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## REFORMING THE VIETNAMESE LEGAL EDUCATION SYSTEM: POSSIBILITIES AND PERSPECTIVE

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### INTRODUCTION

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

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

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

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

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

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

Accordingly, the paper begins with a discussion on the demand for reforming Vietnamese legal education. There is a growing dissatisfaction among the profession, public agencies and private companies in Vietnam with the poor quality of the current legal education system. The need to reform legal education, therefore, is widely accepted by all stakeholders - law students and teachers, lawyers, governments, public agencies and international donors. This reform is regarded as an essential condition to foster a rule-of-law<sup>4</sup> society, provide legal human resources for national social-economic development, and strengthen the legal profession in

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

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

#### THE DEMAND FOR THE REFORM OF THE VIETNAMESE LEGAL EDUCATION SYSTEM

In Vietnam, legal education plays a significant role in national social-economic development. As Sidel and Pham<sup>5</sup> have pointed out, legal education is a strategic area for development assistance and is significant for further promotion of a rule-of-law society in Vietnam. From the judiciary system perspective, UNDP maintain:

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

<sup>5</sup> Sidel and Pham, above n 3, 1.

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

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

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

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

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

"...that national tertiary education should be renewed in a vigorous, substantial and comprehensive manner".<sup>8</sup>

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

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

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

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

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

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

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

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

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

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

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

increase the likelihood to have more well-qualified lawyers, judges, procurators<sup>11</sup>, and the like. These people are important actors in making a rule-of-law society possible in Vietnam.

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

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

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

<sup>12</sup> Bui, above n 7, 299.

<sup>13</sup> Vietnamese Communist Party, above n 9.

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

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

## POSSIBILITIES FOR THE REFORM OF VIETNAMESE LEGAL EDUCATION

### *i) Moving to graduate-level legal education?*

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

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

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



Vietnam. It has created more study options available for the learners. However, unlike in Japan<sup>16</sup> and South Korea<sup>17</sup> where a new law school system was established, Vietnamese law schools have modified their existing bachelor degree curricula to fit with 2.5-year time frame of the second-degree program. This may be one of the reasons why the second-degree has not been seen as an effective reform of legal education in Vietnam.

Can Vietnam follow Japan, South Korea or other countries<sup>18</sup> in adopting a JD degree as graduate legal education? Yes, it can. But Vietnam needs first to look at experience and lessons from these countries.

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

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

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

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

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

<sup>20</sup> Maxeiner and Yamanaka, above n 16, 315.

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

Similar to Japan, South Korea introduced three-year graduate legal education in 2007 following the United States JD model. However, various challenges resulting from the reform such as economics, culture, and pedagogies<sup>24</sup> have been identified. From the perspective of economics, for example, Kim believes there is an increased number of legal job seekers and tension between students graduating from the 'old' system and those from the 'new' one.<sup>25</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 become a qualified lawyer and this creates an 'unfair competition' for legal jobs.<sup>26</sup>

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

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

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

<sup>22</sup> *Ibid.*, 118.

<sup>23</sup> *Ibid.*, 92.

<sup>24</sup> Kim, above n 17, 21-30.

<sup>25</sup> *Ibid.*, 23.

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

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

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

Among common law countries, Australia is also experiencing challenges with the JD degree. As Cooper *et al.*, have pointed out, not all the JD courses are equal because some of them, as graduate courses, have the same learning outcomes as the LLB courses.<sup>30</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. Consequently, it is argued that some Australian universities might struggle to

<sup>27</sup> Ibid, 27-28.

<sup>28</sup> Ibid.

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

<sup>30</sup> Cooper, *et al.*, above n 18, 37.

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

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

<sup>31</sup> Ibid, 38.

<sup>32</sup> Ibid, 39.

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

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

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

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

<sup>33</sup> The 2014 Research Interviews.

<sup>34</sup> The 2014 Research Interviews.

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

Accordingly, an academic department specializing in international trade law has been established<sup>35</sup> at two principal Vietnamese law schools – Hanoi Law University (HLU) and Ho Chi Minh City Law University (HCMCLU). The HLU Department of International Trade Law has become a dynamic and attractive academic unit to many law students.<sup>36</sup> Meanwhile, the Department of International Trade Law is one of the units having a large number of student enrolments in HCMCLU.<sup>37</sup> As the international economics and trade become an important national priority, courses teaching this knowledge will continue to be common in Vietnamese law schools' curricula.

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

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

<sup>36</sup> Interviews with HLU law teachers.

<sup>37</sup> Interviews with HCMCLU law teachers.

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

of Legal Professional Practice has organized various skills courses for students to learn practical knowledge from inviting judges, lawyers and procurators.<sup>39</sup> In others, professional knowledge and skills are taught as supplementary courses delivered outside formal curricula. These courses are designed as short-term training organized by law school *Centers for Legal Consultancy and Short-term Training*. This can be seen as an increasing trend in law schools such as HLU,<sup>40</sup> HCMCLU<sup>41</sup> and HUSL.<sup>42</sup>

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

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

<sup>39</sup> Interviews with HUSL law teachers.

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

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

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

Vietnamese Communist party – may not accept the removal of ideology-related courses from law curricula. As Bui maintained, Vietnamese legal education has been heavily shaped by the socialist theories and the central Government aims to ‘produce’ generations of ‘socialist’ lawyers.<sup>43</sup> To some extent, the maintenance of these ideology courses at higher education<sup>44</sup> (and may be at other levels of education) is an essential condition for Vietnam to maintain and stabilize the communist regime.<sup>45</sup>

*iii) Reforming teaching methodologies: what should it be?*

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

43 Bui, above n 7, 299-304.

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

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

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



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

*iv) Adopting and incorporating CLE into law curricula*

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

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

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

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

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

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

As an innovative teaching methodology, CLE has been considered as the most significant legal education reform, since the introduction of case-law method by Christopher Columbus Langdell in 1890.<sup>49</sup> Evans *et al.*, have identified various values of CLE to legal education:

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

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

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

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

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

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

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

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

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

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

on' professional skills. In many countries, CLE programs have been designed as general practices where free legal service on various areas of law is delivered by students under the same supervisors. Meanwhile, specialized clinical programs have also been established in order to help clients with specific legal problems<sup>53</sup> such as children rights protection, employment law, family law, human rights protection, immigration, and labor law.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

<sup>68</sup> *Ibid.*, 12.

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



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

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

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

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

<sup>70</sup> Rice, above n 67, 13.

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

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

As an integral part of CLE, reflection is the key factor that helps strengthen students' thinking ability. In a clinical setting, students are not only given opportunities to learn professional knowledge and skills but also required to reflect from their experience. With time, the reflection process will help students study better and mature professionally and ethically. Ledvinka, *et al.*, even believe that reflection is the 'magic ingredient that converts legal experience into education'.<sup>73</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>74</sup>

A well-known educational theory asserts that there are four stages of learning, in each of which reflection is an important step.<sup>75</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>76</sup> A clinical program where reflection is graded as 'insight assessment'<sup>77</sup> will motivate students to work harder and try their best to understand the problems more

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

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

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

<sup>76</sup> Ledvinka, above n 73, 32.

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

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

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

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

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

<sup>78</sup> Ibid, 31.

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

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

<sup>81</sup> Hyams, above n 77, 31.

<sup>82</sup> Evans, *et al.*, above n 50, 20.

<sup>83</sup> Ibid.

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

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

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

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

<sup>85</sup> Bui, above n 7, 299.

<sup>86</sup> Evans, *et al.*, above n 50, 4-6.

<sup>87</sup> *Ibid.*, 15.

<sup>88</sup> Bui, above n 7, 312.

<sup>89</sup> Brayne, Duncan and Grimes, above n 48, 1.

application of legal knowledge.<sup>90</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 versus how such learning gets applied in practice,<sup>91</sup> CLE thus bridges the gap between legal education and the legal profession.

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

## CONCLUSION

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

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

<sup>90</sup> Hyams, above n 77, 25.

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

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

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

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