations of the research was that the author did not have an opportunity to go deeply into the issue of the 'rule of law' and its relevance to CLE as a means to reform Vietnamese legal education. As discussed in the thesis, building a rule-of-law society has been a priority of the Vietnamese central government, led by the Vietnamese Communist Party. In this regard, various participants in the research argued that legal education reform might create a strong motivation for the process of building a rule-of-law society in Vietnam. CLE, as a promising approach for Vietnamese legal education reform, will help better train generations of open-minded, ethical and professionally-sound law graduates who, in turn, will make the rule of law more possible in Vietnam.

However, the research was unable to examine the impacts of CLE on the attitude and political willingness of Vietnamese political leaders in relation to rule-of-law issues. Theoretically, if CLE has great potential to foster a rule-of-law society in Vietnam, then the Vietnamese government and relevant national agencies should be supportive and willing to adopt and incorporate it into the legal education system. In practice, however, it is not easy to investigate whether or not the Vietnamese central government and relevant national agencies will, in a rule-of-law context, assist law schools in maintaining, developing and expanding CLE in Vietnam. This is a significant consideration that was not included in the research due to limited time and resources. But the issue should be addressed in future research.

Another limitation of the research was the exclusion of general community views from the VER process, again for cost and time reasons. Although all the research questions were successfully addressed by various participants from both academic and practical perspectives, in some cases opinions from communities and clients may well have been significant. In particular, when it comes to the issues of the benefits of the various clinical programs and the challenges facing different models of CLE, it is important to know the views of the people whom Vietnamese law school clinical programs have assisted. However, as discussed in this thesis,

Vietnamese CLE still has a long journey ahead so opportunities for further research and discussion are still open. The exploration of the views of relevant communities on Vietnamese CLE, its challenges and how to address them may enable additional or more precise recommendations for the improvement and sustainability of CLE in Vietnam in the future.

Finally, not including individuals from the wider university environment in the research can be seen as another limitation of the thesis. To some degree, it might be worthwhile to explore the views of people from the broader university population (outside the law school), especially those having authority on law schools' budget, about the adoption and incorporation of CLE into the Vietnamese legal education system. However, there are three types of law schools in Vietnam with different levels of autonomy and independence: law universities (most), law schools (medium) and law faculties (least). Therefore, the influence from higher authorities to law schools on different issues (including financial matters), varies. In addition, most law school leaders and managers in the interviews expressed their views that all the clinical programs established and run had to be approved by the higher authorities, and that in general, higher authorities were every supportive to CLE. This was the primary reason why the author did not interview individuals within a university environment (but outside the law school).

## **8.5 Conclusions**

### **8.5.1 *The Future of Vietnamese Legal Education***

On the basis of the research findings presented and discussed in this thesis, it is argued that the future of Vietnamese legal education lies in a combination of traditional and clinical approaches. While traditional curricula and teaching methodologies will likely remain pervasive, clinical approaches can play a significant role in reforming and strengthening Vietnamese legal education. In a perfect setting, an appropriate combination of theoretical education and experiential learning will be a productive environment for teaching and studying law. This in turn will enrich students' practical knowledge and the professional skills necessary for their future careers.

This research has also opened various possibilities for the future reform of legal education in Vietnam. Adopting a graduate legal education model (such as a JD degree) may be a promising option for Vietnamese law schools to increase the teaching of professional skills and practical knowledge. A JD degree may also potentially help students to grow and mature and improve graduates' readiness to enter the profession. In the Vietnamese context, the adoption of a JD degree has become more possible as universities are given more autonomy and privileges. Vietnamese law schools have increasingly gained independence in designing their legal education degrees and curricula and this is a great foundation for them to include new forms of legal education in the teaching process.

Meanwhile, the reform of curricula and teaching methodologies has been in the interests of many Vietnamese law schools and it is likely to continue to happen. Particularly in the current era of globalisation and international economic integration, Vietnamese law schools must compete with each other and with foreign education providers for students. Accordingly, law schools in Vietnam need to review and reform their curricula more often in order to teach their students the knowledge and skills required by society, particularly by the legal profession. In addition, the teaching of law needs to become more interactive and experiential to attract the attention and motivate the participation of students.

The future of Vietnamese legal education will likely witness the increasing incorporation of professional training into the education process. As discussed earlier in this thesis, teaching practical knowledge and professional skills has been of great interest in Vietnamese law schools in recent years. This interest has been in response to the demands of the legal profession for more practice-ready law graduates. However, it may not be possible for Vietnam to achieve full incorporation of professional knowledge and skills — currently delivered by various legal professional schools and discussed in Chapter Five — into law schools' curricula, as proposed by some Vietnamese scholars. This is because this would lead to the closure of all of these professional schools — something which is very unlikely to occur in the Vietnamese political context. Accordingly, within the limited space of their curricula, Vietnamese law schools may choose to include some professional knowledge and skills that they consider to be significant for students' future careers.

### **8.5.2 *The Future Possibilities of CLE in Vietnam***

The future of CLE in Vietnam is fairly bright in the light of calls for national judicial and legal education reform and in the context of the global clinical movement. As a newcomer in that global clinical movement, Vietnam has many options and possibilities for its long-term clinical programs. More importantly, collective efforts from different stakeholders will help Vietnamese CLE overcome many internal challenges and take the opportunities created by international clinical collaboration in order to support the development and sustainability of CLE. In this journey, law schools, the Vietnamese Bar Federation, local bar associations, the central government and relevant national agencies will be key actors, especially working together to build for the future of Vietnamese legal education and the profession. Meanwhile, international assistance and collaboration still remain significant.

It is likely that community legal education will still be the most common form of CLE in Vietnam in years to come. The fact that Vietnamese law schools are used to, and feel comfortable with, community legal education means that this form of education has a solid foundation on which to continue to develop in Vietnam. In addition, it is expected that Vietnamese law schools will continue with other forms of CLE such as in-house legal consultancy, moot courts and other simulations in order to create more learning opportunities for students. Importantly, the externships model will need to be redesigned to make it an effective form of experiential learning, where students are able to really ‘do’ law, and are not merely observing what others are doing. This requires a closer collaboration among relevant stakeholders, notably law schools, law firms, judicial agencies and other externship host institutions. In Vietnam, where the number of students is relatively high, law schools must diversify the forms of experiential learning to ensure students’ learning demand is met and that students graduate ready for the profession. In this regard, the role of the central government and relevant national agencies (such as the MOJ and MOET) will remain significant in leading the way.

Moreover, longer-term attention must be paid to the live client in-house clinic model as the best form of experiential learning. This model creates the most productive environment for students to learn practical knowledge and enrich their professional skills. The development of

CLE in Vietnam will be incomplete without this type of CLE. Unfortunately, the immediate future of the live client in-house clinic in Vietnam is unclear but the conditions exist in which this model can be developed. The operation of the in-house legal consultancy model among some Vietnamese law schools can be a good start as it has something in common with the live client in-house approach: critically, they both deal with real clients in real cases. In addition, various approaches, proposed by the VER participants and discussed in this thesis, are expected to help overcome challenges and open opportunities for the live client in-house clinic to be initiated and developed in Vietnam.

Importantly, attention must also be paid to recognising the position of clinicians at law schools and including CLE in law curricula as formal for-credit units. Theoretically, tenure for clinicians and formal positions at law school will help ensure that clinicians devote more of their time and efforts to teaching CLE. Tenured positions for clinicians also evidence an advanced stage of development of CLE and this cannot happen overnight. In Vietnam, the recognition of clinicians' positions at law schools might only be possible when CLE is recognised and incorporated into the education process. In this regard, again, it is critically important for Vietnamese law schools to design CLE as a formal for-credit unit in law curricula. This has already happened in some law schools and it is expected to continue in the future.

Finally, diversifying and strengthening the sources of funding for clinical programs appear to be key factors in the development of CLE in Vietnam. As the values of CLE have been gradually revealed and recognised by relevant legal education stakeholders, Vietnamese law schools may manage to look for more sources of funding to support their clinical programs. Once clinical programs become an integral part of the education process, then it is probable that more funding will come from law schools themselves. In this regard, internal reallocation of law school existing funds might be seen as an option for funding CLE programs. In addition, close collaboration by law schools with the national legal aid agency and local bar associations seems to be one of the most promising options. It is anticipated that many law schools in Vietnam will choose this option, while others may choose to maintain the international relationships they have built in order to take advantage of the opportunities offered by the global clinical movement.



Clinical legal education has shown that it can work well in a theoretically-focused and lecture-dominated legal education system of a civil law country like Vietnam. As the values and benefits of CLE are increasingly recognised by different Vietnamese legal education stakeholders, the research suggests that more attention will be paid to the clinical approach in making traditional Vietnamese legal education more effective. It is hoped that this thesis will assist in encouraging more resources to be allocated for the development of CLE in Vietnamese law schools and that this will, in turn, ensure the long-term success of CLE in Vietnam.

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# Appendices

## Appendix A

### Letter of Invitation to Participate in Empirical Research Interviews

#### INVITATION LETTER

Date ...

Mr/Mrs/Professor/Associate Professor ...

Name of law school/law firm/judicial agency ...

Address ...

Tel ...

Email ...

Dear ... ,

We are currently conducting the research *Clinic as A Means to Reform the Vietnamese Legal Education System: The Current Situation and Future Possibilities* at Faculty of Law of Monash University.

At a global level, it has been proven at law schools in many countries that with clinical legal education law students have the opportunity to learn law-in-context and they will mature professionally. Based on this context, the aims of the research is to answer the question whether the current legal education system in Vietnam is effective in providing law students with professional practice training and whether clinical legal education is an appropriate approach for the reform of legal education in the Vietnamese context.

We would like to invite you, as the leader of a Vietnam law school, to be involved in this research by participating in a semi structured interview. The interview will be held at ... at a time convenient for you and will last up to 90 minutes.

This research is crucial for Vietnam in the assessment of its current situation and in looking for better approaches for reform of legal education system. Therefore, we hope you could participate in the research. For further details of participation in the research, please refer to the Explanatory Statement attached to this letter.

Please respond to this invitation letter by emailing the Co-Investigator, Mr. Ai Nhan Ho at: [REDACTED] or calling Mr. Ai Nhan Ho at number: [REDACTED] (in Australia) or [REDACTED] (in Vietnam).

We appreciate your help and are looking forward to hearing from you.

**Yours sincerely,**

**Ross Hyams**

Chief - Investigator of the project

Faculty of Law, Monash University, Clayton, 3800.

Email: ...

Tel: ...

## Appendix B

### Letter of Permission for Empirical Research Interviews

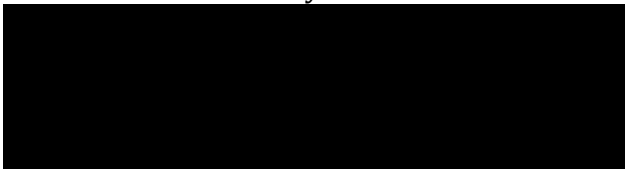
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#### PERMISSION LETTER

**Project: Clinic as A Means to Reform the Vietnamese Legal Education System: The Current Situation and Future Possibilities**

Name of city..., date ...

Mr. Ross Hyams  
Faculty of Law  
Clayton campus  
Monash University



Dear Mr. Ross Hyams,

Thank you for your request/invitation to recruit participants from ... for the above-named research.

I have read and understood the Explanatory Statement regarding the research project ***Clinic as A Means to Reform the Vietnamese Legal Education System: The Current Situation and Future Possibilities*** and hereby give permission for this research to be conducted.

Yours sincerely,

*(Signature of person granting permission)*

Name, position  
Name of institution  
Address ...  
Tel: ...  
Email: ...

## Appendix C

### Explanatory Statement for Empirical Research

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#### EXPLANATORY STATEMENT

(Vietnamese law school leaders/managers Group)

**Project: Clinic as A Means to Reform the Vietnamese Legal Education System: The Current Situation and Future Possibilities**

**Chief Investigator's name: Ross Hyams**

**Student's name: Ai Nhan Ho** *(only include if this is a student research project)*

Faculty of Law

You are invited to take part in this study. Please read this Explanatory Statement in full before deciding whether or not to participate in this research. If you would like further information regarding any aspect of this project, you are encouraged to contact the researchers via the phone numbers or email addresses listed above.

#### **What does the research involve?**

The aims of the research is to answer the question of how effective the current Vietnamese legal education system is in providing law students with professional practice training and whether clinical legal education is an appropriate approach for the reform of legal education in Vietnam. The study involves audio recording a semi structured interview in which the researcher will ask you for your opinions on the current situation of the Vietnamese legal education system and the current situation and future direction of clinical legal education in Vietnam.

#### **Why were you chosen for this research?**

We have obtained your contact details which are publicly provided on your law school website. You have been chosen because you have been working as a manager at a Vietnamese law school providing legal education to students which is directly relevant to the research we are conducting.

**Consenting to participate in the project and withdrawing from the research**

You, as a research participant, will be provided with a consent form to be read, signed and returned to the researcher at the beginning of the interview. You also have the right to withdraw from further participation at any stage of the research under any circumstances and without any responsibility. You, as a participant, should note that it will be impossible to withdraw data once it is analysed and becomes a part of the publication.

**Possible benefits and risks to participants**

You will benefit from this research because it will play as a practical foundation for you to improve the management of law schools as well as to enhance the quality of legal education for your students.

It is not anticipated that the interview will cause you inconvenience or discomfort. However, if you find any questions distressing or embarrassing, you simply do not have to answer them. If you feel distressed after the interview process, the researcher can provide you with details of available service if you wish to attend for counselling.

**Services on offer if adversely affected**

It is not anticipated the interview will cause you adversely affected. However, if you feel distressed or adversely affected after the interview process, there are services available at Hanoi Medical University, Hue University Medical School, Ho Chi Minh City University of Medical, Cantho University Medical School that you could attend for counselling.

**Confidentiality**

Your personal information will be kept confidential, and no identifying details will be used in the transcript, or disclosed in the published findings of the research, or to any party. Pseudonyms will be used in any published material. You will be given a transcript of your interview for your approval before it is included in the final written research.

**Storage of data**

Storage of the data collected will adhere to the University regulations and kept on University premises in a locked cupboard/filing cabinet for a minimum of 5 years. A report of the study may be submitted for publication, but individual participants will not be identifiable in such a report. After 5 years, when the research result is published and the data is no longer needed, it will be destroyed.

**Use of data for other purposes**

The data is used only for the purpose of this research. However, in some cases, your anonymous data may be used for other purposes (such as future publications or research if the researchers intend to use data for any other purposes). In such a situation, they will contact you for approval.

**Results**

The findings will be made available after March 2018. If you would like to be informed of the research findings, please contact Ai Nhan Ho on 0413420586 or email: [aho15@student.monash.edu.au](mailto:aho15@student.monash.edu.au)

**Complaints**

Should you have any concerns or complaints about the conduct of the project, you are welcome to contact the following person:

Ms. Nguyen Thi Hoai Phuong  
Lecturer, Department of Constitutional and Administrative  
Law  
School of Law – Hue University  
An Tay ward, Hue city, Vietnam



Thank you,

**Ross Hyams**

## Appendix D

### Consent Form for Participating in Empirical Research Interviews

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#### CONSENT FORM

**Project: Clinic as A Means to Reform the Vietnamese Legal Education System: The Current Situation and Future Possibilities**

**Chief Investigator: Ross Hyams**

**Co-investigator: Ai Nhan Ho**

I have been asked to take part in the Monash University research project specified above. I have read and understood the Explanatory Statement and I hereby consent to participate in this project.

I consent to the following:	Yes	No
I agree to be interviewed by the researcher	<input type="checkbox"/>	<input type="checkbox"/>
I agree to allow the interview to be audio-recorded	<input type="checkbox"/>	<input type="checkbox"/>
I agree to make myself available for a further interview if required	<input type="checkbox"/>	<input type="checkbox"/>
I agree to be part of a focus group up to 20 people	<input type="checkbox"/>	<input type="checkbox"/>
The data that I provide during this research may be used by the researchers in future research projects	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>

Name of Participant \_\_\_\_\_

Participant Signature \_\_\_\_\_ Date \_\_\_\_\_



## Appendix E

### Questions for Empirical Research Interviews

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#### A - First interview

##### **I. Questions about the current situation of the Vietnamese legal education system**

1. Could you please introduce briefly about legal education at your law school?
2. How do you evaluate the general situation of legal education in Vietnam?
3. As a practising lawyer/judicial official, how would you evaluate the current state of legal education in Vietnam and in the local area where you are working?
4. As a practising lawyer/judicial official, do you think the current law curricula meet the requirements of the legal profession in Vietnam? Could you please provide details about your opinion?
5. As a law school leader, what do you think about the current teaching methodologies at your law school? Are your students interested in these current teaching methodologies?
6. As a law teacher, what teaching methodologies are you using in your course/courses? Are your students interested in these teaching methodologies?

As a law teacher, do you use interactive teaching methodologies in your classes? Do you think large class size is a barrier in using interactive teaching methodologies in legal education? If not, why not? If so, why?

7. As a student, what do you think about teaching methodologies currently employed by teachers at your law school? Are they effective in delivering knowledge and skills to students?
8. Is 'lecture' a popular teaching methodology at your law school? How popular do you think it is?
9. What do you think about the current curriculum at your law school? Do you think this current curriculum provide students enough knowledge and professional practice skills to become a good lawyer?
10. How are students at your law school learning professional practice skills? Could you briefly describe practical programs/activities organised for students to learn 'law in context'? Do you think these activities/programs are effective for students to learn practice of law and professional skills?
11. As students, what do you think about activities/programs organised by law school for students to expose themselves to practice of law and learn law in context?

12. As a practising lawyer/judicial official, how would you evaluate the training of qualified lawyers in Vietnam? In your view, does that training provide law graduates enough knowledge and professional skills for practising law?

## **II. Questions about the Vietnamese legal profession**

13. In your view, what are the advantages and challenges of the legal profession in Vietnam and in local area where you are working? What do you think about the role of the legal profession and practising lawyers in promoting and improving legal education in Vietnam?

14. What do you think about the lawyer-population ratio of Vietnam and the target of 18,000-20,000 licensed lawyers by 2020 set out by the Central Government of Vietnam?

15. What do you think about law graduates' career options in Vietnam and in local area where you are working? According to some recent surveys, only a small proportion of Vietnamese law graduates chose to follow the lawyering career. In your opinion, what are the reasons for this situation?

16. What do you think about the relationship between the legal profession and legal education in Vietnam? Has this relationship created challenges to or promoted the development of Vietnamese legal education?

17. What do you think about law teachers' practising law under the current Vietnamese legal system? Do you think that law teachers should be permitted to practise law? Why or why not?

## **III. Questions about the demand and possibilities for reforming Vietnamese legal education**

18. Do you think legal education at your law school (and in Vietnam) need to be reformed? Why?

19. What area/areas (curriculum, teaching methodologies, evaluation methodologies, academic staff, administrative staff, size of classes, and others) in the current Vietnamese legal education system do you think the most necessary to be reformed?

20. If you had a chance to reform the current curriculum at law school, what would you recommend to change?

22. If you had a chance to reform the current teaching methodologies at law school, what would you recommend to change?

23. In your opinion, is large class size a challenge in legal education in Vietnam? If not, why not? If so, why? What would you recommend Vietnamese law school do in order to address this challenge?

24. In your view, should Vietnamese legal education institutions focus more on professional

training and deliver more practical knowledge to students? Could you explain more about your view?

25. In your opinion, what should Vietnamese legal education institutions do in order to improve students' professional skills and practical knowledge?

26. Do you think Vietnamese law schools should include professional training in their curricula?

a. If no, why not?

b. If yes, could you explain in more detail?

27. As a practising lawyer and a potential employer in the legal profession, do you think Vietnamese legal education need to be reformed?

a. If no, why not?

b. Is yes, what would you recommend Vietnamese law schools to do?

28. As a judicial official, do you think the training of qualified lawyers in Vietnam need to be reformed?

a. If no, why not?

b. If yes, what would you recommend to reform?

#### **IV. Questions about the current situation of CLE in Vietnam**

29. Could you please describe briefly about the CLE program(s) currently operating at your law school?

30. As a law school leader, what makes you come to a decision to establish and run a clinical program at your Law school?

31. As a law teacher/student/practising lawyer/judicial official, what makes you decided to involve in CLE activities/programs organised by law school?

32. In your opinion, what benefit could law students achieve when they participate in a CLE program run by law school?

33. How do you evaluate the students' demand for participating in the CLE program at your law school?

34. From the perspective of a student, what have you learned from participating in CLE programs organised by law school? How does CLE benefit your education and may be your future career? If you didn't receive any benefit, why not?

35. Is clinical legal education program a formal for credit component of the curriculum at your law school?

36. In your opinion, does your law school need a clinical legal education program? Could you please provide the reason?

37. From the perspective of a manager of law school leader/law teacher/students/practising lawyer/judicial official, do you see any challenge/barrier that limits the establishment and operation of clinical program at Vietnamese law school?  
What have you done to overcome this/these challenge(s) and barrier(s)?

**V. Questions about the future possibilities of CLE in Vietnam**

38. How do you evaluate the future of clinical legal education in Vietnam?

39. Do you think clinical legal education will work in the Vietnamese context? In your opinion, which clinical model is the most appropriate in Vietnam?

40. In your opinion, what conditions are needed for a clinical program to be sustainable in Vietnam?

41. Do you think that Vietnamese law school leaders/managers are willing to provide funding for running a legal clinic at your law school? What are the alternative sources of funding for CLE in Vietnam?

42. In your opinion, should CLE be a formal part of curriculum in your law school? Could you please provide the reason?

43. In your opinion, what do Vietnam law schools need to do in order improve and develop CLE in Vietnam?

44. How do you evaluate the roles of the Ministry of Justice, the Ministry of Education and Training and the Central Government in promoting and developing CLE in Vietnam?

45. If you had a chance or authority to reform and improve the operation of clinical program(s) at law school, what would you recommend to change?

**B - Second interview**

**I. Questions about the current situation of the Vietnamese legal education system**

1. What do you think about the two-phase legal education system in Vietnam, where law schools provide general theory legal education and professional training schools deliver professional training to law graduates?

2. The VJA is an important professional training institution in Vietnam. How would you compare the training at the VJA and that delivered by Vietnamese law schools?

3. What do you think about the potential of the Lawyering Training School established to deliver professional training for would-be lawyers in Vietnam?

4. As a judicial official, do you think the current legal education system meet the requirements of the judicial legal professions (judges, procurators, law enforcement officials or public notary officials) in Vietnam? Could you please be more detail about your opinion?
5. In your view as a judicial official, in order to be a judge, procurator, law enforcement official or public notary official, what knowledge and professional skills should a law graduate need?
6. As a judicial official, how would you evaluate the professional training delivered by the VJA? Does that training provide law graduates with enough knowledge and skills in order to work in the judicial professions ((judges, procurators, law enforcement officials or public notary officials)?
7. What do you think about law graduates' career options in Vietnam and in the local area where you are working? According to some recent surveys, only a small proportion of Vietnamese law graduates chose to follow the lawyering career. In your opinion, what are the reasons for this situation?
8. What do you think about law teachers' practising law under the current Vietnamese legal system? Do you think that law teachers should be permitted to practise law? Why or why not?
9. What do you think about the externship programs currently organised and delivered by your law school (and law schools in Vietnam, in general)? Have these externship program provided students with a productive environment for practise law and learn professional skills?

## **II. Questions about the demand and possibilities for reforming Vietnamese legal education**

10. As a judicial public official, do you think the VJA need to be reformed in order to better deliver professional training to law graduates?
  - a. If no, why not?
  - b. If yes, what would you recommend to change?
11. As a judicial public official and a potential employer in the judicial professions, do you think Vietnamese legal education need to be reformed?
  - a. If no, why not?
  - b. If yes, what would you recommend Vietnamese law schools to do?
12. In your view, is it necessary for Vietnamese law schools to include professional training in their curricula or just focus merely on theoretical legal education? In your opinion, what should Vietnamese law schools do to increase law graduates' professional skills and practical knowledge?
13. What do you think about law teachers' practising law? Do you think that Vietnamese law teachers should be permitted to practise law?
  - a. If no, why not?
  - b. If yes, could you explain further?

14. As a law school leader, how would you evaluate the role of the legal profession in strengthening and improving legal education in Vietnam? What could we do to develop the relationship between the legal profession and legal education? Are you willing to involve practising lawyers in legal education at your school?

15. Some Vietnamese law school have introduced the 'second-degree' legal education model. What is the motivation of this form of legal education? Do you think this model is helpful in reforming Vietnamese legal education? Could you please explain further?

16. As a law school leader/law teacher/practising lawyer/judicial official, what do you think about curriculum reform at Vietnamese law schools? Do we have any challenges/barriers for this reform in Vietnam?

17. What do you think about the proposed reform to include all the professional training courses, currently delivered by different professional training schools, in law schools' curricula and increase the education duration to 5 years (instead of 4 years)?

18. What do you think about teaching methodology reform in the Vietnamese legal education system? What directions should law school in Vietnam follow?

19. Do you think that CLE is a potential option for Vietnamese legal education reform?

c. If no, why not?

d. If yes, could please explain further?

### **III. Questions about the current situation of CLE in Vietnam**

20. Could you please briefly provide a description of the clinical program(s) running at your law school or you have been involved in? Do you think CLE a potential solution for the reform of Vietnamese legal education? If so, why?

21. Is there any challenge/barrier in establishing, running and maintaining a clinical program at your law school? Could you please provide some more details?

22. Do you think it is a challenge for the development of CLE in Vietnam when the law does not permit law teachers to practise law?

a. If no, why not?

b. If yes, what should we do to overcome this challenge?

23. How clinical supervision is organised and delivered in your law school CLE programs? Any challenge or barrier?

24. Community Legal Education and Legal Consultancy are the two primary CLE models currently delivered by Vietnamese law schools. Do you see any advantage and challenge of these two forms of CLE in the Vietnamese setting?

25. One of the challenges facing many clinical programs around the world is lack of finance. Do

you encounter similar problem when running and maintaining your clinical program(s)? What have you done to overcome this challenge?

26. In your opinion, who should provide funding for clinical programs? Do you think that the Vietnamese government and other relevant agencies (such as the Ministry of Justice - MOJ and the Ministry of Education and Training - MOET) are willing to provide funding for CLE? How do you evaluate the role of international donors in funding clinical programs in Vietnam?

27. UNDP has completed a 4-year project to support and promote the development of CLE among Vietnamese law schools. How would you evaluate the benefits of this project to the development of CLE in Vietnam?

28. In Vietnam, the Vietnam Judicial Academy (VJA) plays an important role in delivering professional training to law graduates before they can start their jobs in various professions. Do you think there is any overlapping training between clinical programs and the VJA professional training? Can CLE and VJA co-exist and supplement each other?

29. What do you think about the position of CLE in current Vietnamese law curricula? Should CLE be designed as a voluntary non-credit program, an elective unit or a compulsory course in the legal education process?

#### **IV. Questions about the future possibilities of CLE in Vietnam**

30. From international experience, there are various clinical models such as simulation, externship, in-house clinic and street law. In your opinion, which model among them will work best in the Vietnamese context? Could you please explain further?

31. In your opinion, what should Vietnamese law schools do in order to improve the effectiveness of their externship programs?

32. In your opinion, what are the influential factors for the establishment and development of CLE in Vietnam? What would you recommend Vietnam to do in order to develop and sustain CLE in the country?

33. Does your university or law school have a capacity and willingness to provide funding for CLE? Are there any other potential finance sources for CLE in Vietnam and at your school?

34. What do you think about the potential of a collaboration between Vietnamese law schools and Legal Aid Agency in promoting the development of CLE in Vietnam, including the matter of financing clinical programs?

35. If a project similar to the UNDP Clinical Project is carried out in Vietnam in the future, what would you recommend the project to focus on in order to develop and sustain CLE in Vietnam?

36. What do you think about the willingness of Vietnamese central government and other relevant agencies (MOJ and MOET) in accepting and including CLE in law curricula? What happen if they are not willing or not accepting? Is there any possibility for Vietnamese law

schools to continue their clinical program(s) in that circumstance?

37. What should Vietnamese law school do in order to improve the supervision in their CLE programs?

38. Among different CLE models delivered by Vietnamese law schools, what model do you think will work best in the Vietnamese setting? Could you please explain further?

39. Overall, how would you see about the future of CLE in Vietnam?



## Appendix F

### Questions for Follow-up Focus Group Discussion Seminars

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#### **I. Current state of Vietnamese legal education and possibilities for reform**

1. What are the challenges of the Vietnamese legal education system? How does these challenges affect law graduates' readiness for their future careers? What do you think about the statement: *'Vietnamese legal education is disconnected from the legal profession'*?
2. Do you think the two-stage legal education system is a good option for Vietnamese legal education in preparing law graduates effectively for the profession?
3. How important is professional training to law graduates in preparing for their future careers? In addition to the Vietnamese Judicial Academy (VJA) and other professional training institutions, is there any other effective approach for delivering professional training to law students? Any reform needed for the VJA to function better?
4. What do you think is the most urgent reform needed for the Vietnamese legal education system from the perspective of each participant coming from different professions? Could you explain further?
5. What do you think about law teachers' practice law in Vietnam and how this will affect Vietnamese legal education? Do you think Vietnam will return the right to practise law to law teachers any time soon?
6. What are the potential solutions for the reform of Vietnamese legal education? How do you see the role of stakeholders (law schools, local bar associations, practising lawyers, Vietnamese central government and relevant ministries and others) in this reform? How do you see the relationship between law schools and local bar associations in this reform?
7. Some people propose the following options for reforming Vietnamese legal education:
  - (1) building graduate-level legal education (for example, a JD degree);
  - (2) curriculum reform;
  - (3) teaching methodology reform;
  - (4) incorporating professional courses, currently delivered by various professional training schools, into law school curricula; and
  - (5) adoption of clinical legal education (CLE).

What is your opinion on this? Could you explain further?

8. Do you think Vietnamese law schools have enough capacity in order to deliver effectively both general doctrinal education and professional training to students?
9. Do you think CLE is a potential option for the reform of Vietnamese legal education? What are the potential values CLE may bring to Vietnamese legal education? Could you explain

further?

10. In general, what do you think about the future of Vietnamese legal education?

## **II. Current state of Clinical legal education in Vietnam and future perspective**

1. How do you evaluate the current state of CLE in Vietnam?

2. What are the challenges that Vietnamese law schools encounter in developing and sustain CLE in Vietnam?

3. What is the most challenging obstacle of Vietnamese CLE?

- Finance
- Political willingness
- Regulatory barriers
- Conception barriers
- Supervision
- Others

4. Do you think the Vietnamese legal education system needs CLE in the process of reform? Could you explain further?

5. What do you think about the roles of stakeholders (law schools, local bar associations, practicing lawyers, Vietnamese central government and relevant ministries and others) in promoting CLE in Vietnam?

6. In your opinion, who should provide funding for CLE in Vietnam?

- Vietnamese central government
- Relevant public agencies (the Ministry of Justice and the Ministry of Education and Training)
- Law schools
- Legal Aid Agency
- International donors
- Others

7. In your opinion, should CLE be designed as a course in law curricula?

If no, why not?

If yes, should it be a compulsory unit or elective course?

8. What clinical model do you think the most suitable in Vietnamese context? Could you explain further?

- In-house clinic (including the legal consultancy model)
- Simulations
- Externships
- Community Legal Education (Street law)
- Others

9. What should Vietnam do in order to improve the supervision in CLE programs? In the Vietnamese setting, who, among the following people, should be in the best position to supervise clinical students?

Clinicians

Doctrinal law teachers

Practising lawyers

Others

10. What recommendations would you have for Vietnam in developing and sustaining CLE in the country?

11. In general, what do you think about the future of CLE in Vietnam?