

CLINICAL LEGAL EDUCATION IN THAI LAW SCHOOLS AND ACCESS TO
JUSTICE

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บทคัดย่อและแฟ้มข้อมูลฉบับเต็มของวิทยานิพนธ์ตั้งแต่ปีการศึกษา 2554 ที่ให้บริการในคลังปัญญาจุฬาฯ (CUIR)

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การศึกษากฎหมายเชิงคลินิกของมหาวิทยาลัยในประเทศไทยและการเข้าถึงกระบวนการยุติธรรม

นางสาวลอเรน ดอนนีสัน

วิทยานิพนธ์นี้เป็นส่วนหนึ่งของการศึกษาตามหลักสูตรปริญญาศิลปศาสตรมหาบัณฑิต

สาขาวิชาการพัฒนาระหว่างประเทศ

คณะรัฐศาสตร์ จุฬาลงกรณ์มหาวิทยาลัย

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ลิขสิทธิ์ของจุฬาลงกรณ์มหาวิทยาลัย

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การให้บริการทางกฎหมายโดยไม่เสียค่าใช้จ่ายเป็นกิจกรรมที่สำคัญยิ่งในทุกๆ สังคม เพราะเป็นการช่วยเหลือประชาชนให้มีโอกาสในการเข้าถึงความยุติธรรมได้อย่างเท่าเทียมกัน อย่างไรก็ตาม ในประเทศไทยและประเทศอื่นๆ ยังขาดแคลนนักกฎหมายที่จะมาช่วยทางด้านนี้อย่างแท้จริง การศึกษากฎหมายเชิงคลินิกนั้นจึงมีเป้าหมายในการเตรียมนักศึกษาที่มีความสนใจและมีความรู้ด้านกฎหมายที่มากพอ ทั้งยังเป็นการเสริมทักษะการเป็นนักกฎหมายที่ดีและมีความยุติธรรมทางสังคมผ่านการเรียนรู้ทั้งสองฝ่าย โดยให้นักศึกษาเป็นศูนย์กลางในการเรียนรู้และเป็นการปลูกฝังให้นักศึกษากฎหมายที่สำเร็จการศึกษาไปแล้วยังคงเป็นอาสาสมัครในการให้บริการทางกฎหมายโดยผ่านการทำงานหรือสายงานที่ทำอยู่ เป้าหมายที่สองของการศึกษากฎหมายเชิงคลินิกคือการเพิ่มความยุติธรรมในสังคม โดยวัตถุประสงค์ของการศึกษานี้เพื่อประเมินผลกระทบเชิงบวกของการศึกษากฎหมายเชิงคลินิก เมื่อสำเร็จการศึกษาไปแล้วจะเพิ่มศักยภาพในการเข้าถึงความยุติธรรมในประเทศไทย

จากการศึกษาพบว่า (i) การศึกษากฎหมายเชิงคลินิกมีประโยชน์อย่างมากต่อนักศึกษากฎหมายเมื่อสำเร็จการศึกษาแล้วจะมีความตระหนักในการช่วยเหลือและรับผิดชอบต่อสังคม อีกทั้งเพิ่มประสบการณ์ฝึกการเตรียมความพร้อมในวิชาชีพนักกฎหมาย (ii) การศึกษากฎหมายเชิงคลินิกยังช่วยให้ผู้ที่สำเร็จการศึกษาเข้าใจถึงการให้บริการทางกฎหมายและศักยภาพแนวทางที่สามารถพัฒนาให้เป็นส่วนหนึ่งของการทำงาน (iii) ในประเทศไทยยังมีผู้ขาดความรู้ความเข้าใจทางด้านกฎหมาย ซึ่งเป็นปัญหาและอุปสรรคที่สำคัญอย่างยิ่งในการเข้าถึงกระบวนการยุติธรรมในประเทศไทย (iv) หลักสูตรการศึกษากฎหมายเชิงคลินิกช่วยเพิ่มแนวทางในการเข้าถึงความยุติธรรมในสังคม โดยให้บริการคลินิกกฎหมายโดยตรง เช่น การให้คำปรึกษาทางกฎหมายและการให้ความรู้กฎหมายสู่ชุมชน นอกจากนี้ยังเป็นการทำงานนอกเวลาที่เพิ่มประสิทธิภาพให้บัณฑิตมีความเป็นมืออาชีพควบคู่กับการมีคุณธรรมจริยธรรมของวิชาชีพนักกฎหมายในประเทศไทย

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Legal pro bono activities are vital in any society to ensure that the rule of law is upheld and equal access to justice is achieved, however in Thailand, like in many countries, there are a lack of professionals who actually participate in such work. Clinical legal education programs aim to provide students with a more holistic education that enhances their lawyering skills and incorporates a pro bono and social justice ethos into legal education through interactive, student centered teaching methods. It is hoped that after graduation law students will continue to do pro bono work throughout their careers. CLE also has a secondary aim of increasing the access to justice within a society. The purpose of this study to evaluate the positive impacts CLE has upon law graduates and its potential to increase access to justice in Thailand.

The primary findings of the study are: (i) CLE programs have a positive impact upon graduates skills, social awareness and sense of social responsibility, increasing graduates overall capacity and better preparing them for the practice of law. (ii) CLE programs increase graduates understanding of pro bono, its significance for society and has the potential to influence graduates career choices. (iii) Lack of legal awareness and understanding is the perceived greatest obstacle to justice in Thailand. (iv) CLE programs have the capability of increasing access to justice within Thai society by offering direct legal services, such as legal counsel and legal education. Furthermore, overtime, they could also strengthen the rule of law and create a more professional and ethical legal profession within Thailand.

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LIST OF ABBREVIATIONS

CLE	Clinical Legal Education
CMU	Chiang Mai University
TDRI	Thailand Development Research Institute
TU	Thammasat University
UN	United Nations
ICCPR	International Covenant on Civil and Political Rights

CHAPTER I

INTRODUCTION

1.1 Statement of the Problem

“Access to justice is the hallmark of a civilized society”(Robins 2011) and therefore should, in an ideal world, be equally accessible and available to all people. Therefore, access to justice is crucial to any society that purports to be socially just. The concept of access to justice is derived from the concept of social justice, to create a society that is fair and equal for all. However, what we commonly see in many developing and developed countries is that poor and marginalized people are not given equal access to justice. They are excluded because of the cost, inadequately skilled legal professionals, location, language, discrimination, fear, mistrust or education limitations (Pinedo 2011). Without adequate access to legal justice a person can experience many negative impacts such as fear, insecurities and vulnerabilities (Joshi 2003).

As the “handmaidens of democracy,”(Anand 2007) lawyers are believed to have a social responsibility to ensure that all members of society have equal access to justice (Rhode 1999). Pro bono has been acknowledged as an instrument to alleviate the problem of lack of access in society (Golub 2007). Furthermore, the UN recognizes the right to legal aid as a human right, and that a state has an obligation to provide free legal aid to those who are unable to bear the financial cost. Pro bono services are an important instrument in ensuring that there is equal access to justice and that justice doesn’t depend on a person’s ability to pay (Cappelletti 1979). However, the delivery of pro bono service depends on the willingness of lawyers and law firms to provide it (Rhode 1999, Cordray 2011). Although, it is presumed lawyers have a social responsibility to provide pro bono services, how can lawyers understand this responsibility if they are never taught it? How can lawyers really grasp the importance of pro bono work until they have met those on the outskirts of justice? Therefore, to ensure that lawyers uphold their responsibility to society, it is necessary to increase their awareness, understanding and commitment to pro

bono, and where better to start than law school? Law schools have the perfect stand point, to increase students' awareness about the importance of pro bono and instill a sense of professional commitment towards doing pro bono into future lawyers (Rhode 1999, Cordray 2011). Furthermore, Rhode (2004) believes if we want lawyers to perceive pro bono services as a professional responsibility then that message must begin in law school.

In response to a lack of socially active lawyers and in the interest of acquiring access to justice, American law schools developed a practical law program that aimed to improve the quality of legal education. The hope was that this will create better lawyers, and improve citizens' access to justice. These practical courses are typically known as Clinical Legal Education programs, these programs generally provide students with training on the subject of lawyering skills and frequently, they also provide students with the opportunity to practice their skills at their in-house university clinic or by taking part in internships. Furthermore, many of these programs carryout community legal education programs to create legal awareness among the general public, usually targeting vulnerable or marginalized groups. CLE has a social justice motive of promoting greater and more equal access to justice within society and "instilling a sense of public responsibility" (Bloch 2008) into the lawyers of the future.

Traditionally, law school was seen as a place to learn law, not learn to be a lawyer (Prasad 2006) however, there has been a move away from this idea and a move towards "experiential education"(Bloch 2008). The American ideology has now gone global and law schools across the world are now incorporating practical courses into their undergraduate law degrees, to better prepare students for the practice of law. The recent Carnegie Report on legal education increased law schools awareness about the importance of practical legal education and recommended that law schools should strive to produce students with more adequate skills, knowledge and desire to work towards improving society. CLE programs may have the potential to fulfill the Carnegie Reports recommendations and could help to increase access to justice within society.

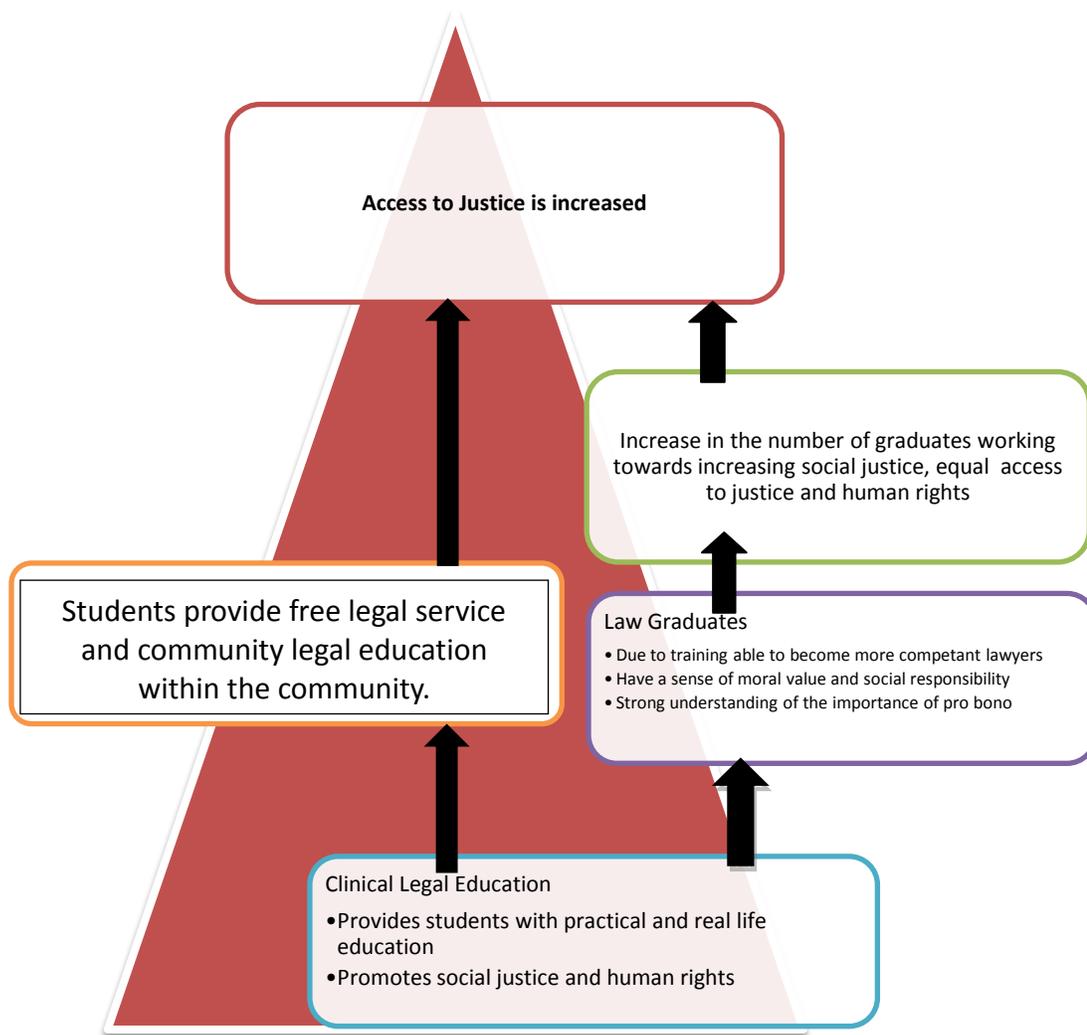
This thesis will assess if CLE programs in Thailand, such as the ones at Chiang Mai University and Thammasat University, achieve their objective of increasing student

skills set, instilling social responsibility and awareness into students and if this leads to an increase in the number of graduates participating in pro bono work or pursuing an ethical career within the legal field. This thesis focuses on graduate's students who participated in these programs and provides in-depth accounts of their experiences and reflections on their experiences. Furthermore, this thesis will investigate the factors that obstruct a person from being able to access justice within Thailand. The importance of this research is that it provides an invaluable education methodology which is currently underutilized in Thailand law schools, which could result in countless positive effects for law graduates and society as a whole. A comprehensive analysis will judge the value, as well as, evaluate the effectiveness of clinical legal education programs in universities as a tool to increase citizens' access to justice in Thailand.

1.2 Conceptual Framework

The key variables that will be addressed in this thesis are; access to justice, the impacts clinical legal education has upon students' skills, sense social responsibility, understanding and commitment to pro bono work.

As the framework below demonstrates, Clinical Legal Education aims to enable justice by overcoming common obstacles that obstruct access to justice. CLE provides both theoretical and practical education within a social justice setting with the goal of instilling professional responsibility into future lawyers and improve the competence of law graduates. Incompetent and poorly educated lawyers restrict access to justice because they are not able to adequately represent clients. Furthermore, a lack of socially active or socially aware lawyers working to promote human rights and social justice can restrict justice. CLE has the potential to produce lawyers that are concerned with promoting and protecting human rights and social justice which would provide greater access to justice for citizens. Furthermore, CLE intends to increase access to justice by providing free legal services and community legal education to poor or disadvantaged clients.



1.3 Research Questions

- 1) What positive impacts does Clinical Legal Education have upon law graduates in Thailand?
- 2) Does Clinical Legal Education encourage law graduates to participate in pro bono or pursue an ethical career within the legal field?
- 3) Can Clinical Legal Education increase access to justice in Thailand?

1.4 Objectives

- To assess if CLE builds graduates skills capacity.
- To evaluate if CLE programs influence law graduates to continue pro bono work after graduation or pursue an ethical career within the legal field.
- To identify the obstacles that restrict access to justice in Thailand
- To establish if CLE programs can be used as a tool to help to overcome obstacles to access to justice in Thailand

1.5 Hypothesis

There is a lack of access to justice in Thailand, especially for poor and marginalized people, deriving from low public knowledge of the law and a lack of services dedicated to increasing public knowledge and providing free legal services. A contributing factor to the cause of this problem is that traditional Thai legal education doesn't focus on promoting professional or social responsibility, or raise awareness of social justice. However, clinical legal education programs can be used as an education tool to instill a sense of professional and social responsibility into students, and encourage pro bono participation. Therefore, CLE can help to increase the number of graduates who participate in pro bono work or pursue an ethical career within the legal field, leading to an increase in access to justice in Thailand.

1.6 Significance of the Research

According to the documentary data collected and to the best of the researcher's knowledge, a study investigating clinical legal education and its impacts upon access to justice in Thailand does not exist. This research fills this knowledge gap. This thesis also highlights the importance of CLE as a mechanism to enhance legal education, implant social responsibility into future lawyers and educate students about their society and social problems within it. This research aims to contribute to the gap in knowledge in international development studies as to how we can increase law graduates interests and

participation in pro bono or ethical careers within the legal field. Furthermore, this research identifies the key obstacles to access to justice in Thailand and suggests ways that CLE can help to overcome these. Overall, it provides the recommendations for legal education reform and the incorporation of CLE programs into Thai legal education, not only for the benefit of students, but for the benefit of Thai society as a whole.

1.7 Research Methods

A qualitative method was utilized for this study in order to answer the research questions and test the hypothesis of this thesis. This was entailed in a cross-sectional study using various methods including: documentary research, exploratory research, semi structured, in-depth and expert interviews.

1.7.1 Documentary Research

Documentary research was used to gain an understanding of the Thai legal system and Thai legal education system. Documentary information relevant to the two universities selected was gathered from each institution.

Secondary data was collected from books, journals, reports, news articles and credible internet sources. All information reviewed related to access to justice, CLE and the role of legal education.

1.7.2 Field Study Research: Data Collection and Methods

The following section will discuss specifics about the data collected in the field. The data for this thesis, drawn from interview transcripts, field notes and university documents, were gathered during a one month field study. For this research two case studies were used, Chiang Mai University located in the north of Thailand and Thammasat University located in Bangkok. Both of the legal centers were visited several times, but extensive observation was not conducted because many of the interviews were held outside of the university.

Respondents were divided into two groups; 1) expert and key informants: in-depth interviews and 2) Sample population: semi-structural interviews

1.7.2.1 Expert and Key Informants

To gain a wider understanding about clinical legal education and issue to access to justice in Thailand, five law professors were interviewed: one from Thammasat University and four from Chiang Mai University. The Dean of Thammasat University Law Department and the head of the Thammasat legal clinic were also interviewed. Furthermore, several foreign experts within in the field of clinical legal education and three Thai lawyers working in the field of development and human rights were interviewed. (See Appendix B for more details)

1.7.2.2 Sample population

To understand about the impacts that clinical legal education had upon students and students perception of problems to access to justice, a total of 15 graduate students, nine from Chiang Mai and six from Thammasat, who had spent time working at the university legal clinic were interviewed for this study. (See Appendix A for more details)

Interviews ranged from 25minutes to 50 minutes and all were digitally recorded, and transcribed. In order to contact the graduates, the researcher contacted the legal clinic staff who, with the permission of the professors and graduates themselves, provided the telephone numbers or email addresses of graduates. However, due to a lack of graduate records, the legal centers could only provide a limited number of contacts, therefore the snowballing method was used to contact more graduates. Graduates were contacted, with the help of a translator, to arrange interview dates. Due to graduates unavailability some interviews were conducted by telephone and by email. A translator was present at all of the interviews to assist when language difficulties arose.

1.8 Research Scope

This research focused on CLE in Thailand. Chiang Mai University is currently the only law school in Thailand that has integrated CLE into its curriculum and Thammasat University is one of the oldest universities in Thailand and its legal center is renowned for its work, therefore this is why these universities were selected for this study. Both of the legal center models are very different from each other and the researcher had to gain a clear understanding of the way in which both centers operated and how the students participated within each center.

1.9 Language use and use of a translator

This research was conducted in Thailand and a large percentage of the target population was Thai, therefore as a non-native speaker the researcher used a translator during interviews where the interviewee was unable to speak English. In total three translators were used and the purpose of the study was explained in detail before interviews for better understanding.

1.10 Ethical Issues

Ethical issues were carefully considered during this research. The interviews that took place with graduates and key informants were done after their understanding and agreement were attained.

1.11 Data Analysis Procedure

The interview questions covered an ample range of topics to gain a clear insight into the issue of access to justice and CLE in Thailand. The questions were fully comprehensive in order to answer the research questions. The five key fields; legal education, CLE, access to justice, obstructions to justice and overcoming access to justice using CLE incited information that enabled the researcher to arrive at the conclusions that will be discussed in detail in chapter 6.

1.12 Limitations

The following sections discuss limitations to the study that the researcher encountered during field work.

1.12.1 Language

This research used a translator during interviews when the interviewee was unable to speak English. This created a limitation because the researcher felt unable to talk freely with interviewees and the meaning of certain things and emotions were lost through translation. Moreover, sometimes interviewees would inform the researcher that they were able to speak English and no translator was necessary, however on several occasions they were able to speak English but were unable to express their ideas in the manner in which they wanted to due to the language barrier and English being their second language. In response, the researcher always provided a translator during interviews to ensure that interviewees could fully communicate their answers.

1.12.2 Snow-Balling Method

Another limitation was the use of the snow balling method, which was used to select graduate students. Due to a lack of graduate records from the legal centers it was difficult to gain contact with graduates. The legal centers were able to provide limited resources therefore, the researcher had to ask interviewees for other ideal research candidates. As a result, the Chiang Mai graduates were all very familiar with one another and had studied in the same class. Ideally, the researcher would have chosen a more diverse set of research candidates had the option been available. Furthermore, at Thammasat University the researcher was unable to identify multiple candidates for the study and all the candidates selected were male because no female candidates could be found. This lead to an imbalance in the number of graduates from each university interviewed, ten from Chiang Mai compared to six from Thammasat.

1.12.3 Access to desired population

Due to a lack of contacts, the researcher was not able to interview any lawyers who worked at the Lawyers Council of Thailand providing pro bono assistance. It would have been very useful to have interviewed someone to gain a clearer insight into how the process of free legal service in Thailand worked and to discuss some of the accusations made against the service.

1.13 Terminology Used

The following section clarifies terms used throughout the thesis.

Rule of Law: the rules or laws that have been established within a country, region or area, which all government members and citizens are bound by. These laws must be public knowledge and enforcement must be fair and efficient.

Access to justice: means being provided sufficient education to understand the law and the means to seek a remedy if your rights are infringed upon by others.

Clinical legal Education: A university program that incorporates practical legal skills and ethical responsibility into legal education. This can be in a number of different forms e.g. legal clinics, outreach programs, or field visits. The key aspect is that the program has an overall objective of encouraging law graduates to become more socially responsible and instilling a sense of professional ethics into future lawyers.

Pro bono: Any work that is legal in nature, where the provider is unpaid and the receiver is not required to pay a fee, that strives to increase access to justice for all members of society.

An Ethical Career: is one which is meaningful to you, it can be within the public , private or charitable sector as long as the aim is to create positive change within society through the work you do. An ethical career within the legal field is one which is legal in nature and aims to create positive change with regards to legal issues, for example working towards increasing access to justice, promoting rule of law or creating societal legal awareness.

Socially Active Lawyer: is a lawyer that works towards creating positive social change within society through promoting equal access to justice and social justice.

Socially active lawyers are included within ethical careers within the field of law, but the term socially active lawyer is too narrow in definition because it only includes lawyers. Therefore, to ensure all ethical careers with a legal focus were included in this research the term ethical career was utilized.

CHAPTER II

LITERATURE REVIEW

2.1 Access to Justice

Firstly, it is important to establish the relationship between the rule of law and access to justice. The rule of law, in its simplest form, means the rule or laws that have been established within a country, region or area. At a minimum, all government members and citizens must be bound by the rule of law and act in accordance with it (Tamanaha 2007). These laws must be public knowledge; they must be consistent and must apply to everyone. To ensure that the rule of law applies to all, governments establish formal legal systems and create written laws, often in the form of constitutions. As well as ensuring these laws are established within a legal system, there must also be mechanisms to ensure that the laws are abided by. Therefore, there must be strong enforcement structures, such as police and courts, the system must efficient and available to all, the decisions should be fair and non-discriminatory, and those within the system must be competent and impartial (Carothers 2006). The function of the rule of law is to protect citizens against the arbitrary use of power by the state, other individuals or any other organizations (Vel 2010). Moreover, the rule of law provides the framework that enables societies to be fair and prosperous (M.D. Agrast 2013). The role of courts is to protect citizens' rights and offer remedy when citizens' rights are breached by another. However, if one is unable access courts then they cannot seek justice. This clearly demonstrates that the rule of law and access to justice are interdependent on each other for their existence.

One of the leading works on access to justice was Cappelletti & Garth's book on "Access to Justice and the Welfare State" (Garth 1981). Although they don't provide an exact definition of access to justice, they define it as containing two main elements:

- First, the system must be equally accessible to all

- Second, it must lead to results that are individually and socially just.

For there to be equal access there must be no obstacles that limit a person's access. Otto (2002) argues that access to justice is achieved when a person, not excluding any members of society, suffering from an injustice is able to gain assistance, either from state or non-state bodies, in order to resolve their grievance in accordance with the rule of law. If all citizens do not have equal access and are not able to pursue their rights then this makes a "mockery of legislative intention, the rule of law and access to justice" (Mayson 2010). Many countries offer legal aid to try to ensure that people are not obstructed from access based upon financial restrictions. The European Union Charter of Fundamental Rights refers to the concept of access to justice with regards to legal aid. The term access to justice is explained as "the right to legal aid for those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice" (Pinedo 2011). Furthermore, this definition requires that the legal system itself is just, non-discriminatory and gives results that are fair. Otherwise, the system is flawed and justice cannot be achieved even when all people have equal access. However, it has been argued that access to justice is not just simply access to courts or access to lawyers, if we restrict the concept of access to justice to just include this we in fact restrict justice (Pinedo 2011). Abregu (2000) states that, for a person to fully realize the right to access to justice, firstly, they must be aware of their rights and secondly, be aware that they also have a right to exercise those rights. For law to be understood by all members of society it must be translated into everyday language (Palacio 2006). Furthermore, Susskind (2008) supports this idea stating that, a society which has genuine access to justice, is one where facilities and mechanisms are in place so that non-lawyers are able to recognize that the law impacts their lives.

A World Bank report acknowledges that the poor suffer disproportionately if the state fails to provide access to justice. Legal empowerment of the poor is a critical component for a country fighting against poverty, by providing all members of society with equality before the law you enable people to be able to economically develop too. In conclusion, access to justice is a collaboration of an established rule of law, a competent

and impartial judiciary that produces fair results, legal assistance that is equally available to all citizens and legal awareness and understanding of the general population.

2.1.1 Limitations to Access to Justice

There are some common factors that have been identified as key reasons for limited access to justice. Firstly, the location of legal services, services are often located in cities, restricting access to those outside of these areas. Cost is another barrier, legal services are usually expensive and often the State is only able to provide limited legal financial aid. Additionally, if a person lives in a rural area and wants to access legal services within an urban area, the cost of transportation to the urban area maybe out of their financial reach.

If citizens consider their legal system to be corrupt they may feel that it can offer no justice, so they don't access it. Also, within a corrupt system the poor are further disadvantaged because they will not have the financial means to buy access to justice. Moreover, if the system is discriminatory, certain people may not be able to access justice and justice will not be distributed equally and fairly.

Language, the law is written in the national language of a country; therefore, this excludes indigenous and migrant populations who may not be able to understand the native language. Secondly, with regards to language, laws and legal terminology can be very difficult to understand for people who are unfamiliar with academic studies or have low literacy levels. Abregu (2000) demonstrates this point by stating that sometimes the complexity of legal language can be so difficult that a person may not even understand the sentences that they are being given. People must be able to understand the law for there to be true access to the law (Pinedo 2011). Furthermore, due to the very nature and formality of the legal system many people may feel intimidated by the system and are afraid to try to access justice.

Another central issue obstructing access is that many people are not aware that they have rights that can be exercised and even if they are aware of their rights, they don't have the knowledge to be able to exercise them (Abregu 2000). This issue is a

fundamental issue, which obstructs access to justice and F. Bloch (2008) argues that any access to justice program must first address this issue by creating basic legal knowledge to the general population. Finally, a lack of lawyers, especially socially active lawyers, can restrict access because if there are an insufficient number of lawyers to represent the population, then fewer people will be able to access justice. Moreover, if there are few socially active lawyers, then this may limit the availability of legal aid.

However, these factors are contextual and cultural and don't always apply in every society, therefore this research aims to identify the key factors that obstruct access to justice in Thailand. Following is a comprehensive review of access to justice in Thailand based upon current literature.

2.2 Access to Justice in Thailand

Over the past two decades, Thailand has experienced economic growth, a substantial reduction in poverty and significant improvements in areas of social development, including access to education, health and other social services (UNDP 2005). However, Thailand is still a nation of imbalances, for example, the richest quintile of Thais earn 14.7 times more than the poorest quintile. These imbalances are leading to an increasing sense of injustice among the population and heightened political instability (Thailand 2011).

Internationally, Thailand has signed seven of the nine international core Human Rights treaties, therefore they are required to respect, protect and fulfill the civil, cultural, economic, political and social rights of all those within its territory and jurisdiction without distinction of any kind. To this end, Thailand must ensure every individual's ability to access justice through: the legal recognition of rights, the provision of effective legal protection from abuses and ensuring access to legal remedies and reparation. Domestically, in 2007 a new Constitution was adopted in Thailand, incorporating many of the constitutional protections the 1997 Constitution had previously enshrined, as well as introducing new provisions specifically directed at improving access to justice. For example, Section 40(1) on rights in the judicial process proclaims that individuals should

be able to access justice, “easily, comfortably, quickly and indiscriminately”¹. However, in practice this is not the case, as discussed in more detail below; many people face difficulties, discrimination and long delays when trying to access the Thai legal system. Recent reforms have focused on five objectives; to make the judiciary more impartial, accessible, independent, accountable and effective. Judicial independence is imperative for a fair and impartial system, it means that the judiciary must be free from any kind of political inferences and therefore the Ministry of Justice should not be controlled by the Government.

In order to enhance access to justice for all, measures have been taken to expand legal services. One way has been through the development of Alternative Dispute Resolution (ADR), which aims to settle legal matters outside of court quickly and inexpensively. Furthermore, legal aid programs have been expanded to provide legal services for the low income persons (Surin. Cholpattana 2009). In a bid to enhance the legal aid system and improve overall access to justice within the county, the Justice Fund was established in 2006 by the Ministry of Justice, under the administration of the Department of Rights and Liberties. The fund assists those unable to pay their own legal fees or bail bond. Nevertheless, due to underfunding, lack of independence and ill management the fund is up for reform. The proposed reforms hope to make the fund more accessible to those in need, for example by decentralizing the management and implementing local sub committees, so people will not have to travel to Bangkok to gain access to services (Rojanaphruk 2013). Despite, all of these recent reforms, expectations have not been met and therefore major obstacles still exists, "Our judicial system is still inefficient and marred by inequality," stated the vice chairman, Somkiat Tangkitvanich, from the Thailand Development Research Institute (Nation 2011).

In a recent World Justice Project report, Thailand was ranked 83th out of 97 countries worldwide on their Rule of Law index (M.D. Agrast 2013). Taking a bottom up approach, they interviewed members of the public directly affected by the rule of law in

¹ “Constitution of the Kingdom of Thailand, B.E. 2550 (2007), Section 40(1)

their country. The index comprises of nine collective categories and 48 sub-factors. Table 2.0 presents Thailand's individual results for each category, their lowest score was in the field of civil justice, which the report blamed upon delays in processing cases and difficulties enforcing court decisions. The report also highlighted corruption within the legislature and the police as a significant problem.

Table 2.0: Thailand's Rule of Law Index results

Factors	Scores	Global Rankings	Regional Rankings	Income Group Rankings
Limited Government Powers	0.53	55/97	10/14	16/30
Absence of Corruption	0.41	65/97	11/14	24/30
Order and Security	0.63	71/97	13/14	20/30
Fundamental Rights	0.66	38/97	7/14	9/30
Open Government	0.50	42/97	8/14	13/30
Regulatory Enforcement	0.51	53/97	9/14	18/30
Civil Justice	0.43	80/97	11/14	25/30
Criminal Justice	0.59	35/97	8/14	7/30

(Source, World Justice Project- Rule of Law Index, 2013)

Furthermore, figure 2.0 provides a more in-depth insight into the sub-categories used to assess delivery of justice in Thailand. This shows that with regards to the civil justice system being free from discrimination, Thailand's score was lower than that of other Asian and lower income countries. Also, it shows that in comparison with other Asian countries, Thailand's civil justice system suffers from unreasonable delays, does not effectively enforce civil justice and Alternative Dispute Resolutions are not very accessible, impartial or effective.

Figure 2.0: Delivery of Justice in Thailand



(Source, World Justice Project- Rule of Law Index, 2013)

These findings are supported by several other reports regarding access to justice in Thailand. With regards to discrimination, a national report produced by the National Human Rights Council of Thailand, acknowledges unequal access for the poor and greater awareness among the poor regarding legal services and the legal procedure is essential. They also found that there is a lack of human rights awareness and sensitivity towards marginalized communities among law enforcements, which creates further discrimination and equality (Council 2009). Moreover, the Asian Resource Center is also

conscious that there are certain groups within Thai society that face greater obstacles when trying to access justice, such as non- Thai ethnic groups, legal and illegal migrants, and persons from low socio-economic classes (Center 2005).

Inequality for the poor who are unable to afford legal representation is also a problem. Poor defendants must accept court appointed volunteer lawyers, who are often young, inexperienced and are often believed to ill advise client's and advise them to plead guilty (Unphakorn 2011). With a combination of discrimination and bad legal advice, the result is prisons are occupied mainly by the poor (Nation 2011). For example, as of 2012 there were 250,000 inmates in Thai prisons, the majority whom are from lower economic backgrounds (Nation 2012). The bail system has also been criticized as being unfair and not adhering to the right to fair bail, since bail bonds are not based upon the income level, this is most detrimental to poor defendants who cannot pay high bail bonds (Nation 2012). The result has been that the rich are able go home until their trial and the poor remain in jail. Moreover, the Thai Justice System has been critiqued for being inefficient, Thailand has 400 officials in the judicial system per 100,000 people, which is high in comparison with other countries, however they are still not able to work fast enough to deal with the overload of cases (Nation 2011). Therefore, due to the lengthy procedure of court cases, the poor are further excluded from accessing justice because they are unable to bear the costs.

Access to justice is said to reflect the social and political landscape of the country (2012), and even though Thailand appears to be a democracy and have respect for human rights, it has been argued that it is still an elitist ruled country. "The rule of law is nothing more than a face because in practice, Thailand is still subject to the rule of lords"(Center 2005). The rich and powerful, especially those within government positions, have much more immunity to the justice system (Unphakorn 2011). For example, the higher position one has within the government the less legally accountable they appear to be, the Asian Resource Center refers to high ranking officers in the armed forces who are accused of human rights abuses, but they go unpunished because of their ranking (Center 2005).

Furthermore, Corruption of the Thai police and government officials is widespread and well known, which inhibits people from trying to access the law because they feel justice will not be served (Center 2005). The rule of law principle states that no should be above the law, if they are then true rule of law does not exists. Measures to strengthen rule of law must be taken to ensure a fair and impartial legal system. Moreover, reform is needed to instill trust back into the people of Thailand who have lost trust in the system due to corruption and political interference within the justice process (Wongwaikolayoot 2012).

Overall, Thailand still needs to strive to improve their judicial system and strengthen the rule of law, in order to comply with their constitution and international standards, focusing on creating a more impartial, effective, independent system that is free from discrimination. This research intends to evaluate if CLE programs can be utilized as a tool for facilitating these reforms.

2.3 Pro Bono

Pro bono comes from the Latin term “pro bono public”, which means for the public good and society as a whole (Campbell 2009). The ideology of legal aid derives from the notion that "legal professionals cannot live in ivory towers” they must engage in society and their work should be focused towards promoting social justice(Prasad 2006) p.203). Legal pro bono, is generally in the form of free legal assistance for those who are unable to afford it, it is like a social service that redistributes services from the rich to the poor (Alviar 2008). It can also cover other work such as legal advocacy, which aims to improve and benefit society. When there is inadequate state funded legal aid services, pro bono work is significant in providing access to justice for the poor (Renouf 2003). Furthermore, legal aid is important because access to justice should not depend on a person’s ability to pay and under the principle of ‘rule of law’, access to justice should be available to everyone (Cappelletti 1979). Moreover, Rhode believes that access to justice upholds the key ideals of democracy, human dignity and procedural fairness (2004).

In Thailand, the state provides limited free legal services through the Office of the

Attorney General. Alongside the state there are several organisations that work in Thailand who provide free legal advice and assist in cases, including the Lawyers Council of Thailand and the Muslim Attorney Centre. Nevertheless, access to justice is not merely access to lawyers but also access to legal knowledge. Several NGOs and student groups, such as The Cross Cultural Foundation and the Human Rights and Development Foundation, work towards educating the population about their rights. In the absence of literature, no conclusion can be reached at this stage on whether the pro bono services provided are sufficient enough to ensure access to justice for all members of society. As discussed above, there are several concerns regarding the quality of free legal services in Thailand.

Legal professionals engage in pro bono work for a number of reasons, such as a sense of professional responsibility, a public service obligation, to promote access to justice or in order to create social change (Renouf 2003). There has been much debate whether pro bono work is a lawyer's choice or professional responsibility. Rhode (1999) acknowledges that legal aid is a fundamental right and that lawyers have a right to ensure that this right is protected. However, others have contested why lawyers should be expected to bear the burdens of society when other professionals aren't. For example, there seems to be no moral responsibility on doctors to provide pro bono services (Frankel 1994).

2.4 The Right to Legal Aid

There has been a great deal of debate around the definition of what legal aid is and what should be included in legal aid services. Traditionally, legal aid meant state provision of legal representation in court. Rhode (1999) argues that legal systems are not user friendly for the general lay person because they are created for and by lawyers. Therefore, without legal representation, a person may not be able to have a fair trial because they may not be able to comprehend the complexities of the legal procedure. The right to a fair trial is guaranteed as a fundamental human right under article 14 of the ICCPR. It states that "when a person is in need of legal assistance, but unable to

financially access assistance, then legal assistance should be provided for free”. If legal representation is not equally accessible, then this will undermine the rule of law and moreover, promote social injustice. Furthermore, if legal aid services are not of equal quality to the services provided to paying members of society, this will also obstruct equal access to justice (Rhode 1999).

Rice (2010) believes that the human right to legal aid, stemming from the universal right of access to law, article 25 ICCPR, is more than just a fair trial. Rice argues that due to the rule based nature of society, we have a fundamental right to “effectively know the rules of society.” Therefore, legal aid does not simply mean access to legal representation, but must also include services that provide knowledge and understanding about the rules or laws of their society to the general public. By educating citizens about the law, you are empowering them and thus strengthens their ability to access justice (UNDP 2005). Therefore, for Rice, access to justice means the right to be told the law, given the opportunity to know and understand the law, to use and comply with the law, to gain its benefits and protection.

Recently, the UN announced its guidelines on Legal Aid (Justice 2012) stating that legal aid is a right and that it is a state’s obligation to provide free legal aid to its citizens. The UN definition of legal aid includes both legal representation, access to legal information and legal education. The UN acknowledges that many states struggle to provide adequate legal services, often due to a lack of financial and human resources. They recommend that as a way of increasing legal services, states should establish partnerships with non-state legal aid providers. Guideline 16 suggests that States should take measures:

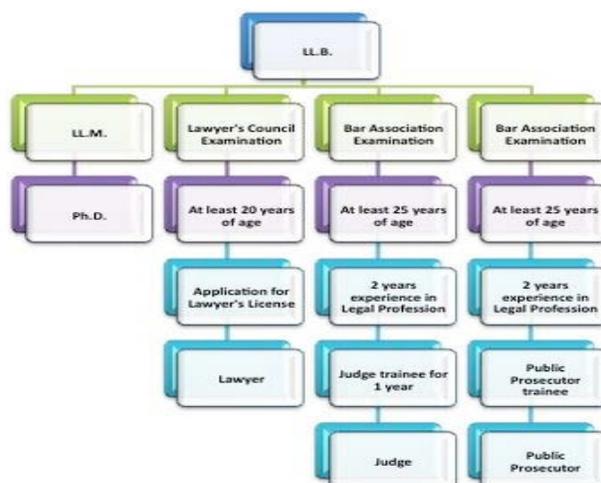
- (a) To encourage and support the establishment of legal aid clinics in law departments within universities, to promote clinical and public interest law programs among faculty members and the student body;
- (b) To encourage and provide incentives to law students to participate, under proper supervision and in accordance with national law or practice, in a legal aid clinic

or other legal aid community scheme as part of their academic curriculum or professional development

In order to uphold the rule of principle and allow equal access to justice, a state must take measures to ensure legal aid services are available. Whether, legal aid is a choice or professional responsibility is not important here, what is more important is that we ensure that students are educated about the significance of pro bono and have the opportunities to participate in meaningful pro bono programs during their time at university.

2.5 Legal education in Thailand

Figure 2.1: Structure of Legal Education in Thailand



The first Law Faculty established in Thailand was at Thammasat University in 1933. Today, there are around 97 law schools nationwide, which produce fifteen thousand plus law graduates per year (Thanitcul 2009). To obtain a Bachelors of Law (LLB) students are required to study for 4 years. As figure 2.1 demonstrates, those wishing to become lawyers must be at least 20 years of age, they must pass a lawyers license exam and register with the Lawyers Council of Thailand. For those who want to become a judge or public prosecutor, they must be over 25 years old, they must have 2 years legal

work experience, complete the appropriate training and they must pass the Bar Exam at the Institute of Legal Education of the Bar Association.

"Reproduction, rather than social critique" (Ashar 2008), this statement is an appropriate description for Thai legal education, since tradition, theoretical, teacher centered methods of teaching are the most predominate methods used. Exams are focused on memorization, there is narrow opportunity for class discussions and limited or no student participation (McCutcheon 2000, Ngamnet. Triamanuruck 2004, Ikawa 2011). The reasons behind this is that universities often face issues with large class sizes, limited law instructors and facilities (Thanitcul 2009). Moreover, there is a belief that university is not the place where students should learn lawyering skills, but that these skills will be taught to them when they join the legal profession (Bruce. A. Lasky 2011). However, researchers are agreed that students who are actively involved in their own learning are able to retain more knowledge, gain a clearer understanding, develop the ability to think critically and apply information learned (Michael. Hunter-Schwartz 2009). The professors are there to teach and guide students on how to become lawyers, but to learn how to do this students must be allowed to think for themselves and must engage with the law and not just listen to the professor talk about it (Arnold 1999). Furthermore, by exposing students to hands on training, they will be able to become more competent and more skilled lawyers that are able to apply the law in real life situations.

The 2007 Carnegie Report on legal education, made several perceptive suggestions for the future direction of legal education (William M. Sullivan 2007). It recommended that legal education should be more practical in nature, like medical schools, preparing students for professional practice. It criticizes legal education for focusing too much on doctrine and not enough on skills and professional identity. It suggests that these three pillars are integrated and share equal value within legal curriculums. Theory alone is not adequate to thoroughly educate students about the difficulties and moral dilemmas they will face in their future careers. However ,by incorporating practical and theoretical education students will be able to gain a clear understanding of the notion of social justice and this will arouse excitement in prospering lawyers to bring about future social

change (Simonson 2010). As the UN legal aid guidelines suggest, this can be done by creating university law clinics with a public interest agenda, which provides students with first hand pro bono experiences.

Rhode (2004) acknowledges that pro bono services are imperative to increase access to justice within society, however there are often a lack of lawyers who participate in this work. Therefore, she proposes that if we want lawyers to perceive pro bono services as a professional responsibility, then that message must begin in law school. Students are more accessible targets than legal professionals because their legal skills, morals and knowledge are still in their infancy, therefore, it could potentially be more straightforward to instill a sense of moral responsibility in them. When students engage in pro bono work they experience peoples legal problems in reality and learn to how to address those problems and ultimately resolve them. Students are encouraged to think beyond the clinic and their client and consider social and political changes required for promoting social change (Ikawa 2011).

Therefore, in order to ensure graduates are competent, skilled, and socially aware and understand the professional responsibilities of lawyers, Thai law schools need to divert away from traditional teaching methods. Additionally, the Thailand Ministry of Education issued the National Qualification Framework for Higher Education in 2009 as a guideline for the implementation of the National Education Act B.E. 2542 (1999). The Ministry announced that the minimum outcomes of learning should include the following areas:

1. Ethical and Moral Development
2. Knowledge
3. Cognitive Skills
4. Interpersonal skills and responsibility
5. Numerical analysis, communication and information technology skills

Many of these skills cannot be achieved through theoretical, lecture style lessons alone, therefore more critical, experiential learning must take place for the Ministry's

learning outcome are hoped to be achieved. CLE programs could be the solution, they incorporate practical, student centered learning with a social justice agenda, in order to better equip future legal professionals.

2.6 Clinical Legal Education (CLE)

CLE is an interactive, hands-on teaching ideology that encourages students to learn by doing and focuses on student centered learning. Originally developed in the United States, CLE was a response to a lack of legal services for the poor and an overall mission to promote social justice by enhancing the social justice conscience of law students (Tokarz 2008). The two main goals of CLE are firstly, to provide law students with higher quality and practical education, secondly, to provide the underserved, low income clients with legal services with an overall aim of creating social change (Karin 2011). These goals are motivated by a desire to achieve greater social justice within society and create a sense of professional responsibility within the legal profession (Prasad 2006).

As the world has globalized so has legal education and CLE is becoming a global phenomenon as we all strive to prepare our future lawyers to be highly skilled, ethical and motivated in the pursuit of achieving social justice (Bloch, 2008). Obviously, lawyers need to be technically skilled but also it's essential that they are socially sensitive and have socially relevant law training to bring about social change. Legal education, in practice, should be teaching lawyers not only what lawyers do but also what they ought to be doing (Prasad 2006). Although CLE began in the US it has now spread too many countries all over the world and it is not simply limited to developed countries. There are programs being conducted in Nepal, Bangladesh, India, and the list goes on.

Susetio (2010) believes the role of legal education is to instill morals into future lawyers, that encourage them to uphold the supremacy of the law and protect human rights. Lawyers are key to the promotion of justice, they must actively work towards providing justice and challenging barriers to justice, within the judicial system (Prasad 2006). CLE programs allow students to come face to face with the “glaring inequalities in

access to justice” (Bloch 2008) and once aware of this problem then the hope is that these future lawyers will make positive steps towards redressing these issue (Wizner 2001). CLE programs provide students with the skills and knowledge to practice law in real life situations. Furthermore, CLE programs offer legal services that would otherwise be unavailable to the poor and marginalized. They also address one of the root causes of lack of access, which is that people are often unaware of the rights they have, due to a lack of legal knowledge and understanding. Golub (2004) acknowledges that CLE work is underappreciated and that CLE is an underutilized resource. He believes that CLE can have a significant impact on shaping legal services because CLE combines public interest law, human rights and access to justice by engaging future lawyers in public service. By better preparing law students for the practice of law and arousing a sense of moral value within them, we are in turn providing the community at large with greater access to justice. By this I mean, if lawyers are incompetent and corrupt then citizens will not be able to access justice, therefore CLE has even greater implications that can increase access to justice (Prasad 2006). Corruption undermines the legal system and the rule of law within a country, law schools must educated their students about the importance of professionalism and the ethical practice of law so that they will work towards combating corruption in the future (Maisel 2011).

2.6.1 Clinical Legal Education Methodologies

CLE uses a teaching ideology that encourages students to learn by doing and focuses on student centered learning within a social justice setting. It is important to identify the difference between interactive teaching and clinical teaching so as not to confuse the two (Genty 2008). Interactive teaching methods, such as moots and debates, are designed to enhance students learning experience. But clinical education, as well as improving student’s legal education and skills, has a greater purpose of social justice which interactive teaching lacks. Clinic participation introduces critical and creative thinking through reflective lawyering, and gets students to problem solve, skills which are invaluable for all lawyers (Barry 2012). This is done by exposing students to the

broader legal problems within their society and teaching them how to analyze the different legal strategies that maybe used to address different problems (Karin, 2011). By giving the students the opportunity to work in law clinics they are able to develop many skills which they couldn't develop in the classroom. Bloch (2008) argues CLE programs are important because, as well as being technically skilled, it's also essential that lawyers are socially sensitive and have socially relevant law training to bring about social change.

Some CLE programs also give students the opportunity to participate in a variety of community teaching programs for marginalized communities, for example women's groups, support groups for people living with HIV, juvenile detention centers, community centers and other institutions. These Street Law programs, as they are often named, are tailored to the needs of the specific community. These programs are a tool to raise the communities' awareness about their legal rights and responsibilities and are designed to help people access their legal rights and legal services. Barry (2012) defines community legal education as a kind of "systemic advocacy" with the goal of educating a segment of the community about its legal rights in a particular legal context to advance the empowerment of that community. By providing awareness of rights and information regarding how to assert these rights, legal education thus empowers communities and individuals to achieve social justice and change for themselves (Nazeri 2011). Many CLE programs have community legal education programs alongside their legal clinic, to reach a wider community and create awareness of legal rights. Furthermore, by entering into a community students are able to gain a clearer understanding and witness first hand injustices that maybe occurring in a particular community (R. Grimes 2011).

2.6.2 CLE Models

It's not easy implementing CLE into University curriculums because it's not simply a new course, it's a change in legal education and thinking. It requires student, professors and governments to go beyond their normal requirements to bring about social change and it demands social acknowledgement of problems and the challenges of overcoming these. Furthermore, there is no one standard CLE model; instead universities

have developed different models to cater to their target populations' needs and the universities resources.

Access to justice is one of the fundamental principles of the CLE movement, however due to the high volume of low income people in developing countries it is much more challenging for university based clinics to be able to assist everyone. Maisel (2011) therefore argues, that in order to be sustainable and effective university law clinics must receive government funding and should partner with local NGOs and government legal service to ensure no duplication of services. From reviewing case studies, of CLE programs around the world, it appears that CLE programs that have collaborate with the government, government bodies or NGOs appear to be the most successful and effective. For example, in India the government has acknowledged the value of university law clinics and the invaluable services they provide. Therefore, the law clinic will prepare legal cases that are passed onto private lawyers who receive compensation from the government for their work (McCutcheon 2000).

Furthermore, there is also a growing trend for legal clinics to establish specialized units to be able to deal with the needs of the local community more effectively. For example, the University of Adelaide Law School established a Homeless Persons Advice Service in order to respond to the limited availability of legal and advocacy services available to the homeless (McEvoy 2004). By joining in partnership with South Australia's Baptist Community Services, the law school was able to highlight the legal needs of homeless persons and therefore train students and staff appropriately. The legal clinic as well as providing legal resources to the homeless community helped the law school and students establish a stronger relationship with the local community and legal profession. Also, the students were able to conduct research into factors that obstructed homeless people's access to justice and ways in which these can be overcome. McEvoy discusses the importance of this program for the students, she believes that through their work they will become more aware of the issues of homelessness and realize the value of pro bono work for the community. Therefore, in the future the law students maybe more

likely to actively engage and promote pro bono work, which will have long term benefits for the whole community.

In his article, Gentry (2008) raises the argument that due to different legal systems countries have adopted different legal education methods. Civil legal systems are based upon theoretical law; in contrast common law systems are founded on the principle of law in action and are practical in nature. Thailand is based upon a civil law system therefore, according to Gentry, in civil legal education systems lecturing is the dominating teaching method due to the structure and style of the civil code. On the other hand, in common law countries there is less focus on lecturing and more discussion and debate relating to the interpretation of the law. However, studies have been conducted that show the value of interactive teaching methods in both civil and common law countries (J.Bedard 2001). CLE had been successfully integrated into many law schools in common law countries such as America, Australia and India. There are also successful examples of CLE programs being adopted in civil law countries too such as Goa and China. For example, in Goa, unlike the rest of India, there is a civil law system which derived from the Portuguese civil law code. Despite this the V. M. Salgoacar College of Law established a Legal Aid Society in 1998. They made it compulsory for all students to join the society and participate in societal activities. The society's mission is to serve the general public by providing free legal services and ensuring that law graduates are competent and socially perceptive. Currently, there are 35 permanent free legal aid centers operated by the college in Goa and a number of additional services. The society works in co-operation with NGOs and Local Government to provide a variety of services to the general population (Prasad 2006). This example of Goa, demonstrates that CLE programs can flourish within a civil law system, proving that CLE programs are not only suitable for common law systems but can be adapted to fit civil law systems, like Thailand, too.

CHAPTER III

FINDINGS: CLINICAL LEGAL EDUCATION IN THAILAND

This chapter highlights and reveals the research findings from the field research. Firstly, an in-depth description of the two case studies selected for this research is presented and then an evaluation of the benefits of practical education in comparison to theoretical education. Next, the chapter presents the four areas where CLE programs impact law graduates: lawyering skills, social awareness, social responsibility, and understanding and commitment to pro bono. Finally, this chapter reaches a conclusion that CLE positively impacts students in many ways and can potentially increase the number of graduates who participate in pro bono activities or pursue an ethical career within the legal field.

3.1 Case Studies

This research aims to analyze two different university's legal clinics, Chiang Mai University Legal Consultation Center and Thammasat University Law Center. Both have similar goals, however, the histories of the two university's legal centers are significantly different and their methodologies applied to educated students also differ. Both universities deal with an array of legal problems subject to the needs of their clients, neither specializes in one area but try to incorporate all areas of law. Subsequent, a brief description of both legal centers is presented.

3.1.1 Thammasat Law Center

The Thammasat Law Center originally started in 1962 as a community project that provided community legal education and advice. All of the staff, including professors, students, alumni and lawyers, that worked on the project were volunteers. In 1975, the faculty recognized the significant and important of the work the project was doing and the Law Center was formally established.

Figure 3.0: TU Legal Center Staff

The Law Center has the following objectives:

1. To disseminate legal knowledge and provide legal assistance to general population.
2. Training that provides students with the skills to practice law and integrity in the legal profession.
3. To educate and nurture students to become aware of their obligations to the cause of social justice.
4. To help students to study legal problems in society.



Figure 3.1: TU Legal Center Reception

Today, the Law Center is funded by the government and received 2 million baht funding this year, it has 6 full time paid lawyers, several professors and around 20 student volunteers on its staff. During 2011 to 2012, the TU Law Center gave legal counseling to 673 clients: 295 of those clients received counseling in person, 362 clients received counseling by telephone, 9 clients received counseling by internet and 7 received counseling by post. In the same year, the Law Center carried out 19 lawsuits at the court of first incident and took one case to the Supreme Court. Furthermore, each

year the Law Center conducts 12-18 legal community teaching sessions outside of the university. Since Thammasat University has two campus it also has two legal centers, the main center is open Monday to Friday from 9am to 4pm and is located at Tha Prachan Campus, at the Faculty of Law. Clients can contact the center by telephone or email, or come into the center to request a counseling appointment. The second center is at Rangsit campus and this is for students activities.



Figure 3.2: TU Legal Center Meeting Room

Students can apply to volunteer at the legal center at the beginning of every academic year, and the chief of the legal center will select the most suitable candidates. All the work the students conduct is voluntary therefore they receive no academic credits for it. The student's main role

at the center is to assist lawyers, by doing research for cases, meeting with clients and taking notes during meetings. As well as assisting with legal counseling, students are responsible for conducting community legal education outside of the university. Furthermore, the volunteer students organize an annual legal conference, the purpose of this conference is to address current legal issues and make suggestions to the government. All of the work the legal center does, providing free services and educating students about the importance of pro bono and their social responsibility, is motivated with the desire to uphold the University motto: "Be the finest, be fair, be the main engine of society". This motto is taught to all students at Thammasat and the legal center is seen as one place where students are able to act upon this motto and work towards improving society.

Figure 3.3: CMU Legal Center

3.1.2 Chiang Mai Legal Consultation Center

The CMU legal consultation center began in 1994 as a Legal Community project, and over time developed into a legal clinic. Dr. Panarairat Srichaiyarat was the one to first propose the idea of developing a legal clinic at the faculty and she has continued to play a very active role in its development over the years. The objective for establishing the center was to instill an idea of public service obligation into the minds of law students, as part of their legal education and to provide the local community with legal counseling. In 2009, the Law Clinic was renamed the “Legal Consultation Center”, and with technical and financial assistance from international NGOs, Bridges Across Borders South East Asia and the Open Society Institute, it was able to extend its services. Now, the center provides legal community teachings, a street law program, and an internship program for students and an accredited Clinical Legal Education course. Their main focus is socially vulnerable and marginalized groups and communities. The center has no lawyers, so students work under the close supervisor of the CMU law professors, using a structural education approach. Last year, 2012, the legal center provided legal advice to 140 clients and conducted 36 community teachings at four different locations. The center is open Monday to Friday from 9am to 4pm and is located on the first floor at the Faculty of Law at CMU. Clients can contact the center by telephone or email or come into the center to request a counseling appointment.



Students are able to join the center as volunteers from their first year of law schools and can enroll on the CLE course, LAW 409, when they are in 4th year of law school. When students join in first year, they start by helping with the community

teaching programs and as they gain more knowledge and skill their responsibilities are increased. In third year, students are responsible for organizing and conducting the community teachings. Each year around 40 to 50 volunteers join the consultation center.

The CLE course, as table 3.0 below shows, consists of both theoretical and practical training, and has the objective of teaching students practical legal knowledge, lawyering skills and ethical values.

Table 3.0: Chiang Mai CLE Syllabus

	Course Content	No. Lecture Hours	No. Practicum Hours
1.	Introduction to CLE procedures and methods of teaching CLE	2	
2.	Interviewing skills and statement taking	2	5
3.	Theory of the case and election of remedies	1	5
4.	Advice and consultation skills	2	10
5.	Investigation Skills	2	5
6.	Legal writing and drafting skills	2	10
7.	Case referral problems	1	5
8.	Teaching and giving advise/ Consultation law concerning indigent, socially marginalized and vulnerable groups	3	50
		<u>15</u>	<u>90</u>
		Total	105

Students receive 3 credits for participating in this course. On average 30 to 40 students enroll on the course each year and the students who are enrolled in this course are the ones primarily responsible for providing legal consultations to clients. Students are solely responsible for meeting with the clients and providing legal advice. However,

before they are able to respond to clients legal problems they must consult with their professor first. At present, there is no lawyer working at the legal consultation center, therefore they are limited to only providing advice and cannot offer legal representation to clients. When possible, students provide clients with information about other free legal services to help them resolve their legal problem.

3.2 Significant differences between the selected university Legal Centers

Figure 3.1 below identifies the difference between the two legal centers at Thammasat and Chiang Mai Universities.

Figure 3.1: Difference between the Universities Legal Centers

	<u>Chiang Mai University</u>	<u>Thammasat University</u>
Training	<ul style="list-style-type: none"> •Receive one week of CLE training when they join the legal center, at the beginning of the academic year. •focuses on legal education, teaching methodologies and the way in which the students can help people by becoming volunteers at the legal center 	<ul style="list-style-type: none"> •Receive a one day orientation, when they join the legal center at the beginning of the academic year. •The main purpose of explaining the functions and operation of the legal center
CLE course	<ul style="list-style-type: none"> •Integrated CLE course into curriculum •Students and teachers given credit for their work. 	<ul style="list-style-type: none"> •No course- Only Volunteers
Students Responsi	<ul style="list-style-type: none"> •Students are given a large amount of responsibility and 	<ul style="list-style-type: none"> •Students shadow the lawyers who work there, following direct

Abilities	control over the clinic, <ul style="list-style-type: none"> •for example students are responsible for meeting with clients to provide legal advice 	instructions and have limited responsibility.
Staff	<ul style="list-style-type: none"> •The Legal Center has one full time member of staff and four law professors collectively manage and coordinate the legal center and the CLE course. 	<ul style="list-style-type: none"> •The Legal Center staff consists of six full time lawyers, a legal center chief and administrative staff. •The TU law professors assist in the centers work but are not responsible for its management.
Services	<ul style="list-style-type: none"> •Legal consultation •Legal education community outreach 	<ul style="list-style-type: none"> •Legal consultation •Legal representation •Legal research •Annual conference •Legal education community outreach
Funding	<ul style="list-style-type: none"> •Receives University funding, since it is an accredited course and outside funding from NGOs 	<ul style="list-style-type: none"> •Receives Government funding and outside funding from private donors

These two different case studies were selected to try and identify if there were any difference in students responses based upon the legal center model and training methods adopted at their university.

3.3 Classroom vs Clinic

There has been recent global debate about the direction of legal education and if it should incorporate more of a practical element to better prepare graduates for the practice of law (William M. Sullivan 2007). In light of this, respondents were asked if they

believed that theoretical legal education alone was enough to prepare students for life after university. Overall, it was felt that theory alone was not sufficient, for example, Pawinee, a practicing human rights lawyer, believes that due to the theoretical nature of Thai legal education, law students have a very narrow view, they only see what is written and don't get the opportunity to see the other things that are more important than the law. Mainstream legal education in Thailand teaches students how to apply the law, like a robot, but not how to adapt or criticize the law. But, in reality it should be different because the law is relevant to peoples life's and can violate their rights if misused, therefore we must learn be more critical of the law (Interview, Chumsri, 11/06/2013). SongKrant, another practicing human rights lawyer, has strong belief that the way we learn law impacts the way we practice law. He criticizes current Thai legal education for being taught out of context and separate from society, therefore students don't know how to apply the law. To ensure students are prepare for the practice of law, they must learn how to problem solve and criticize the law and he strongly believes this cannot be done through lecture but through student centered learning (Interview, Pongboonjun, 05/06/2013).

Furthermore, lawyers are seen to be important members of society, who are supposed to uphold the rule of law and embrace a sense of morality and social responsibility, but can student really learn to be moral and socially responsible by sitting in a classroom? Dean Narong, says at the clinic students are not taught morality but encouraged to learn by themselves through the work they do at the legal center (Interview, Narong, 12/06/2013). We can lecture students on morality and responsibility, but until they experience it firsthand, they have no tangible understanding. For example, I can lecture you on how to ride a bike but if you have never seen a bike or sat on one do you really understand how to ride or how it feels to ride it? Gaew, believes that the issue with Thai legal education is that it fails to foster an understanding of morality (Interview, FuangTong, 06/06/2013). Professor Patchaya, from Thammasat, believes that students who work at the legal center, have a more fulfilled view about justice and morality, because of the work they engage in (Interview, Patchaya, 26/06/2013). Moreover,

Professor Tupkhwa, also from Thammasat, believes it is important to educate students when they are young about pro bono and morality, this way “they will be able to adapt and learn so when they graduate they will have good morality” (Interview, Tupkhwa, 26/06/2013). These comments suggest that morality is not something we can lecture on, it’s something students develop through experiences; therefore legal education must provide ample experiences to help students construct morality.

During interviews participants were asked how they felt the classroom and the clinic were different. Many respondents talked about how the clinic allowed them to see the law in action and how they felt more in touch with society. For example, a TU graduate, stated “When I worked in the clinic I was connected to society, I didn’t feel like an outsider looking in but in insider of that community” (Interview, Juthakan, 26/06/2013). Furthermore, a CMU Professor, said that “In the class the lecturer will prepare all the detail and content for the students but in the clinic the teacher’s role is just to supervise and guide the students but the student must go and find the answers for themselves” (Interview, Ajarn Bunchu, 20/06/2013). This student centered method provides students with more responsibility over their own learning and allows students to fully engage with the subject materials. Students mentioned, that in class law is separated into different fields, but in the clinic you must listen to the client’s problems and then select the appropriate area, therefore you must know all areas to assist them (Interview, Juthakan, 26/06/2013). A CMU Professor, said that “in class we just study separate law subjects but in the clinic, in real cases, students must connect and use all the law to solve the problem” (Interview, Ajanr Sakchai, 20/06/2012).

Graduates were asked if they felt they were able to learn more in the classroom or through their work and the legal clinic, the majority felt that they were able to learn more about the law and society from their work in the clinic and how law works in practice. For example a TU graduate explained, “When I go outside I can see that the law is very different in practice and I learned to understand what justice is and how justice works in real cases. You can connect the law and the real issues, so you have a bigger vision of the

law that people who don't work at clinic" (Interview, Juthakan, 26/06/2013). Another graduate from CMU stated that, "Studying in the class doesn't help me understand society but working in the clinic helped me to understand" (Interview, Wongsinnak, 14/06/2013). Students felt that by being actively involved in society they were able to understand more clearly how the law functions and because students must teach the law they must know it very well before they teach it. So working in the clinic and doing community teaching helps students to remember more and engage with the law more actively (Interview, Lardtdattanapong, 04/07/2013). Also, it given professors an opportunity to assess how much students have understood and retained (Interview, Ajarn Bunchu, 20/06/2013).

These findings support previous research which suggests that students who are actively involved in their own learning are able to retain more knowledge, gain a clearer understanding, develop the ability to think critically and apply information learned (Michael. Hunter-Schwartz 2009). Student's responses suggested that they felt that positive about practical legal education and the beneficial effects it has. The most important difference between practical and theoretical education was that practical education connected students to the law, allows them to see it in context and understand how it functions within that context. This skill is very import because without context students will not be able the apply law to real cases later on (Arnold 1999).

3.4 Significance of CLE

3.4.1 Lawyering Skills

Professor Panarairat, argues that "one of the major problems with legal education is that when student's graduate they don't know how to work and employers often complain about their dissatisfaction of the graduates' education. Therefore, if they have a chance to practice before they graduate this will help them in their career" (Interview, Ajarn Panarairat, 18/06/2013). Preeda, a former CLE student from CMU and former BABSEA CLE employee, also believes that CLE can help students prepare for work in

the real world and trusts that if it wasn't for his experiences at CLE he would not have been able to open his law firm so young because he wouldn't have the skills to do so. (Interview, Saiupparat, 19/06/2013) Don, also a CMU graduate, believes CLE teaches students how to work before they graduate, which is important because he feels many law students graduate and are unable to do anything due to a lack of skills training at university (Interview, Wannarat, 28/06/2013). Moreover, students are given a unique experience, to work with legal professionals within a pro bono setting. However, CLE is different from internships in law offices, because they are located at law schools, instructed by law professor and often integrated into the law curriculum (Wizner 2002). The quality of internship ranges very widely; some may provide students with good experience and valuable skills, but sometime students just end up making coffee and photocopying documents. Professor Panarairat believes that the issue is that, offices are not directly responsible for the students learning, they are not teachers, and they have their own work responsibilities (Interview, Panarairat, 18/06/2013). Therefore, CLE helps graduates to be better equipped to enter the legal working environment after graduation.

CLE aims to increase student's skills and capacity, throughout interviews respondents listed multiple abilities that students were able to develop, through participation in CLE programs. Listed below, are some of the key themes, which were identified, as skills that students can develop by working at Legal centers and on community outreach programs. (The order in which they are in is of no significance)

- Community legal education programs, help students to develop the skills to “make lesson plans, conduct legal community lessons, and develop their public speaking skills” (Interview, Nouansyvong, 07/07/2013).
- CLE programs give students the opportunity to work with people different people, such as lawyers, professors, senior students, and people in rural areas (Interview, Bugjit, 02/07/2013). Furthermore, they also helps students to develop team work skills, learn how to communicate with people from an array of backgrounds and how to use simple legal language for people who have not studied law (Interview,

Larddattanapong, 04/07/2013) (Interview, Buamali, 17/06/2013) (Interview, Warawattananon, 28/6/2013).

- Students develop problem solving skills, for example Pim, a CMU graduate said, “not all the answers are in our books, so we need to think more about how to solve the problem”(Interview, Maker, 13/06/2013). Furthermore , Professor May from CMU, stated that student who study at CLE “are able to solve problems better than other students because they can apply the law and see the real problems, they must find the relevant law and provide advice step by step” (Interview, Ajarn May, 21/06/2013).
- Students cultivate their research capacity because they must go to library to do research for the lawyers and provide the best solutions” (Interview, Narong, 12/06/2013).
- Students get a lot of unique experience from working with CLE, that not all students can get, like travelling to different provinces to teach communities or attending court or teaching in youth detention centers (Interview, Rattanasit, 02/07/2013) (Interview, Juthakan, 26/06/2013). These kinds of experiences open up students’ eyes to the real issues of society and encourage students to be more critical of the law because of the things they experience.
- Working in legal clinics helps students develop interviewing skills, and often due to the kinds of the clients that legal clinics assist, the legal issues dealt with at legal centers are very sensitive in nature. For example, Brian Barbour the founder of a university legal center established to assist refugees in Hong Kong, maintains that, “Interviewing clients is a very important skill and if you can interview a traumatized refugee client, in a truly sensitive way and gather all the info you need for their case then you can interview anyone. It’s one of the hardest interviews you will ever do” (Interview, Barbour, 24/06/2013).
- “By working in the legal center, students can develop social skills, which are very important for lawyers, since legal matters are often very sensitive and students must learn to cope in these situations”(Interview, Narong, 12/06/2013).

- Often law students will work with marginalized communities who may not speak Thai therefore they will have to work through interpreters. This is a very unique and useful skill (Interview, Barbour, 24/06/2013).

As this list demonstrates, CLE programs provide students with an extensive variety of skills which they could not develop in theoretical, lecture style classrooms. It is hoped, that after participating in CLE, graduate students “will have the skills required to provide legal services to real people in the real world, which will make them better lawyers” (Interview, Tupkhwa, 25/06/2013).

3.4.2 Social Awareness

Legal education must be *pri parsu* style, theory alongside practical (Interview, Pankhamkerd, 15/06/2013). CLE programs aim to bridge the gap between theory and practice, and places law into a real life tangible concept (Rhode 1999). “CLE brings knowledge and practice together, giving you the chance to use your classroom knowledge and apply it to real life” (Interview, Saiupparat, 19/06/2013). William Pincus, the father of clinical legal education movement, believes that it is essential for law students, to learn and recognize what is wrong with their society and the machinery of justice in which they work in (Pincus 1969). In order to do this, students must actively engage with their society and their legal framework, not simply learn about it. The experiences that students have when working at legal centers can alter their ideas about their legal system, their ideas of justice and the way they think about the law. For example, students stated, that they learnt to understand the problems with the justice system in Thailand and that the law does not always help people, especially poor people who often face discrimination. It is important that students are able to have these experiences, that allow them to see directly the problems of their legal system, because is not something they can understand from reading a book. Breeze, a CMU graduate, pointed out that “in Thai society only money is important, therefore if you have can access the law but if you have no money, then your access is restricted” (Interview, Wongsinnak, 14/06/2013). Don, a CMU graduate, said at first, he thought that the law was just law, but after working at the

clinic, he realized that law is different and that lawyers must use reason to apply the law, because the word of the law is not what helps people, but it's the people who use the law (Interview, Wannarat, 28/06/2013). CLE is therefore very important in shaping the way students see the law, because if they only study in class and from books their concept of law and justice will be very different from that of reality.

Clinics go beyond lectures, because they require students not to memorize the law, but instead to understand it and use it within a social context as a means to solve a problem (Ikawa 2011). The in-depth interviews for this research found that CLE, at both universities, had enhanced students' awareness of how the law affects real people and how limitations of the legal system can cause hardship for people. Van, a Chiang Mai Law graduate, stated that "Working in the clinic made me think more about social issues than studying in the class because I was connected to society" (Interview, Buamali, 17/06/2013). Students believed strongly, than working in the clinic enhanced their ability to understand how law and society work together, more than in the classroom. Nan, a Chiang Mai graduate, stated "If I only learn in the classroom I will be a machine lawyer, like a walking book, but when I study in the clinic I understand and see many things more that in the classroom" (Interview, Sautatirat, 18/06/2013). Moreover, many of the students' interviews demonstrated that working with clients and community members helped them feel connected to the law and to the people who face difficulties because of the law. A CMU Graduate, May, stated "When I work with the clinic I know the problems but, when I go to work in the village, I feel the problems, it's like it's my problem. I can feel what they are feeling. If you study in class, you understand the problems but don't feel" (Interview, Lardtdattanapong, 04/07/2013). Students develop more emotional attachment to the law and to their clients, realizing it is not just words written in a book but a powerful tool that truly impacts people and their lives (Wizner 2001). Moreover, students are able to identify injustices within society first hand, Nan, a graduate from Chiang Mai said, before working in the legal center "I thought the law could make everyone live peacefully in society, but this is not true, because poor people are more likely to go to prison than others"(Interview, Sautatirat, 18/06/2013). From this insightful experience of

how injustices in the law affect people, students may feel inspired to work towards creating social equality (Bloch 2008). Breeze, a CMU graduate, believes students have the capacity to change society, therefore, they must learn about society, its problems and overall how to address these problems. Ajarn Tupkhwa, from TU, believes that working at the clinic enables students to do this, because they get the opportunity “to help poor people, learn about the real problems of society and learn how to solve these problems” (Interview, Tupkhwa, 25/06/2013).

3.4.3 Social Responsibility

Ajarn Sakchai, a law professor from Chiang Mai University and CLE instructor, stated that students may learn about social responsibility in class and we can tell them about disadvantaged people, but it “doesn’t instill in their minds and may not develop the feeling of wanting to help” until they see and experience firsthand the injustices in society (Interview, Ajarn Sakchai, 20/06/2013). By engaging students in the practice of law and connecting them with society, students may gain a sense of purpose and meaning for their study (Cordray 2011). For example, a CMU student, describes how working at the law clinic changed his feelings towards studying, “Before I started to work at the legal center, I felt bored with my life, because I didn’t like studying law, but after the CLE training I felt excited and for the first time, I thought about how we use the law and how to develop the law” (Interview, Wannarat, 28/06/2013).

Winzer (2001) implies, that a student’s sense of social responsibility is derived from their responsibility to their client. By representing low income clients, they are made aware of the unequal access to legal service to the poor and this could in effect raise their social responsibility. For example, when asked if he learnt about social responsibility at his time at Thammasat legal center, a student responded ‘It is not in any book in my possession, but I find it in all work I do and collect it unintentionally’ (Interview, Pankhamkerd, 15/06/2013). This demonstrates that social responsibility is something that students can’t learn about from books, but is something they must learn firsthand, through experience. In-depth interviews found, that CLE increased students’

sense of social responsibility and helped them to understand the important role of lawyers within society. Tom, a Thammasat University graduate, stated that “From the legal center, I learnt that students are members of society and that every member of society, has a responsibility to help this society be an inclusive society, where every member has the opportunity to live a good life” (Interview, Bugjit, 02/07/2013). Gab, also a Thammasat Graduate, stated “Every profession, even lawyers, can influence society and when he started working with the clinic he saw that the lawyers have more responsibility, than others, to make society better” (Interview, Toomthong, 03/07/2013).

Moreover, Wizner (2002) argues that, the professional behavior of law graduates depends upon the education they receive at law school, as well as other factors. May, a Chiang Mai graduate said, “At first I thought that the law could help people, but it is the people who use the law who have the ability to help, but they have to use the law in a good way. The law has two sides it depends on how you want to use it” (Interview, Lardtdattanapong, 04/07/2013). Law graduates must be taught about how to responsibly use their knowledge and use the law in a way that benefits society, not one’s own selfish interests (Prasad, 2006). CLE programs can help to do this, by exposing students to the injustices in law and society, and guide them on how to use the law in a good way, to help improve peoples lives. It is evident from this research, that many students became aware that the law does not always help people within society. Through practical real life experiences, CLE programs can instill professional responsibility into future lawyers and raises awareness of the “powerful influence law and lawyers have in society” (Karin 2011).

At Thammasat, the notion of social responsibility is very important and is taught to all students, through the schools motto. Therefore, the legal center has an important role of promoting their motto and acting in accordance with it. For example, the TU Legal Centers chief stated that, “When students study in class, the teachers teach them the motto of Thammasat: be the finest, be fair, be the main engine of society. So, when they come here, they can practice too and the lawyers help them to develop their practical skills and try to help them to practice the motto too” (Interview, Ajarn Tupkhwa,

25/06/2013). Furthermore, the Dean of Thammasat Law Faculty, said that, “At Thammasat, we don’t teach students to be elite, but to use the law and their knowledge to serve the peoples interests” (Interview, Narong, 12/06/2013). Students also made references to the importance of the Legal Center, as a way to uphold the schools motto.

3.4.4 Pro Bono

Pro bono comes from the Latin term “ pro bono public”, which means for the public good and society as a whole (Campbell 2009). Legal pro bono is generally in the form of free legal assistance for those who are unable to afford it. However, it can also cover other work such as legal advocacy, which aims to benefit society. For lawyers to participate in pro bono and understand its value, they first must be introduced to it (Rhode 1999). CLE programs, aspire for future lawyers to be actively involved in creating greater access to justice, by participating in pro bono activities and working towards a justice legal system. This research, examines the impacts CLE has had upon the graduates' view of pro bono, their enthusiasm to partake in it and whether CLE can influence graduates career decisions after law school.

During interviews, students were asked if they had done any volunteer or pro bono work prior to joining their university legal center. The majority of students had never volunteered or done pro bono before they joined the legal center. Furthermore, when asked if they knew or understood about pro bono before they joined the legal center, most of the graduates said they didn’t know what pro bono was before they joined. Some said, they had a vague idea but were keen to learn more and that is why they decided to work at the legal center. This demonstrates that CLE positively impacts student’s awareness and understanding of pro bono, since all the students said that they learnt to understand the meaning and value of pro bono from their work at the clinic. May, a CMU graduate, said “Lawyers have to be special, the heart or personality of a lawyer must think about other people and not just do for themselves” (Interview, Lardtdattanapong, 04/07/2013). Pro bono for her is about lawyer showing that they care about others and take responsibility for their society.

It was also found, that students were able to see the value of pro bono, for students and society as a whole. For example, Don a CMU graduate, said that pro bono was important, because ‘the law is meant to protect all people, but some people cannot afford to access the law, so lawyers must do pro bono. If lawyers do pro bono, we will increase the number of people in society who can access the law’ (Interview, Wannarat, 28/06/2013). Moreover, Nan, believes that CLE programs allow “two worlds to come together, students and poor people,’ and both groups benefit from this encounter because “communities learn about the law and students how to teach law in a simple language” (Interview, Sautatirat, 18/06/2013). A TU graduate, said pro bono is important because if people only care about themselves, then this will cause problems for society (Interview, Toomthon, 03/07/2013).

Raising awareness about pro work and alternative legal careers is very important. For example Songkrant, a human rights lawyer, believes that if students are given the opportunity to experience social problems for themselves, they may choose a career focused on challenging these issues. For him, income is not what desires him to work in this field, but the happiness and sense of life fulfillment he receives from his work (Interview, Pongboonjun, 05/06/2013). Gaew, also a human rights lawyer said, she never got the opportunity to do pro bono work at university but said maybe if she had had the opportunity to work with CLE when she was at school, she would of know what she wanted to do in her life. Then she could of come to work for an NGO straight after graduating university, instead of spending many years working in the private sector (Interview, FuangTong, 06/06/2013).

3.4.5 After Law School

Golub (2004) believes, that CLE can have a significant impact on shaping legal services because CLE combines public interest law, human rights and access to justice by engaging future lawyers in public service. “I think if more people knew about the problems in society and how they could help, then they would use the law and legal skills

to help people” (Interview, Pongboonjun, 05/06/2013).

During interviews, graduates were asked what they had done since graduation and had their decisions been influenced in anyway by the work they participated in at their university legal center. The research confirms that CLE experiences can potentially encourage students to alter their career paths and increases students’ willingness to practice pro bono. “Working in a clinic is inspirational and transformative for students” (Interview, Bliss, 20/06/2013). However, an increase in actual pro bono participation in graduates was not observed.

Breeze, a CMU graduate, is now working for the National Human Rights Commission in Thailand, providing human rights training for communities. When he joined law school, he was interested in commercial and criminal law, but when he started working in the clinic he realized “the law in Thailand doesn’t reach all the people” and that why he became interesting in studying society and the law. By working at the legal center, he said, “I changed my career path, before I wanted to be a lawyer but now I just want to use the law to help people” (Interview, Wongsinnak, 14/06/2013). Nan, CMU graduate and current LLM student and court watch volunteer, would like to be a law professor in the future. Her motivation for becoming a professor is her desire “to change students vision of the law” and “to create a new generation of lawyers that work towards changing society” (Interview, Sautaturat, 18/06/2013). When asked if her experience at the legal center affected her decision, she said, yes because in first year she wanted to be a lawyer or a judge. Van, a CMU graduate, works with a government organization that helps highland people develop livelihood projects, she said “when I graduated I wanted to help people by using the law this is why I took this job” but she said that “if I didn’t come to the clinic, I don’t think I would have chosen a job like this” (Interview, Buamali, 17/06/2013). Tom, a TU graduate, now works for a corporate social responsibility consultancy company; he said, even though his job is not related to law he “wanted to do a job that helped people and society” and he thought this job “is one way to improve Thai society, especially in the private sector.” When asked if his work at the legal center influenced his career decision he said, “I think my experience, skills and knowledge from

legal clinic helped me choose this job” (Interview, Bugjit, 02/07/2013). After their experience from working in their university clinics these four students decide to pursue an ethical career with a focus of law. They all choose not to be lawyers, but decided to stay within the legal field and use the law in a way that can positively impact society.

Preeda, a CMU graduate, has now opened his own law firm but still teaches law at the women’s prison and in local communities from time to time. He said that even if he hadn’t gone to the clinic he would have still would of volunteered but the difference would be, he wouldn’t know the right methods to use to teach people therefore, his work may not be as effective(Interview, Saiupparat, 19/06/2013). Some students who join CLE may already have the desire to make social change, like Preeda, and they benefit from participating because they learn how to reach out to communities and how to effectively teach law to people with no legal knowledge. Moreover, they connect students with communities which then allows them to continue doing pro bono work after graduation.

Furthermore, five of the graduates interviewed from CMU spent time working for BABSEA CLE² after they graduated, ranging from a period of six months to three and half years. The reasons stated for decided to work with BABSEA CLE included, wanting to learn more about CLE, wanted to continue to help people, an opportunity to improve English skills, the work was fun and enabled them to meet many different people from all over the world. However, when asked why they decided to leave BABSEA and pursue other careers, graduates told me that the felt that working for an NGO was not a stable job. They felt that because NGOs depend on funding then their job depends on that funding and they believed that if there was not enough funding available they could lose their job. Furthermore, these five graduates were asked about the social perception of people who work at NGOs in comparison to lawyer, graduates felt that it depends on the NGO you work for. If you work for a well know organization, like the UN, people will

² Bridges Across Borders South East Asia Clinical Legal Education(BABSEA CLE) is a Chiang Mai based NGO that works towards promoting and implementing CLE programs in universities in South East Asia. They work very closely with the CMU legal center and have help with its development over the past five years.

think you have a good job and high salary. But maybe if it's a smaller unknown organization people won't think it's a good job. Youn, a TU graduate, now works for the TU law association, in the future he wants to a public or business lawyer. He said he is hesitant at the moment because he wants to make money to help his family but also wants to help people. This was interesting because he seemed to be suggesting he could not do the two at the same time. He either had to choose business law for money or public law to help people. Ajarn Bunchu, a law professor from Chiang Mai, made reference in his interview to how "pro bono doesn't have any money and maybe this is why only a few graduates do this kind of work" (personal interview, Ajarn Bunchu, 20/06/2013). Tze, a previously CMU students and BABSEA employee, stated that "working with an NGO, like BABSEA, provided me with great experiences but you can't work their forever because the salary is not very high" (Interview, Warawattsnsnon, 28/06/2013). These findings help us to understanding the possible reasons why law graduates, who have a social justice interest, do not pursue an ethical career. Even if they develop a desire to work towards creating positive, social change from their experiences at CLE, students may not be able to pursue such a career due to financial reasons or because of worries about social judgment.

Most of the students interviewed do not currently do any pro bono work and stated lack of time as the main reason but said that in the future, if the opportunity arises, they would like to do pro bono work. All the students expressed strong desire and willingness to do pro bono work in the future. This research did not investigate possible pro bono opportunities available to the graduate respondents or in Thailand as a whole. To understand more clearly the factors that affect graduates or lawyers decisions to do pro bono work in Thailand further research in to pro bono options must be conducted.

CLE teaches students about value and ethics, through contact with marginalized people and injustices in the law. The purpose of this is to create lawyers who work for the good of society. During interviews, the question "are graduate students from the Legal center more likely to work in the field of pro bono?" was asked. Ajarn Panarairat, a law professor and founder of the Chiang Mai Legal center, answered, "even if they become

lawyers or judges if they have a public service mind it doesn't matter what job they do, they can do a public service" (Interview, Panarairat, 18/06/2013). She described a previous student's experience of when they interned at the Public Attorney's Office, from the students experience Ajarn Panarairat realized "that if my student was to become a judge, she would have more sympathy towards prisoners and she would work faster to get them out of prison more quickly because she understands their suffering." Helping students to develop a public service mind will ensure that, no matter what career they choose, they work toward a better society. This is supported by an interview with Don, a Chiang Mai graduate who talked about his first case when he became a lawyer,

"My first client was a teenager, and he was taking drugs but not selling them. He got caught by the police and I went to be his pro bono lawyer. CLE teaches you how to interview and how to make the client trust you. Maybe another lawyer would just tell the boy to plead guilty and then his job is done, but CLE teaches you to care about your client. I asked for the real story and we worked together. I told the judge he is young, it's his first crime and he is using drugs not selling, so he must go to hospital not the jail. Then, he can have the opportunity to go back to school and maybe university in the future. But the prosecutor said he is bad kid and bad for our society. In the first court we lost, I talked to prosecutor but they didn't care, they ask why didn't you just plead guilty? But I argued that there was no reason to put this kid in jail for 2-3 years. So we went to the Supreme Court and we won. This was my first case; my feeling was this is not fair. If I am lawyer I can do my job and go home and not worry about the client. But when I work with CLE and go to the prison, I see the prisoners and this kid is not a bad person, he is not a murderer and it's his first crime. We must give him an opportunity. CLE teaches us to fight and work with the client and with their family. I feel responsible for society; I stopped one kid from going to jail because I know if he went there he would practice a lot of bad things" (Interview, Wannarat, 28/06/2013).

This demonstrates, that CLE graduates are more compassionate towards and concerned about their clients because of their experiences of working with poor and marginalized people at the legal center. At the legal center, students learn about equality and fairness and that all clients, paying or non-paying, should receive equal service and commitment. Don's experience shows that he took the time to talk to the client, understand the issue and try to find the best solution; in this case he felt jail was not the best option because he knew that if the boy went to jail he might learn bad things and in the future commit more serious crimes.

The data collected shows that participation in CLE programs has a significant impact upon students' decisions after graduating law school. Their increased awareness of inequality in society and lack of access to justice for the poor and marginalized has encouraged them, in certain cases, to alter their career path all together. Some students have opted to take non-conventional³ legal career paths to fulfill their desire to use law in a way that is beneficial to society and help people. Research in America, on volunteering, found that if people have positive volunteering experiences when they are young then it is likely to increase their participation in voluntary activities in the future⁴ (Rhode 1999). A successful example of a law school that integrated pro bono as compulsory requirement is Tulane University, in the USA, which was the first law school in America to adopt mandatory pro bono in 1987 (Kramer 1991). During research, two thirds of graduates reported that by participating in public service they felt more willing to participate in the future and three-quarters felt they had gained confidence in their ability to represent indigent clients. Therefore, with the correct training law students will feel competent and able to challenge legal dilemmas independently. This supports the current research that CLE can and does increase students to have a public service mind.

³ A conventional legal career in Thailand is to become a judge, a lawyer or to work for a government office

⁴ Giving and volunteering in the United States, 1996 ed. : findings from a national survey / analyzed by Virginia A. Hodgkinson, Murray S. Weitzman ; survey conducted by the Gallup Organization for Independent Sector

3.5 Conclusion

Simonson believes that legal education is not simply about the quality of the education, but more importantly, the quality of the lawyers that emerge from law schools. A holistic education that encompasses theory, practice and morality would enable a higher quality of future lawyers, who will be far superior to those students who only receive theoretical education (Simonson 2010). Due to a lack of emphasis on ethics within legal education young legal professionals are unprepared to deal with ethical dilemmas in practice. However, CLE programs are an effective way of teaching legal ethics, because students engage with real people facing real problems. CLE programs also, have the potential to "transform a student's view of the world", instilling morality and a sense of public duty into their hearts (Wizner 2002). Instead of memorizing things off by heart, CLE students learn to develop creative thinking and analytical skills (Joanna.Śliwa 2010). This research clearly reveals that students increase their skills when they partake in CLE programs, skills which prepare them for the actual practice of law.

Furthermore, CLE programs can significantly increase students understanding of pro bono and their willingness to participate in it. Overall CLE "instills professional values and public responsibility" into young lawyers, and they become aware of the "powerful influence law and lawyers have in society"(McCutcheon 2000) p278). These values then encouraged certain students to pursue an ethical career within the field of law in the hope of creating positive social change. CLE has a goal of providing law students with higher quality education with a practical element in order to create more socially conscience graduate concerned about creating positive change within society, and this research supports that CLE has the potential to fulfill these goals if correctly implemented. Rhodes (2004) argued that to increase lawyers participation in pro bono activities they must first be educated about it at law school. However, this study shows no increase in graduates' participation in pro bono activities after university. To understand this more accurately further study into pro bono in Thailand needs to be conducted. This research showed no

significant difference in answers between Thammasat and Chiang Mai graduates, they had all shared similar positive experiences during their time at their university clinic.

CHAPTER IV

FINDINGS: ACCESS TO JUSTICE IN THAILAND

Firstly, this chapter presents the findings on limitations to access to justice, which then enables an evaluation of CLE programs as a means to increasing access to justice in Thailand. The researcher was able to identify key areas where CLE programs elevate access to justice within society, both potentially and actually.

4.1 Limitations to Access to Justice in Thailand

Within each society, the barriers to access will vary, therefore it is essential to identify them and then tailor service and legal reform to overcome these barriers (Pinedo, 2011). In order to understand the key barriers to access to justice in Thailand, all of the respondents were asked what they believed were the main obstacles that obstructed people from accessing justice. From their response some key themes were identified.

4.1.1 Legal Knowledge

Access to justice is not just simply access to courts or access to lawyers, but also understanding of the law. The most predominant theme cited for obstructing access to justice was that many people in Thailand lack knowledge about the law, especially poor people and those living in rural areas. “The law applies to everyone, however not everyone has equal knowledge about the law, therefore access to the law is unequal” (Interview, Patchaya, 26/06/2013). This lack of education can result in people being exploited and not being able to assert their rights. One issue people face when trying to understand the law is the formal language it is written in. Students frequently cited how it was important for them to make the law more understandable for the community members when conducting legal education programs, due to the complexity of legal language. The rule of law principle states that the laws must be public knowledge, however, as this data and previous literature demonstrates the Thai Ministry of Justice is

failing to fulfill its obligations to ensure that the law is written in a language everyone can understand. As Rice debated, if every within society cannot understand the law then access to it cannot be equal (2010).

4.1.2 Discrimination

The rule of law principle states that, the law must apply to everyone and the decisions should be fair and non-discriminatory (Carothers 2006). Previous reports on Thailand regarding access to justice, continually refer to the issue of discrimination resulting in mistreatment by the legal system (Council 2009). Although, few of the respondents quoted discrimination as an obstacle to justice it can be inferred from their repetitive reference to the poor being the most disadvantaged. Both of the legal centers work towards increasing access to justice for poor and disadvantaged communities and it can be presumed that the respondents are aware of the inequality between rich and poor people's access to justice in Thailand. For example, a TU graduate, states "in Thailand there are a lot of people who don't have money, power, and cannot reach justice easily" (Interview, Rattanasit, 02/07/2013). As well as the poor, other minorities also face injustices when trying to access justice, for example there are a lot of people in Thailand that are non-Thai, which creates obstacles because they can't access the law due to a lack of an identity card, nationalization, citizenship or language. Bruce Lasky believes, that sometimes there are prejudices against the poor, non-Thai members of society and other marginalized people, which makes it challenging for them to access justice. For example, even with money, some individuals such as transgendered persons, may find it difficult to attain advocates to defend their rights (Interview, Lasky, 18/06/2013). Therefore, in Thailand the rule of law is undermined by the systems failure to treat everyone equally and by allow discriminatory practice to continue.

4.1.3 Accessibility

The location of legal services has been recognized as a common limitation to access to justice, because legal services are often located in cities, restricting access to

those outside of these areas. Section 40(1) on rights on the judicial process, proclaims that individuals should be able to access justice, “easily, comfortably, quickly and indiscriminately”⁵. Even though none of my respondents directly cited location as a limitation, it can be inferred from their reference to “people in the county”, who they often referred to as the people with the most limited knowledge about law and access to legal services. Furthermore, in Thailand, legal services are expensive and the legal process takes a long time which makes it even more difficult for poor people to access the law (Interview, Pongboonjun, 05/06/2013). This implies that section 40(1) is not being complied with because many people are not able to easily, comfortably, quickly access justice in Thailand. Additionally, due to the very nature and formality of the legal system many people may feel intimidated by the system and don’t feel comfortable or confident to access the law. Some respondents acknowledge that in Thailand, some people of lower class were afraid and intimidate by the system, which prevented them from trying to gain access. Tze stated that some people feared going to lawyers, because they don’t understand the law and lawyers use formal legal language, but he believes lawyer must speak in a way that the client can understand (Interview, Warawattsnsnon, 28/06/2013). Furthermore, people often don’t have good understanding of the legal process. For example, Professor Panarairat believes that the main obstacle is that some people may not know that they need legal services. For example, a study conducted with female prisoners found that some prisoners/accused don’t realize they need lawyers; they think they can tell their story to the judge like they talk to their family or teacher. They don’t know that there are many technical steps to the court process, so when they judge asks if they need a lawyer they say no (Interview, Panarairat, 18/06/2013).

4.1.4 Free Legal Services

Songkrant, a human rights lawyer, believes it is not easy to find free legal services in Thailand even though limited free legal services are provided, through the Lawyers Council of Thailand, to clients who are unable to bear the financial costs of a lawyer. At a

⁵ “Constitution of the Kingdom of Thailand, B.E. 2550 (2007), Section 40(1)

recently forum that she attended concerning legal aid services in Thailand, Professor Panarairat said that “a lawyer from the Lawyers Council of Thailand said that, they help with around 70,000 cases a year and to them that seems to be enough” (Interview, Panarairat, 18/06/2013). However, quantity is not the foremost issue; several respondents believed that the quality of these free legal services was not always up to standard. For example, it was stated that most of them are young lawyers and are inexperienced. Moreover, to become a judge in Thailand a lawyer must represent a certain number of pro bono clients so the lawyers do pro bono case so that they can become public attorney or judges”. Therefore, often the lawyers are motivated by self-interest and didn’t always act in the client’s interest which has resulted in lawyer obtaining a bad reputation (Interview, Panarairat, 18/06/2013). Literature regarding access to justice in Thailand also made reference to the quality of the free legal provided by the Lawyers Council of Thailand, raising concerns regarding the lawyers’ competence and ethics. The Regulation of the Lawyers Council on Conduct of Lawyers B.E 2529 (1986) states that lawyers must act in their clients best interest, however if the accusations are true, more needs to be done to ensure that lawyers treat all clients equal, whether paying or nonpaying. Moreover, the Lawyers Council of Thailand must place more importance onto ethical and professional responsibility and regulate lawyers behavior more vigorously (Interview, Pongboonjun, 05/06/2013).

This mistrust in the system legal system may also prevent people from trying to access the law. Tze, a CMU graduate, shared his experience of when he participated in community teaching. He said that at first “it felt like there was a wall between the community and the law students” but using the methods he learnt at CLE he was able to reach out to the community. Overtime he felt that the community began to trust him and he was able to help them connect with the law (Interview, Warawattsnsnon, 28/06/2013). This benefited the community because they increased their legal knowledge and Tze said afterwards he felt more confident to go into communities and teach.

Throughout this research the researcher discovered that the term pro bono lead to some confusion during interviews. Strictly speaking pro bono work is supposed to be a

legal service where the provider is unpaid and the receiver is not required to pay a fee. The reason why there is supposed to be no fee is because lawyers should not do pro bono for financial gain. Moreover, pro bono is supposed to provide assistance to those who can't afford legal services. However, within the context of Thailand, it was discovered that legal services which were referred to as pro bono were not strictly pro bono. For example, lawyers from the Lawyers Council of Thailand who provide free legal services do not provide these services completely for free. The lawyer receives a very small fee, often to cover travel expenses and other costs incurred. Furthermore, usually when lawyers do pro bono work for NGOs, like provide legal advice or representation in court, the lawyers will be provided with a stipend to cover travel or accommodation expenses. Therefore, if the strict definition of pro bono is applied to these two examples, this work would not in fact be pro bono. However, with the Thai context it appears that it is the common practice for lawyers who provide pro bono services to receive a small fee. Therefore, for the purpose of this research the strict definition of pro bono was not applied instead the researcher included legal services where the provider received a small fee or stipend under the category of pro bono.

4.3 CLE and Access to Justice in Thailand

One of the key research questions for the thesis is; can Clinical Legal Education programs help to increase access to justice in Thailand? In order to answer this question it was important to identify the fundamental obstacles to justice in Thailand, which has been done above. This next section will evaluate if CLE programs have the ability to help to resolve these obstacles and increase access to justice in Thailand. Expert and key informants were asked; how can CLE help to increase access to justice? Some key areas in which CLE can increase access to justice were identified.

4.3.1 Pro Bono Services

Both CMU and TU legal centers deliver community legal education, these programs are very valuable because they provide an important service that few others

provide in Thailand. One key obstacle identified was that legal services are not accessible to everyone, especially to people in rural areas. However, “CLE students are not just standing in the clinic, but actually going out into the community and educating the population” (Interview, Wannarat, 28/06/2013) this overcomes the obstacle of accessibility, by taking the legal service into the communities. Furthermore, since there are universities all over Thailand, and if they were all to adopt CLE, then they could potentially educate a large percentage of the Thai population about the law (Interview, Wannarat, 28/06/2013). By educating the population about the law, you could potentially reduce the risk of people having their rights exploited and even reduce crime. For example, one CMU graduate who spent two years conducting legal education classes at Chiang Mai women’s prisons said, “The guards told me, that after the classes started, they have fewer problems with the prisoners and the number of women who return to the prison after released fell” (Interview, Wannarat, 28/06/2013). This is an immediate positive effect of the CLE programs. Additionally, both legal clinics provide free legal advice and TU also provides a limited amount of legal representation in court for clients. This is an important service that provides people with direct access to justice and can significantly impact society as a whole. For example, if one law students helps around 20 people per year, and there are ten students working at the legal center, that is around 200 people per year who receive free legal assistance that they may not have got anywhere else (Interview, Saiupparat, 19/06/2013). Neither of the clinics specialized in one area of law and when students were asked about the legal topics they taught to communities students stated that they covered a whole selection of topics and it depended largely on the needs of the community.

In South Africa, the first law clinic was established in 1971, in the University of Cape Town. The motivation behind the clinical movement was the need to increase the poor’s and disadvantaged access to justice. Due to limitations of government legal aid services law clinics became a valuable resource to ensuring people’s access to justice. The South Africa government recognized the importance and value of university law clinics and in 1994 established the Legal Aid Board. Its role was to develop law clinics

throughout the country and overall twenty-two government funded clinics were established. Now many of these state funded university clinics have been incorporated into justice centers, these are similar to legal aid specialist law firms. (Golub 2007) This is an example of how university law clinics can evolve to ensure wider access to justice is provided to the community. Around twenty-one university law clinics still exist in South Africa, but most of them are independently funded (McQuoid-Mason 1992). It's estimated that around 3,000 law students graduate each year in South Africa and if each of those students worked on ten cases in their final year they could potentially provide assistance to around 30,000 people. This shows the potential and impact that university law clinics can have.

In Thailand each year there are approximately 15,000⁶ law graduates nationwide, if as little as 10% of them were involved in legal clinics and that 10% worked with ten clients in their final year, they could potentially provide legal assistance to around 15,000 people. This is legal advice alone; it does not include the impact that legal community education programs have. At CMU, during the academic year 2007-2008, the community teaching program provided legal knowledge and community empowerment training to over 2500 community members (Bruce.A.Lasky, 2011). There are approximately around 100 law schools in Thailand, if they all developed CLE programs and conducted community outreach programs, they could potentially provide legal knowledge and community empowerment to around 250,000 people per year. This is an invaluable resource that could help to overcome the obstacle of lack of legal knowledge in Thailand, which was cited as the most serious obstacle to justice.

As discussed in chapter 3, CLE has the capacity to increase graduates' willingness to participate in pro bono and can also encourage them to pursue ethical careers within the field of law, which could lead to an increase in access to justice in Thailand. Programs that educate students on clinical practice alongside practical experience, can help to

⁶ This figure is slightly out of date; however more up to date figures were not available during the time of this research. This figure could therefore be significantly higher.

develop a habit of pro bono services within law graduates (O'Connor 1985). Bruce Lasky believes that “some of the reasons lawyers don’t engage in pro bone is because they are not made aware of the variety of models” (Interview, Lasky, 18/06/2013). However, by working with CLE students are exposed to a variety of pro bono models, they learn to appreciate the importance of pro bono work and develop an interest in doing such work. Furthermore, the quality of lawyers providing government funded legal services has also been stressed as an obstacle to justice. However, CLE has the potential to overcome this issue, because CLE helps students to develop lawyering skills, which equips them for the practice of law and values, such as professional responsibility, to represent all clients equally (Interview, Lasky, 18/06/2013).

4.3.2 The Legal Profession

O'Connor(1985) blames legal education for lawyers insensitivity to their ethical and social responsibilities, arguing that law schools fail to instill these responsibilities into students. However, if law schools focused on lawyers’ moral and social responsibility more graduates would be concerned with these issues. Therefore, the role of clinics as a means to transform the legal profession cannot be over-emphasized since CLE produces better lawyers, who are more skilled and have a sense of ethics and social responsibility (Samaai 2010). A lawyer should be more than a mouth piece of his client in pursuit of profit, instead he should be a guardian of his client’s rights (1998). However, for lawyers to act as guardians they must be taught that this is their role. Professor Bliss, a clinical professor from Georgia State University, USA, believes that CLE provides an opportunity to transform the country and it is the best way to train future lawyers who have a very important role to play in the development of Thailand.

‘If you start by training the next generation of lawyers in a positive, ethical manner and create awareness for the need of professionalism and the need ethical behavior you will transform law graduates. Those people who are educated in clinics are going to graduate and work in the private sector, take on government positions, become

policy makers, they will work in all areas of society in all parts of the country and they are the future of the country” (Interview, Bliss, 20/06/2013).

Bruce Lasky supports this stating that, “lawyers really have the ability to progressively shift society to be fairer and to provide greater access to justice for people (Interview, Lasky, 18/06/2013). Lawyers can be distinguished from other professionals by their unique professional responsibilities to protect the people’s rights and pursue social justice (1998). CLE programs help to transform the legal profession and in turn the law makers themselves by educating students in an ethical manner and instilling professional and social responsibility into students. Furthermore, by educating students on morality and ethics there is the potential to reduce discrimination within the legal profession. For example, CLE gives students the opportunity to work with clients from all areas of society, making them culturally and socially sensitive to an array of issues. Additionally, CLE students are exposed to how discrimination and alienation from the law can negatively impact people’s lives which, it is hoped, will encourage graduates to refrain from discriminatory practices in the future. Several graduates said that their work at the legal center changed the way they looked at criminals, and other socially marginalized people. For example, Pim, said that before working in the clinic she thought of criminals as bad people, but after spending time working in the prison and interacting with prisoners, she learnt to question why they committed that crime and tried to understand their situation (Interview, Makar, 13/06/2013). Discrimination was identified as an obstacle to justice but has the capacity to help to reduce discrimination and moreover corruption. Corruption, although not discussed in the data, has been recognized as a major problem within the Thai legal system and society as a whole (Center 2005).

Lawyers play an important role in bringing the law to lay people, operating the justice system and often helping to create the laws within their constitution (James. E. Moliterno 2007). However, law schools focus too heavily on legal doctrine at the expense of practical legal education which results in law students being ill equipped for the professional world (Lande 2013). CLE supplies graduates with an extensive range of

skills⁷ which ensures that they are better prepared for the practice of law. These skills include communication, critical thinking, interviewing techniques, problem solving and planning. Most importantly, CLE teaches students to speak about law in a way that everyone can understand, this ensures that no one is excluded from access justice because of legal terminology.

4.3.3 Academia

Law schools need to have academics who work within society and produce work that is beneficial for society, not only pursue research for their own self-interest(Edwards 1992). Academics are important because they have the freedom to look in depth at current issues, research these issues and try to challenge the way things are. However, Brian Barbour, founder of Legal Clinics in Hong Kong, believes that often academics become separate from the practice of law and therefore, need to find a way to link academics and practitioners. Then the academics can do research on issues which will assist the practitioners who don't have time to do it themselves, and CLE can help to link these two which is really helpful" (Interview, Barbour, 24/06/2013). Furthermore, research shows that in Poland, where legal clinics have grown rapidly over the last decade, the development of legal clinics has helped to foster a relationship between the legal profession and the legal academics(Joanna.Śliwa 2010).

4.3.4 Development of the Rule of Law

Nicholas Booth⁸ was interviewed to discuss the reasons why UNDP Vietnam decided to support CLE initiatives in Vietnamese University Law Schools. UNDP were working in Vietnam trying to improve the rule of law culture but he acknowledges that

⁷ refer to the data presented in chapter 3

⁸ Currently Regional Policy Advisor for Governance, Access to Justice and Human Rights at UNDP South East Asia and previously Policy Advisor for Rule of Law and Access to Justice at UNDP Vietnam

this is a very difficult task, that requires different approaches and develops over a long period of time.

It not just about drafting new laws, it's about changing the mentality of the government. However, it is quite hard to change the mentality of middle aged government officials who have a particular set of incentive structures and were educated in a particular way, in a particular time, it's hard for them to change. So, just working with the ministry of justice on their legal aid system wasn't going to be enough and the idea of law clinics was identified as something that had been transformative in other places but wasn't happening in Vietnam. At the time, the law schools in Vietnam were handing out a very thin, rule based, administrative legal education, which was forming what law was for the students and forming their legal culture. So, by adopting CLE methods and programs the quality of the legal education could be increased and the students could learn to understand the meaning of rule of law.

The idea is that by working from the bottom up, CLE programs have the potential to increase rule of law within a country by educating future lawyers, government officials and policy makers about the importance of the rule of law. Rhodes (1999) believes that if legal education encompasses pro bono initiatives and ethical and professional training then overtime, a greater sense of moral obligation to part take in pro bono activities will trickle up to practitioners.

Mr. Booth stated that there were 3 kinds of results or transformations he would really like to see CLE programs bring about in Vietnam or anywhere else where CLE is integrated into law schools.

1. Create a cadre of public interest lawyers and people who want the law to serve the people in whatever branch they choose.
2. Change the mentality of state officials and in the hope that they will see themselves in a different role and treat the people in a different way.
3. Create a culture of empowerment of people, in a way that sees them as bearers of

rights and people themselves believe that they have right to have to the law work for them.

Collectively, these three transformations would have a very positive impact on the rule of law. As previously discuss Thailand was currently ranked In a recent 83th out of 97 countries worldwide, in the World Justice Project report on Rule of Law (M.D. Agrast 2013). The rule of law in Thailand is undermined by discrimination, lack of public awareness about the law, and equal accessibility to justice. It is evident that Thailand needs to take measure to increase rule of law with in the country and CLE could potentially help to overcome this issue.

4.4 Conclusion

In conclusion, access to justice in Thailand is not equally attainable by all members of society. These findings support the literature research and highlight issues of discrimination, lack of trust, accessibility, lack of knowledge and quality of free legal services as obstacles to justice in Thailand. This research data verifies that CLE programs have the potential to offer direct free legal services to people and increase legal knowledge, which will overall enhance access to justice within Thai society. As well as providing these direct services, CLE could have long term positive impacts on the rule of law, the legal profession and academia within Thailand.

CHAPTER V

FINDINGS: THE FUTURE OF CLE IN THAI LAW SCHOOLS

CLE is not a one size fits all program, it is a philosophy that has been interpreted in different ways by different law schools, in different countries. The methods that law schools use to instill social responsibility, ethics and professionalism will depend largely upon the resource of the educational institution. Since CLE is still a very new concept in Thailand, the researcher asked respondents about their views on the future development of CLE in Thailand.

5.1 A Legal Center

All respondents were asked, “Do you think that all Thai law schools should have a legal center?” All interviewees agreed strongly that universities in Thailand need to develop a legal center, of some kind, into their law school. The main reasons cited for this was to increase people’s ability to access justice and knowledge of the law, to increase students understanding of society and to help students learn about and connect with their local community. Furthermore, May, a CMU graduate, believes law students need to understand that becoming a lawyer is not just about making money and gaining power. Instead lawyers have a responsibility towards society because their work impacts people lives, and this is why it is important that we have legal centers in law schools (Interview, Lardtdattanapong, 04/07/2013). Gaew, a human rights lawyer, believe that by giving students the opportunity to participate in pro bono work, such as working at their university law center, you can broaden their horizons and give them an chance to see a different side of the law and introduce them to other legal careers available (Interview, Fuangtong, 06/06/2013).

However, the legal center must facilitate student centered learning and incorporate CLE methodologies; it is not an education facility if the lawyers and professors are in control and students simply assist them. The students need to be

sufficiently engaged so they actually learn, so the professors or lawyers at the legal centers must enable students to be sufficiently engaged and not allow them to be observers. Students must be given responsibility and ownership over the running of the legal center, “The more ownership you give the students, the more you develop their skills of organization, leadership, presentation; you force them to learn by doing” (Interview, Booth, 04/07/2013). Furthermore, for students to effectively learn about society and law legal centers must expose students to the problems of society and the inequality of access to justice, therefore legal centers must target their work towards certain populations (Interview, Chumsri, 11/06/2013). Otherwise students will just learn about the practice of law and still be disconnected from the problems of society.

5.2 An Accredited CLE Course

As previously mentioned, CMU is the only university in Thailand that has integrated an optional, accredited CLE course into their law curriculum. Students can enroll on this course during the final year of law school and it is these students that provide consultation, under the professors’ supervision, to clients once they have completed the course training. In an interview with Professor Panarairat⁹ it was asked why CMU decided to implement an accredited CLE course, she stated when she started working at CMU she had to attend teacher training that all new professor must attend when they join. At this training, new teachers must learn and accept four fundamental roles; to teach, to do research, to serve the community and maintain Thai culture. However, she argues that that the university strongly focuses on teaching and research and when teachers are evaluated, this is what they are given credit for. Little credit is given for community services, so by making CLE accredited professors are given credit for their time and community service is valued on par with research and teaching (Interview, Panarairat, 18/06/2013).

⁹ Professor Panarairat worked together with BABSEA CLE to develop the CLE course at CMU.

CMU graduates and professor were asked the question “Do you think all Thai law schools should incorporate a CLE course into their curriculum?” Several issues were raised in support of a CLE course, for example Professor May, from CMU, felt that a course was important because it ensures that students have adequate training to perform their duties at the legal center (Interview, May, 21/05/2013). May, a CMU Graduate, believes that a course is important because some people don’t want to volunteer so maybe a course can help those people do pro bono work and get credit for it. But, she also felt that there are people who want to volunteer and they should have an option to do this too, so we should have a course and a volunteer program (Interview, Larddattanapong, 04/07/2013). Professor Sakchai, of CMU, believes CLE can teach students how law works in reality, how to practice law, about morality and the law and ultimately how to be a good lawyer and therefore should be implemented at all law schools (Interview, Sakchai, 20/06/2013). Moreover, a CMU graduate, argued that CLE must be developed more in Thailand, because many lawyers in Thailand only think about themselves and don’t care about people who have legal problems. But, CLE teaches future lawyers how to “develop your heart by doing pro bono” (Interview, Wannarat, 28/06/2013). For example one student talks of a client he represented pro bono:

I met one man who was very poor and had been accused of raping a child, but no one cared about him. His daughter came to me for help and I helped them for one and a half years. Now, he is free but if there was no lawyer like me to provide free services, then he would still be in prison because he had no money (Interview, Saiupparat, 19/06/2013).

Another CMU graduate, acknowledged that maybe it is not possible for all universities to develop a CLE course and open a legal center but he argued that, at a minimum, all universities should have a compulsory subject educating students about pro bono. Focusing on why it is important to have pro bono lawyers in society and make students aware of the problems with society and their responsibility to help (Interview, Warawattananon, 28/06/2013).

Professor Panarairat and other professors of CMU identified an issue with an accredited course over a voluntary program, stating that when students volunteer they choose to do it because they have a desire to help people and often the legal center have the ability to select the most eligible volunteer candidates to work at the legal center. However, when CLE is an accredited course students can enroll and the professors have no control over who can or cannot enroll. This can lead to problems because the students who join may not have a desire to help people, but take the course because they think it's an easy option since there is no final exam or extensive amount of course work (Interview, Panarairat, 18/06/2013). Bruce Lasky, an expert in the field of CLE, believes that it is not always essential to create a CLE course, but you can use the CLE methods and integrated them into other courses. For example, at Mae Fah Luang University¹⁰ they incorporated CLE methods into their legal English classes, they used interactive teaching methods with a social justice ethos to educated students about society and marginalized populations (Interview, Lasky, 18/06/2013) The methods are important, it's not just one course, it's about reforming the way law is taught, it's about incorporating morality and ethics into the whole of legal education.

The question regarding a CLE course was not asked to TU graduates because they had no prior knowledge of a CLE course however TU professors were asked about the future development of the TU legal center and the possibility of the law faculty adopting a CLE course. The Dean of TU Law faculty appreciates the value of practical legal education as former head of the legal clinic and is an advocator of "law in action" (Interview, Narong, 12/06/2013). He has adopted a policy to try and encourage law professors, as much as possible, to incorporate practice and experience into legal education. TU would like to have a course in the future, but right now don't have all the resources available (interview, Patchaya, 26/06/2013)

¹⁰ A university located in Chiang Rai, in the North of Thailand

5.3 Voluntary or Compulsory

All participants were asked whether they believed student should have the option to partake in CLE programs/courses or whether they should be made compulsory for all law students. There were mixed responses; some participants felt strongly that all students must partake in CLE programs. For example, Nan, a CMU graduate, believes that all students should study at the legal center because it will change their vision of the law and she hope that it will help to create a new generation of lawyers, a generation that knows that the law is not always fair and lawyers that know how to use the law in a good way (Interview, Sautatirat, 18/06/2013). But for numerous reasons, mainly technical in nature, other respondents felt that CLE programs should remain optional. Professor Sakchai believes that we need to limit the number of students working at the legal center in order to be able to supervise effectively, if there is not enough supervision, students may provide misinformation to clients(Interview, Sakchai, 20/06/2013). Moreover, if there are too many students then there may not be enough staff trained in CLE to efficiently train them all and the quality of the program may suffer.

5.4 Summary

There is overwhelming support for the development of legal centers in all universities in Thailand due to the benefits they provide for students and society. Accreditation helps to ensure education standards are upheld, that students are adequately training to fulfill their duties and that teachers and students are given recognition for their valuable work they do at the legal center. Where CLE programs are voluntary or compulsory, is open to debate, both have positive and negative points and it will largely depend upon the universities resource capacity.

5.5 The Future

“We want to see a CLE course in every law school” (Interview, Panarairat,

18/06/2013). CLE activists argue social justice and pro bono work should not be treated as an extracurricular activity but as something that all law schools do, and is integrated and supported by the law school (Bruce. A. Lasky 2011) . “It’s not enough for a few laws schools to adopt these programs; it should be nationwide and accepted as a core program at universities. When Universities accept, adopt and embrace these programs, you will have graduates that embrace these values and the idea of pro bono” (Interview, Lasky, 18/06/2013).

For CLE to be effective in helping to combat obstacle to access to justice we need to choose a model that is incorporated into the law school and not outside the academic program (Interview, Lasky, 18/06/2013). In Poland, university legal clinics have been very successful embraced in to law schools and a network of nationwide clinics has emerged. In 1997 clinic was establish and by 2010 there were 25 clinics in 15 polish cities. In 2002 the Legal Clinics Foundation was created to manage and develop Poland’s university legal clinics. Between, 2008-2009, 1,661 students and 216 members of teaching staff were working in these clinics. In total, the universities clinics collectively admitted 11,075 cases (Joanna.Śliwa 2010). This demonstrates that with the right support and management legal clinics can develop very successful and emerge as a key legal aid provider. It is also important for the legal profession to be involved; this will help to create a stronger relationship between law faculties and the legal profession and law society. Furthermore, if the Thai Law Society and university CLE programs were to collaborate there could be many positive outcomes, such as improving the quality of the legal service by providing legal aid lawyers with ethical and professionalism trainings. The legal aid lawyers and CLE clinics could work together to provide a more effective and efficient legal aid system, like other legal aid systems in countries such as India or South Africa.

Funding was cited as a key obstacle in the way of CLE development in Thailand: without funding clinics cannot be establish and lawyers or clinic staff cannot be hired. Professor Sumpass, from TU, believes the government may not want to fund these programs because they may feel they will not get anything in return (Interview, Sumpass,

25/06/2013). However, what this research can clearly demonstrate is the CLE can positively impact law graduates, the legal profession, public policy makers, and society as a whole. Therefore, the Thai government would be making an invaluable investment if CLE programs and clinics were to be established at every law school in the country. Maisel (2011) acknowledges that due to the high volume of low income people in developing countries it is much more challenging for university based clinics to be able to assist everyone. Therefore, he argues that in order to sustainable and effective university law clinics must receive government funding and should partner with local NGOs and government legal service to ensure no duplication of services.

5.6 Conclusion

CLE is a powerful education tool and with a social justice mission, to do both of these effectively the right model must be implemented. From the two case studies used in this study, it appears the CMU model is far superior for several reasons: the CLE course ensures students receive adequate training to fulfill their role at the clinic. CMU has a fully develop CLE curriculum that covers areas of ethics and professional responsibility. Professors and students receive credit and recognition for their work. Students have a lead role in the clinic and professors acting as advisors and guardians. CLE is fully integrated into the curriculum and is given equal value to other law courses.

However, Thammasat Legal center does provide significantly more legal advice than Chiang Mai, for example last year TU advised 673 clients and CMU only advised 140 clients. But it must not be forgotten that CLE programs are educational programs and educational development should be the main focus. The provision of free legal services is important but CLE programs must ensure that educational growth occurs too. The TU center is an important legal aid service within Bangkok however its main focus is not students' learning.

CHAPTER VI

CONCLUSION

6.1 Introduction

Access to justice should be equally available to all members of a society however this is not always the reality. One way of increase access to justice is by taking a bottom up approach and focusing on better educating the lawyers of the future. CLE programs aim to better educate and prepare students for the ethical practice of law, as well as provide well needed free legal service within society. By using practical teaching methodologies with a social justice aim CLE programs hope to create lawyers who work towards creating equal access to justice within society.

6.2 Theoretical Analysis

The hypothesis of the thesis tested if the main barrier to access to justice in Thailand deriving from low public knowledge of the law and a lack of services dedicated to increasing public knowledge and providing free legal services. The findings in this thesis support this hypothesis and found that low public knowledge of the law and inadequate legal services promoting access to justice are the key barriers to access to justice in Thailand. The research also found that discrimination, accessibility and concerns with the free legal services provides by the Lawyers Council of Thailand also had a negative impacted upon people's ability to access justice.

Secondly, the thesis hypothesis tested if clinical legal education programs can be used as an education tool to instill a sense of professional and social responsibility into students. The findings in this thesis support this hypothesis and found that CLE programs: increase students skills set equipping them with the skills that are necessary for their future. Provided first-hand, legal experience within society which allows students to develop a clearer understanding of their society and the way in which law functions within it. This in turn, increased their sense of social responsibility once they had been

exposed to those people left on the margins of justice. CLE provides a foundation, planting seeds of morality and ethics within young people and provides an environment for them to grow. It is important that students are taught about ethics and morality at university to ensure they don't develop bad habits. Furthermore, students' knowledge and understand of pro bono was increased, graduates felt inspired to bring about change in society and this research found that in some instances CLE participation can alter a law students career decisions. This research also illustrations the importance of practical education and how it enables educational development which cannot be achieved through theoretical education.

Lastly, the hypothesis tested if CLE can help to increase the number of graduates who participate in pro bono work or pursue an ethical career within the legal field, leading to an increase in access to justice in Thailand. This research partial supports this hypothesis: it was found that pro bono participation after graduation was not increased although graduates understanding of pro bono and willingness to participate in the future, if provided with the opportunities, was increased. This research also found that CLE was able to encourage students to choose ethical careers within the legal field, four out of the fifteen graduates interviewed pursued non-conventional legal careers based upon their experiences from working with CLE. These two finding demonstrate the CLE has the potential to increase access to justice in the future, by creating graduates who are more aware of pro bon and creating graduates who want to create positive social change through law. Furthermore, CLE programs also increase access to justice by providing legal counseling and community legal education. In the long term, they have the capacity to strengthen the rule of law and reform the legal profession within Thailand, which will also contribute to increasing access to justice.

Irrefutably, the evidence presented in this thesis demonstrations that CLE would be a positive addition to legal education in Thailand with benefits for students, the legal profession and society as a whole.

6.3 Observations

The following observations were made in relation to changes that could be made to improve legal education and increase access to justice in Thailand.

- In accordance with the UN guidelines on Legal Aid (Justice 2012) which encourage and support the establishment of legal aid clinics in law departments within universities, to promote clinical and public interest law programs among faculty members and the student body. CLE programs and courses should be incorporated nationwide to Thai university law schools, legal centers should be established as a means to provide practical, social justice lawyering experiences to law students and to provide vitally needed legal education and counseling for Thai society.
- CMU model is better suited for universities because it is a student centered model, the teachers are there to provide assistance to students but do not take the lead role. Giving students the chance to work unsupervised and developing the confidence to work independently. Provide students with sense of ownership and responsibility for the clinic, for example in CMU many students returned to help out at the clinic after they graduated, but at TU they did not.
- A stronger alumnus of students who pass through CLE programs should be established to create a network of social active lawyers within society and to raise awareness about pro bono activities.
- Universities should make strong connections with NGOs in order to reach target populations and expose students to alternative career paths.
- CLE should be incorporated into all aspects of the curriculum, using more student centered methods.
- Government should provide funds for CLE program as a way to improve legal education and help to solve the problem of lacking access to Justice in Thailand

The following observations were made in relation to changes that could be made to increase access to justice.

- The Ministry of Justice increase efforts to provide legal information regarding a person's rights and legal services available to all members of society, especially to the poor, marginalized and those living in rural areas, in a language that is non-formal and understandable.
- Increased efforts are made to expand legal service to rural areas of Thailand, as a means to ensure that all people are able to access legal services without having to travel excessive distances. The recent Just Fund reforms aim to ensure that persons living in rural areas are able to access services within their local areas and don't have to travel to Bangkok to access service. If these reforms are successful and continuing efforts are made to expand legal service with rural areas then access to justice could be increased.
- Measures are taken to ensure that all lawyers are aware and understand the ethical code and that strict adherence to code is upheld and any violations are addressed promptly. Furthermore, the Lawyers Council of Thailand must ensure that lawyers appointed to work pro bono are competent and work in the best interests of their client.
- The Ministry of Justice, Lawyers Council of Thailand and Bar Association must work together to create anti-discrimination literature and workshops in a bid to eradicate discrimination within the judiciary system.

6.3 Suggestions for Further Research

It is recommended that further research be carried out in the following areas related to access to justice and Clinic Legal Education in Thailand.

- A comparison study between CLE graduates and non CLE graduates, to identify if differences between their views on issues such as social responsibility, pro bono and social awareness exist.

- CLE students should be provided with a questionnaire about- pro bono, social justice, social responsibility and their view of the law when join clinic and then again when they leave. Therefore, a comparison can be made between their answers and the true impacts of CLE upon students can be evaluated.
- A study investigating the possible pro bono activities available to lawyers and legal professionals in Thailand, as a means to gain a clearer understanding of why lawyers do or don't participate in pro bono activities.

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APPENDICES

APPENDIX A: LIST OF GRADUATES INTERVIEWED

Chiang Mai Graduates					
<u>Name</u>	<u>Nick Name</u>	<u>Organization working for</u>	<u>Position</u>	<u>Year Graduated</u>	<u>Date of Interview</u>
Kanintrtra Nonthatham	Ja	Government Land department	Legal Officer	2009	17/6/2013
Patcharanan Buamali	Van	Highlands Development and Research Institute (HDRI)	Officer	2010	17/06/2013
Preeda Saiupparat	Preeda	Independent law firm	Lawyer	2008	19/06/2013
Kanignid Lardtdattanapon g	May	Thai Bar Association	Students	2010	4/07/2013
Sorracha Sautatirat	Nan	Chiang Mai	LMM student	2010	18/06/2013
Narudol Wannarat	Don	CIMB Securities	Officer	2008	28/06/2013
Woraset Warawattananon	Tze	CIMB Securities	Officer	2009	28/06/2013
Pimtida Makar	Pim	Thailand Tabaco	Lawyer	2009	13/06/2013

Watchana Wongsinnak	Breeze	Human Rights Commission of Thailand	Officer	2009	14/06/2013
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Thammasat Graduates					
<u>Name</u>	<u>Nick Name</u>	<u>Organization working for</u>	<u>Position</u>	<u>Year Graduated</u>	<u>Date of Interview</u>
Somparn Bugjit	Tom	CSR company	Advisor	2012	02/07/2013
Kitsakorn Rattanasit	Egg	Thammasat	LLM Student	2012	03/07/2013
Sittidej Juthakan (Krng)	Krng	Thammasat	LLM Student	2011	26/06/2013
Ponpawit Pankhamkerd		The Thai Bar	Student	2012	15/06/2013
Patcharapon Shinjaromekit		TU legal Center	Officer	2013	12/06/2013
Sirichai Toomthong	Gab	Private law firm	Lawyers assistant	2013	03/07/2013

APPENDIX B: LIST OF KEY AND EXPERT INFORMANTS

Professors			
<u>Name</u>	<u>University</u>	<u>Position</u>	<u>Date of Interview</u>
Narong Jaiharn	Thammasat Law Faculty	Dean	12/06/2013
Ajarn Sumpass Pungpradist	Thammasat Legal center	Lawyer	25/06/2013
Ajarn Patchaya	Thammasat Law Faculty	Law Professor	26/06/2013
Ajarn Weerasak Tupkhwa	Thammasat legal center	Chief of legal aid	25/06/2013
Ajarn SakChai	Chiang Mai Law Faculty	Professor	20/06/2013
Ajarn BunChu	Chiang Mai Law Faculty	Professor	20/06/2013
Ajarn May	Chiang Mai Law Faculty	Professor	21/06/2013
Ajarn Panarairat Srichaiyarat	Chiang Mai Law Faculty	Professor	18/06/2013

CLE Experts			
<u>Name</u>	<u>Organization working for</u>	<u>Position</u>	<u>Date of Interview</u>
Thip	Bridges Across Borders	Lawyer	16/06/2013

Nouansyvong	South East Asia (BABSEA CLE)		
Bruce Lasky	Bridges Across Borders South East Asia (BABSEA CLE)	Director	17/06/2013
Professor Lisa Bliss	Georgia State University	Associate Clinical Professor	20/06/2013
Brian Barbour	Japan Association for Refugees(JAR) Tokyo	Director	24/06/2013
Ivy Trang	BABSEA CLE	Project manager of HIV and law	26/06/2013
Nicholas Booth	UNDP- Asia Pacific Regional Center	Policy Advisor	4/07/2013

Human Rights Lawyers			
<u>Name</u>	<u>Organization working for</u>	<u>Position</u>	<u>Date of Interview</u>
Gaewgarn Fuangtong	Asylum Access	Lawyer	06/06/2013
Songkrant Pongboonjun	EnLaw	Lawyer	05/06/2013
Pawinee Chumsri (Ann)	Cross Cultural Foundation	Lawyer	11/06/2013

BIOGRAPHY

Miss Lauren Donnison is from the UK and graduated from Lancaster University with a Bachelor of Law. After graduation she knew she wanted to work within the field of development and spent time volunteering in Nepal and Thailand, and also spent some time working as an English teacher in South Korea. She attended the MAIDS program to further her knowledge and skill towards her future career working in the field of access to justice.