

## UNDERSTANDING THE SCOPE OF BUSINESS LAW CLINICS: PERSPECTIVES FROM THE UNITED KINGDOM, ISRAEL AND THE UNITED STATES

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**Abstract:** Law school legal clinics are commonly associated with the provision of free legal advice about personal matters to individuals who cannot afford a lawyer. Business law clinics, those which advise entrepreneurs and other existing businesses, have attracted little scholarly attention despite their longstanding establishment in the United States of America and their growing emergence in Europe. Where it exists, scholarly discussion on business law clinics primarily focusses on single case studies based in the United States. This article addresses the significant gap in the literature by conducting a comparative analysis of three business law clinics in different jurisdictions to reveal commonalities, trends and areas of divergence. The business law clinics under examination are the Business & Commercial Law Clinic at Northumbria Law School, England; The IDC Legal Clinic for Start-Ups at Radzyner Law School, Israel; and Brooklyn Law Incubator & Policy Clinic (BLIP) at Brooklyn Law School, United States.

**Keywords:** *business law clinics; commercial law clinics; clinical legal education; experiential learning; law clinics; pro bono; transactional clinics*

### I. Introduction

Clinical legal education is a growing area for academic research worldwide.<sup>1</sup> Business law clinics, a type of specialist legal clinic, have long been established in the United States and are emerging as an important force in 21<sup>st</sup> century clinical legal education in Europe. Despite this, business law clinics have been largely neglected in the scholarly debate. Where it exists, academic discourse primarily focusses on single case studies based in the United States.<sup>2</sup> This article addresses the significant gap in the literature by providing a global picture of the currency of business law clinics in the United Kingdom, Israel and the United States. Commonalities, trends and areas of divergence have been identified through a case study analysis of three business law clinics within each of the jurisdictions: the Business & Commercial Law Clinic at Northumbria Law School, United Kingdom; The IDC Legal Clinic for Start-Ups at Radzyner Law School, Israel; and Brooklyn Law Incubator & Policy Clinic (BLIP) at Brooklyn Law School, United States. This article posits that business law clinics should be valued for

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<sup>1</sup> Rachel Dunn, 'A systematic review of the literature in Europe relating to clinical legal education' (2017) 24(2) International Journal of Clinical Legal Education, 81, 82.

<sup>2</sup> See, for example, Laurie Hauber, 'Complex Projects in a Transactional Law Clinic' (2009) 18(3) Journal of Affordable Housing & Community Development Law 247-256; Paulette J. Williams, 'Cross-cultural teaching in the Business Law Clinic' (2008) 76 Tennessee Law Review 437-443; Susan R. Jones, 'Transactional Law, Equitable Development, and Clinical Legal Education' (2005) 14 Journal of Affordable Housing & Community Development Law 213-217; Susan R. Jones, 'Transactional Lawyers Supporting Economic Development in the Nation's Capitol', (1999) 9 Journal of Affordable Housing & Community Development Law 18-27; Jill I. Gross and Ronald W. Filante, 'Developing a Law/Business Collaboration through Pace's Securities Arbitration Clinic' (2005) 11 Fordham Journal of Corporate & Financial Law 57-83.

the rich educational experience they afford to students, the important assistance they provide to entrepreneurs and businesses, and the wider benefits they bestow on teaching institutions.

## II. Clinical Legal Education and Business Law Clinics

It is worth deconstructing our understanding of the term 'Clinical Legal Education' (CLE). The phrase can be used to describe a variety of different learning activities that involve law students and there is no one universally accepted definition of the term.<sup>3</sup> One view is that CLE can be defined as 'learning through participation in real and realistic interactions coupled with reflection on this activity'.<sup>4</sup> As the name indicates, the primary focus of CLE is student education, not public service. In contrast, pro bono, the provision of free legal services to people who could not otherwise afford them, has more of a public benefit focus.<sup>5</sup> Clearly though, any clinical programme which involves the provision of free legal advice to the public has a pro bono element, and any provision of free legal assistance by students should be of some educational benefit to them. There is therefore a considerable overlap between the two concepts within law schools and the relative weight of significance placed on education versus public benefit varies from institution to institution.

Given that CLE lacks a universal definition and is something of a 'catch-all' term, Sandefur and Selbin have suggested that its practices and methodologies are not easily summarised.<sup>6</sup> Nevertheless, it is useful to distinguish between different supervisory models and to appreciate that clinics do not all provide the same level of service. Grimes notes that university law clinics may be supervised internally by suitably qualified academic staff, or may be based on externships with the law school providing the students and then facilitating reflection on the experience the student has at the law firm or external body.<sup>7</sup> Some clinics offer a full advice, drafting and representation service, whilst others may provide only initial advice or referral to other legal services.<sup>8</sup> The 'gold standard' of CLE is the full service in-house model which seeks to replicate the service a client could expect to receive if they instructed a firm of solicitors (sometimes referred to as the 'teaching law firm'<sup>9</sup>).<sup>10</sup> In-house legal clinics have their own premises, usually within the law school, and are supervised by suitably qualified members of

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<sup>3</sup> Kevin Kerrigan and Victoria Murray (eds), *A Student Guide to Clinical Legal Education and Pro Bono* (Palgrave Macmillan 2011), 5.

<sup>4</sup> Kevin Kerrigan and Victoria Murray (eds), *A Student Guide to Clinical Legal Education and Pro Bono* (Palgrave Macmillan, 2011), 5. Note that a purist might argue that only work with real people/organisations counts as clinical legal education.

<sup>5</sup> For further discussion of the two concepts see Kevin Kerrigan 'What is clinical legal education and pro bono?' in Kevin Kerrigan and Victoria Murray (eds), *A Student Guide to Clinical Legal Education and Pro Bono* (Palgrave Macmillan 2011), pp.1-20.

<sup>6</sup> Rebecca Sandefur and Jeffrey Selbin, 'The Clinic Effect' (2009) 16 *Clinical L. Rev.* 57, 58.

<sup>7</sup> Vicky Kemp, Tine Munk, and Suzanne Gower, *Clinical Legal Education and Experiential Learning: Looking to the Future* (University of Manchester 2016), 2.

<sup>8</sup> Vicky Kemp, Tine Munk, and Suzanne Gower, *Clinical Legal Education and Experiential Learning: Looking to the Future* (University of Manchester 2016), 2. See also discussion in Kevin Kerrigan and Victoria Murray (eds), *A Student Guide to Clinical Legal Education and Pro Bono* (Palgrave Macmillan 2011), 1-3.

<sup>9</sup> Vicky Kemp, Tine Munk, and Suzanne Gower, *Clinical Legal Education and Experiential Learning: Looking to the Future* (University of Manchester 2016), 2.

<sup>10</sup> Kevin Kerrigan and Victoria Murray (eds), *A Student Guide to Clinical Legal Education and Pro Bono* (Palgrave Macmillan 2011), 1.

academic staff.<sup>11</sup> This type of clinic can only be established with strong institutional support because they require a sustained investment in terms of staff, premises and other resources.<sup>12</sup>

It is also worth analysing what we mean when we refer to 'business law clinics' and how these are conceptually different to a 'traditional' clinic. A social justice agenda was at the heart of the early clinical movement<sup>13</sup> and it is therefore unsurprising that clinics around the world have tended to focus on the provision of advice to disadvantaged individuals on personal matters in areas such as crime, welfare benefits, housing and employment.<sup>14</sup> Whilst a traditional clinic focuses on helping individuals with personal matters, business clinics focus on assisting entrepreneurs and organisations with business and commercial matters. Clients might include individuals, groups of individuals, companies, charities and social enterprises. The work undertaken in business law clinics varies from clinic to clinic. The umbrella label of 'business law clinic' is used here for convenience, but there are other ways of describing this kind of work. For example, in the United States the preferred term is 'transactional clinic'.<sup>15</sup> Either term perhaps disguises to a certain extent the true scope of work undertaken in this type of clinic.

Business law clinics have their detractors. Some clinicians believe that clinics should focus on the provision of legal advice to low income and other underrepresented clients.<sup>16</sup> However, this overlooks the important role small and medium enterprises have to play in any economy<sup>17</sup> and the fact that they often cannot afford legal advice, particularly at the Start-Up stage. For example, the Solicitors Regulation Authority has reported that the majority of small businesses in England and Wales have little contact with legal providers and that over half of businesses that experienced a problem tried to resolve it on their own.<sup>18</sup> There is clearly unmet legal need for businesses as there is for individuals. Jones, a business law clinician in the United States, has argued that business law advice may actually do more to address social ills than traditional clinic: "small business development has ... a greater impact on sustained community change than just representing indigent individuals".<sup>19</sup> Regardless of resistance from certain factions of the clinical community, the following discussion illustrates that

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<sup>11</sup> Vicky Kemp, Tine Munk, and Suzanne Gower, *Clinical Legal Education and Experiential Learning: Looking to the Future* (University of Manchester 2016), 2.

<sup>12</sup> Kevin Kerrigan and Victoria Murray (eds), *A Student Guide to Clinical Legal Education and Pro Bono* (Palgrave Macmillan 2011), 1.

<sup>13</sup> See for example discussion in Frank Bloch and Mary Noone, 'Legal Aid Origins of Clinical Legal Education' in Frank Bloch (ed), *The Global Clinical Movement: Educating Lawyers for Social Justice* (Oxford University Press 2011), pp.153–166.

<sup>14</sup> See discussion in Elaine Campbell, 'Recognizing the Social and Economic Value of Transactional Law Clinics: A View from the United Kingdom' (2016) 65(3) *Journal of Legal Education* 580-596.

<sup>15</sup> See for example Susan Jones and Jacqueline Lainez, 'Enriching the Law School Curriculum: The Rise of Transactional Legal Clinics in U.S. Law Schools' (2014) 43 *Washington University Journal of Law & Policy* 85-127.

<sup>16</sup> See, for example, Stephen Wizner, 'Is Social Justice Still Relevant?' (2012) 32 *Boston College Journal of Law & Social Justice* 345, 352; Stephen Wizner and Jane Aitken, 'Teaching and Doing: The Role of Law Clinics in Enhancing Access to Justice' (2004) 73 *Fordham Law Review* 997, 1008; Donald Nicolson 'Legal Education Or Community Service? The Extra-Curricular Student Law Clinic' (2006) *Web Journal of Current Legal Issues* 3.

<sup>17</sup> For example, in the UK, over 99% of businesses are small or medium sized and account for the majority of employment (60%) - House of Commons Library 'Briefing Paper 06152 – Business Statistics' (2016), 3-5. Available at <<http://researchbriefings.files.parliament.uk/documents/SN06152/SN06152.pdf>> accessed 3 May 2017.

<sup>18</sup> Solicitors Regulation Authority, 'The Changing Legal Services Market' (Solicitors Regulation Authority 2015), 16.

<sup>19</sup> Susan Jones, "Promoting Social and Economic Justice Through Interdisciplinary Work in Transactional Law" (2004) 14 *Washington University Journal of Law & Policy* 249, 260.

business clinics are here, they are becoming more prevalent, and that they can be of social and economic value.

### III. The English Perspective

#### A. Brief Overview of the Legal System in England and Wales

The legal system in England and Wales is a common law system. It is the basis of many other jurisdictions' legal systems. There are two main branches to the legal profession in England and Wales: solicitors and barristers. The training and regulatory structures differ, as do their role in the justice system. A solicitor is usually the first person an individual or business would contact for legal advice. A solicitor is someone who has been admitted as a solicitor by the Solicitors Regulation Authority (SRA), whose name appears on the roll of solicitors and who has a current practising certificate.<sup>20</sup> Solicitors can represent clients at court as well as preparing court proceedings and a wide range of non-contentious documentation (wills, contracts etc.). There were approximately 139,797 practising solicitors in England Wales in 2017.<sup>21</sup> Barristers are regulated by the Bar Standards Board and a barrister is an individual who has been called to the Bar by an Inn of Court.<sup>22</sup> In order to practice a barrister is required to have a current practising certificate<sup>23</sup>. Barristers deal with the majority of high profile court cases and solicitors often instruct them on particularly complex matters. Barristers often specialise in court room representation, drafting pleadings and expert legal opinions. There were approximately 16,435 practising barristers in 2017.<sup>24</sup>

#### B. Overview of CLE and Business Law Clinics in the United Kingdom

The United Kingdom ('UK') embraced law clinics relatively early, from the 1970s onwards.<sup>25</sup> The establishment of legal clinics within law schools was sporadic over the next few decades,<sup>26</sup> but there has been a clear trend of growth so far this century. In 2006, a LawWorks<sup>27</sup> survey found that 46% of law schools were doing pro bono work and/or clinical work;<sup>28</sup> by 2014 that figure had risen to at least 70% of all UK law schools ('2014 LawWorks Survey').<sup>29</sup> The 2014 LawWorks Survey also revealed that

<sup>20</sup> Solicitors Act 1974, section 1.

<sup>21</sup> See <[https://www.sra.org.uk/sra/how-we-work/reports/data/population\\_solicitors.page](https://www.sra.org.uk/sra/how-we-work/reports/data/population_solicitors.page)> accessed 4 March 2018.

<sup>22</sup> Legal Services Act 2007, section 207. The Inns of Court are the Honourable Societies of Lincoln's Inn, Inner Temple, Middle Temple and Gray's Inn.

<sup>23</sup> Bar Standards Board Handbook, Scope of Practice Rules, Section C.

<sup>24</sup> See <<https://www.barstandardsboard.org.uk/media-centre/research-and-statistics/statistics/practising-barrister-statistics/>> accessed 4 March 2018.

<sup>25</sup> Elaine Campbell, 'A dangerous method? Defending the rise of business law clinics in the UK' (2015) 49(2) *The Law Teacher* 165, 166.

<sup>26</sup> Elaine Campbell, 'A dangerous method? Defending the rise of business law clinics in the UK' (2015) 49(2) *The Law Teacher* 165, 166.

<sup>27</sup> LawWorks, formerly the Solicitors Pro Bono Group, is a charity which works in England and Wales to connect volunteer lawyers with people in need of legal advice who are not eligible for legal aid. See <<https://www.lawworks.org.uk/>> accessed 24 October 2017.

<sup>28</sup> LawWorks, 'LawWorks Students Project Pro Bono – The Next Generation' (LawWorks, 2006), 3 – available at <<http://www.probonogroup.org.uk/lawworks/docs/Student%20report%20Final.pdf>> accessed 24 October 2017. Note that 53% of respondents said they engaged in pro bono activity and this equated to 46% of law schools overall, as confirmed in a later report: LawWorks, 'The LawWorks Law School Pro Bono and Clinic Report 2014' (LawWorks 2014), 6 - available at <<https://www.lawworks.org.uk/solicitors-and-volunteers/resources/lawworks-law-school-pro-bono-and-clinics-report-2014>> accessed 24 October 2017.

<sup>29</sup> Damian Carney, Frank Dignan, Richard Grimes, Grace Kelly and Rebecca Parker, 'The LawWorks Law School Pro Bono and Clinic Report 2014' (LawWorks, 2014), 4.

law schools in the UK now have a much greater range and number of pro bono clinics compared to previous years<sup>30</sup> and that clinical work is increasingly becoming a credit-bearing, assessed part of the curriculum.<sup>31</sup>

Law clinics now provide a broader range of advice and services than ever before.<sup>32</sup> The development of clinics offering more commercially orientated advice in the UK has been slow, but there are now a significant number of clinics which offer Start-Up and business advice utilising different models. The 2014 LawWorks Survey suggested there were at least 17 law schools which offered advice to small businesses/Start-Ups (21% of all respondents) and 21 which offered commercial and intellectual property advice (26% of all respondents).<sup>33</sup> The report does not list the law schools in question, but known examples include: York Law School Clinic<sup>34</sup>; Start-Ed Commercial Law Clinic at City Law School<sup>35</sup>; the Intellectual Property Clinic at Portsmouth University<sup>36</sup>; qLegal at Queen Mary University<sup>37</sup>; the Legal Advice Centre at Nottingham Trent University<sup>38</sup>; the IT Law Clinic at University College Cork<sup>39</sup>; Birmingham FLAG at the University of Birmingham<sup>40</sup>; the Law Clinic at the University of Central Lancashire<sup>41</sup>; the Legal Advice Centre at Greenwich University<sup>42</sup>; the Business and Law Clinic at the University of the West of England<sup>43</sup>; and the Small Business Law Unit at Strathclyde University<sup>44</sup>. We know other clinics are also planning to expand into business law advice including Kings College Legal Clinic<sup>45</sup>, Sheffield Hallam and Leeds Beckett. Accordingly, the actual number of clinics

<sup>30</sup> Damian Carney, Frank Dignan, Richard Grimes, Grace Kelly and Rebecca Parker, *'The LawWorks Law School Pro Bono and Clinic Report 2014'* (LawWorks, 2014), 4.

<sup>31</sup> Damian Carney, Frank Dignan, Richard Grimes, Grace Kelly and Rebecca Parker, *'The LawWorks Law School Pro Bono and Clinic Report 2014'* (LawWorks, 2014), 5.

<sup>32</sup> The 2014 LawWorks Survey found there were 45 generalist advice clinics and 32 subject-specialist advice clinics - Damian Carney, Frank Dignan, Richard Grimes, Grace Kelly and Rebecca Parker, *'The LawWorks Law School Pro Bono and Clinic Report 2014'* (2014), 4.

<sup>33</sup> Damian Carney, Frank Dignan, Richard Grimes, Grace Kelly and Rebecca Parker, *'The LawWorks Law School Pro Bono and Clinic Report 2014'* (2014), 25.

<sup>34</sup> See York Law School Clinic Annual Report 2014-2015 (York Law School, 2015) available at <<https://www.york.ac.uk/media/law/documents/Clinic%20Annual%20Report%20%202014-15.pdf>> accessed 24 October 2017.

<sup>35</sup> See 'Start-Ed Commercial Law Clinic' (City University) <<https://www.city.ac.uk/law/careers/pro-bono-professional/start-ed>> accessed 24 October 2017.

<sup>36</sup> See 'Further details of the intellectual property clinic' (Portsmouth University) <<http://www.port.ac.uk/school-of-law/free-legal-advice-for-community/further-details-of-the-intellectual-property-clinic/>> accessed 24 October 2017.

<sup>37</sup> See 'qLegal' (Queen Mary University of London) <<http://www.qlegal.qmul.ac.uk/>> accessed 24 October 2017.

<sup>38</sup> See 'Legal Advice Clinic' (Nottingham Trent University) <[https://www4.ntu.ac.uk/legal\\_advice\\_centre/our-services/index.html](https://www4.ntu.ac.uk/legal_advice_centre/our-services/index.html)> accessed 24 October 2017.

<sup>39</sup> See 'IT Law Clinic' (University College Cork) <<https://www.ucc.ie/en/lawsite/currentstudents/it-law-clinic/>> accessed 24 October 2017.

<sup>40</sup> See 'Birmingham FLAG' (Birmingham University) <<https://www.birmingham.ac.uk/schools/law/flag/index.aspx>> accessed 24 October 2017.

<sup>41</sup> See 'Law Clinic' (University of Central Lancashire) <[http://www.uclan.ac.uk/about\\_us/facilities/law\\_clinic.php](http://www.uclan.ac.uk/about_us/facilities/law_clinic.php)> accessed 24 October 2017.

<sup>42</sup> See 'Legal Advice Centre' (Greenwich University) <<http://www.gre.ac.uk/ach/study/law/legal-advice-centre>> accessed 24 October 2017.

<sup>43</sup> See 'Business and Law Clinic launches at UWE Bristol's £16.5m Enterprise Zone 'Future Space' (University of the West of England) <<https://info.uwe.ac.uk/news/uwenews/news.aspx?id=3449>> accessed 24 October 2017.

<sup>44</sup> See 'Small Business Law Unit' (Strathclyde Law Clinic) <<https://www.lawclinic.org.uk/beyond-casework/projects/sblu>> accessed 28 October 2017. The Small Business Law Unit is currently at pilot stage according to its website.

<sup>45</sup> See 'King's Legal Clinic Quarterly Newsletter: Feb 2018' (Dickson Poon Law School) <<https://mailchi.mp/e322d40580f6/news-updates-from-kings-legal-clinic-newsletter-edition2>> accessed 13 March 2018.

undertaking business law work is likely to be higher than suggested by the 2014 LawWorks Report.<sup>46</sup> We may have reached a critical mass of business clinics in the UK, but there is still a lack of academic and scholarly literature relating to this specific type of clinic. As Campbell bemoaned in 2015: 'there is... a dearth of information about the business law clinics that do exist, or have existed in the past. They have been hidden away, or, at the very least, backwards in coming forward.'<sup>47</sup>

### C. History of the Business and Commercial Law Clinic at Northumbria University

Northumbria University is based in the North East of England in the United Kingdom. The Business and Commercial Clinic operates as part of the long established Student Law Office ('SLO'), a large in-house law clinic within the Law School. The SLO can trace its origins back to the late 1980s when students at Newcastle Polytechnic<sup>48</sup>, started working with real clients using an externship model.<sup>49</sup> In the early 1990s Newcastle Polytechnic became Northumbria University<sup>50</sup>, an in-house clinic was opened to the public and the SLO became an integral, credit-bearing part of the Law School's undergraduate degree programmes.<sup>51</sup>

Today, every student undertaking the four-year M Law (Exempting) degree at Northumbria experiences clinic as a full year module in their fourth and final year. On completion of the clinical module and the degree programme, students are awarded a qualifying law degree ('QLD')<sup>52</sup>, a Master's degree, and exemption from the Legal Practice Course ('LPC')<sup>53</sup>. The SLO is a well equipped, bespoke office at the heart of the law school with its own meeting rooms. Since 2008, the SLO has dealt with over 3000 enquiries, represented more than 1000 clients and secured nearly £1 million on their behalf.<sup>54</sup> The SLO has received numerous awards<sup>55</sup>. Approximately 23 solicitors, barristers and caseworkers supervise an average of 191 students each academic year in SLO who provide advice and representation to the general public. Students work in teams of six, referred to as 'firms' which

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<sup>47</sup> Elaine Campbell, 'A dangerous method? Defending the rise of business law clinics in the UK' (2015) 49(2) *The Law Teacher* 165, 168.

<sup>48</sup> A polytechnic was a tertiary education teaching institution in England, Wales and Northern Ireland. They offered higher diplomas, undergraduate degrees and postgraduate education (Master's degrees and PhDs). They lacked degree-awarding powers and academic degrees had to be validated by the UK Council for National Academic Awards.

<sup>49</sup> Jonny Hall, 'Professor Philip Kenny – A Leader in the UK and International Clinical Legal Education Movement – A Personal Tribute' (2016) 23(2) *International Journal of Clinical Legal Education* 4, 4.

<sup>50</sup> Pursuant to the Further and Higher Education Act 1992.

<sup>51</sup> Jonny Hall, 'Professor Philip Kenny – A Leader in the UK and International Clinical Legal Education Movement – A Personal Tribute' (2016) 23(2) *International Journal of Clinical Legal Education* 23(2), 4, 4.

<sup>52</sup> A qualifying law degree is the first part of the academic stage of education and training for solicitors in England and Wales. There are specific requirements regarding the subjects that must be studied, the number of assessment attempts students are permitted, and there are also requirements relating to the amount of credits that must be allocated to the study of law on the degree. See 'Academic stage of education and training' <<https://www.sra.org.uk/students/academic-stage.page>> accessed 25 October 2017.

<sup>53</sup> The Legal Practice Course (or 'LPC') is the second part of the academic stage of education and training for solicitors in England and Wales. It is a postgraduate professional qualification that is designed to prepare students for work-based learning. See 'Academic stage of education and training' (*Solicitors Regulation Authority*) <<https://www.sra.org.uk/students/academic-stage.page>> accessed 25 October 2017.

<sup>54</sup> See 'Student Law Office, Northumbria University' (*Higher Education Academy*) <<https://www.heacademy.ac.uk/person-cate/northumbria>> accessed 25 October 2017.

<sup>55</sup> For example the Queen's Anniversary Prize for Higher and Further Education and a Higher Education Academy (HEA) Collaborative Award for Teaching ('CATE').

specialise in their supervisor's area of expertise: civil litigation, crime, welfare benefits, employment, family etc.<sup>56</sup> The SLO established a specialist business law clinic in 2007.<sup>57</sup>

**D. About the Business and Commercial Clinic: Structure, Work, Funding, Supervision, Student Selection and Assessment**

*a. Structure of the clinic*

The clinic runs from October to early May. The number of supervisors and students within the Business and Commercial Clinic has grown over the years. In the academic year 2017/2018 three solicitors will supervise five firms (29 students in total) who will provide assistance on a wide range of business and commercial matters. Two full time administrators deal with everything from enquiries to file opening and closing. There is a clinic director, another qualified solicitor, who has overall responsibility for the SLO.

*b. Type of work undertaken in the clinic*

New enquiries are received by telephone or email and are managed by the administrators. Supervisors review the enquiries and decide whether or not they appear suitable for students to work on. Those enquiries which are too urgent, complex or outside the supervisor's expertise have to be rejected.<sup>58</sup> Once students are allocated to a firm, they are usually paired with another student to work to provide a supportive team work environment. This also means that should a student be ill or otherwise absent for any length of time, there is another student who is able to continue running the matter in their absence.

The work undertaken in the clinic in any given year varies according to the types of enquiries we receive. Clients include individuals, partners in partnerships, companies, limited liability partnerships ('LLPs')<sup>59</sup>, charities and social enterprises<sup>60</sup>. The work undertaken in the Business and Commercial Clinic can be broken down into four categories: company; charity and social enterprise; commercial and intellectual property. The work is predominantly non-contentious and we only advise on the law of England and Wales. The assistance provided always involves the provision of face-to-face and/or

<sup>56</sup> Student Law Office, Annual Report 2007-2008 (Northumbria University 2008), 5; Student Law Office, Annual Report 2008-9, (Northumbria University 2009), 4; Student Law Office, Annual Report 2009-10 (Northumbria University 2010), 1; Student Law Office, Annual Report 2010-11 (Northumbria University 2011), 1; Student Law Office, Annual Report 2011-12 (Northumbria University 2012), 1; Student Law Office, Annual Report 2012-13, (Northumbria University 2013), 1; Student Law Office, Annual Report 2013-14 (Northumbria University 2014), 1; Student Law Office, Annual Report 2014-15 (Northumbria University 2015), 2; Student Law Office, Annual Report 2015-16, (Northumbria University 2016) 1; Student Law Office, Annual Report 2016-17 (Northumbria University 2017), 1 (all on file with author, copy available upon request).

<sup>57</sup> Elaine Campbell, 'A dangerous method? Defending the rise of business law clinics in the UK' (2015) 49(2) The Law Teacher 165, 168.

<sup>58</sup> Where an enquiry must be rejected, we try to refer the enquirer to other potential sources of assistance.

<sup>59</sup> An LLP was introduced in April 2001 in the UK as a new form of business ownership by the Limited Liability Partnerships Act 2000. An LLP is a hybrid form of business entity: it is neither a partnership nor a company but has characteristics of both.

<sup>60</sup> In the UK, a social enterprise is defined by the Government as "a business with primarily social objectives whose surpluses are principally reinvested for that purpose in the business or in the community, rather than being driven by the need to maximise profit for shareholders and owners". See Department for Business Innovation and Skills, 'A guide to legal forms for social enterprise' (Department for Business Innovation and Skills 2011) <[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/31677/11-1400-guide-legal-forms-for-social-enterprise.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/31677/11-1400-guide-legal-forms-for-social-enterprise.pdf)> (accessed 26 October 2017). <sup>61</sup> Table adapted from the table in Elaine Campbell, 'A dangerous method? Defending the rise of business law clinics in the UK' (2015) 49(2) The Law Teacher 165, 170.

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written advice, and may also extend to the drafting of documentation and help filling in forms and applications. Table 1 below provides an overview of the type of work commonly undertaken in the Business and Commercial Clinic.

*Table 1 – Overview of Work Undertaken in Business and Commercial Clinic<sup>61</sup>*

Area of Law	Examples of Issues Clients Need Assistance With
Company	<p>Choice of business structure: sole trader, partnership, LLP, private limited company etc.</p> <p>Corporate governance advice: directors' duties, constitutional issues, administrative and filing obligations, drafting of director/shareholder resolutions.</p>
Charity and Social Enterprise	<p>Choice of structure: charitable company limited by guarantee, charitable incorporated organisation<sup>62</sup>, community interest company<sup>63</sup> etc. Advice in relation to incorporating an existing unincorporated charity.</p> <p>Corporate Governance Advice: trustee responsibilities and constitutional issues, administrative and filing requirements.</p>
Commercial	<p>Reviewing and drafting commercial contracts, e.g. partnership and LLP agreements, publishing agreements, supply agreements etc.</p> <p>Producing terms and conditions of sale and purchase for physical and online retailers. Drafting website terms and conditions, terms of use and privacy policies for e-businesses. Advising on data protection and confidentiality issues.</p>
Intellectual Property	<p>Intellectual property protection: copyright, designs, trade marks and patents. Advice and assistance in relation to registering trade marks.</p> <p>Advising on disputes such as another person copying material from the client's website, or the client being pursued for infringing a third party's</p>

<sup>61</sup> Table adapted from the table in Elaine Campbell, 'A dangerous method? Defending the rise of business law clinics in the UK' (2015) 49(2) *The Law Teacher* 165, 170.

<sup>62</sup> A charitable incorporated organisation is form of corporate body with limited liability designed specifically for charities which was introduced by the Charities Act 2011. It is regulated by the Charity Commission and is brought into existence by registration with the Charity Commission.

<sup>63</sup> A community interest company ('CIC') is a limited liability company designed for social enterprises which has the specific aim of providing benefit to a community and uses its income, assets and profits for the community it is formed to serve. CICs were introduced in the UK in 2005 pursuant to the Companies (Audit, Investigations and Community Enterprise) Act 2004.

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*c. Funding and client selection*

The Business and Commercial Clinic does not charge for any of its services. Clients are required to cover any third party expenses, for example trade mark registration fees. The clinic does not have a client account and therefore any disbursements must be paid direct by the client. We do not means test in any way or enquire as to the client's financial position. The Business and Commercial Clinic, like the SLO, is funded out of the Faculty's general budget in the same way as other law modules. Whilst it is undoubtedly more costly to run than a traditional lecture/seminar based module, the clinic is seen as the capstone module of the M Law Exempting degree. This means that the clinic continues to receive the support of the Faculty and the wider University, allowing it to sustain investment in staff and resources.

The services of the Business and Commercial Clinic are promoted on the University website and using social media. Word of mouth is an important source of referral, as are referrals from local law firms and the local business centre within the local library. In deciding whether to take on a case, the primary consideration is whether the matter will be of educational benefit to the students.

*d. Student selection, support and supervision*

Prior to the start of each academic year, the incoming SLO students are given the opportunity to express a preference as to the type of work they would like to undertake. The Business and Commercial Clinic is very popular, with demand usually outstripping the number of places available. Students are allocated so that, as far as possible, everyone gets their first or second choice and no competitive application process is employed.

Students are provided with various training and support, including a detailed handbook and copies of all the office procedures. Lectures cover topics like time management and office IT. At present, all students working in the clinic have previously completed a preparatory module whereby they undertake a mock case and interview clients played by actors.

Northumbria operates a workload system whereby teaching staff are allocated workload hours for teaching, marking, research and administration. Each supervisor is given a workload allowance of approximately 175 hours per firm (about 29 hours per student). Whilst this is more generous than the workload allowance for more traditional teaching, supervision is extremely time consuming. As well as weekly firm meetings, supervisors are often in daily contact with some or all their students. The hours allowance is also inclusive of assessment (discussed in further detail below). Each student also has a mid-year appraisal with their supervisor, an important opportunity for the supervisor to provide additional formative feedback. The mid-year appraisal form the students must complete involves self-assessment.<sup>64</sup>

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<sup>64</sup> The self-assessment does not count towards any final grade but is very useful from both the student and the supervisor's perspective.

Once a new enquiry is given to students, the students have an initial meeting with the prospective client without their supervisor being present. Following this meeting, a decision is made as to whether the matter can be taken on. The decision is ultimately that of the supervisor, although students are encouraged to offer their opinions. If the matter is taken on, a file will be opened, the client will be sent a client care letter and the students will begin to undertake research. Once the research is complete, the client will be invited back to the office for an advice interview (the supervisor is not present but the interview is recorded for educational purposes) and any advice is then confirmed in writing. All work undertaken by students is checked by the supervisor. There is a strict policy to ensure client confidentiality. Key card access is required to enter the office and all work must be completed in the office. Students are given a specific clinic email account, separate from their normal university email account. If the students need to email their client, which is common in the Business and Commercial firms, they must email the SLO administrators who will send it from the main SLO account. The clinic is covered by the University's indemnity insurance policy.<sup>65</sup>

#### *e. Assessment*

The Business and Commercial Clinic, like the SLO, is an assessed 60-credit module at level 7<sup>66</sup>. It represents nearly 40% of a student's final year grade. Students are assessed on their practical work (70% of their overall mark) and by way of two reflective essays (30% of their overall mark). Whilst students usually work in pairs, they are assessed individually and must produce some pieces of work alone. A student's practical work is evidenced by a portfolio which they must submit at the end of the academic year. The portfolio will contain copies of all substantial pieces of work undertaken as well as the supervisor's comments on the work. A student's final mark for their practical work is not just determined by the physical work they produce and evidence in their portfolio but also by the other skills and attributes they have demonstrated including oral communication, time management and teamwork. The supervisor fills in a detailed assessment form. In the UK system, degrees and performance in assessments are normally categorised as follows: 70% and over is a first; 60-69% is an upper second (2.1); 50-59 is a lower second (2.2); 40-49 is a third; and anything below 40% is a fail. Because SLO is a level 7 module, the pass rate is 50%. Students receive a specific mark for their practical work out of 100%, in line with the usual grading system. Detailed grade descriptors are provided for each of the assessment criteria to help the supervisor decide which category a student falls into. The two reflective essays each have a word count of 2,000 and are marked out of 100%. They are assessed against marking criteria such as reflective analysis, self-awareness and clarity of expression. During their time in the clinic, students must also complete two LPC competencies: interviewing and written advice. These are assessed on a competent, not yet competent basis. There is a rigorous quality assurance procedure in place and all assessments are subject to both internal moderation by the wider supervisory team, and external moderation by an external examiner.

#### *E. Anonymised Case Studies*

##### *a. Case Study 1 – Advice to an unincorporated charity*

*Type of Client:* Established, but unincorporated, charitable organisation.

*Assistance provided:* Advice in relation to incorporation, trustees' obligations, and branding.

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<sup>65</sup> There is a lack of regulatory clarity over what level of insurance law clinics in England and Wales are required to maintain. See Linden Thomas, 'Law clinics in England and Wales: a regulatory black hole' (2017) 51:4 The Law Teacher for further discussion.

<sup>66</sup> Level 7 is master's degree level in accordance with the framework for Higher Education Qualifications in England, Wales and Northern Ireland, August 2008.

*Work undertaken by students:* Initial meeting, research, advice interview, and written letter of advice.

*Points of note:* The charity was not incorporated and had no formal management structure. In practice, this meant the students experienced difficulties taking instructions from a large number of trustees, some of whom failed to respond to correspondence or were confused as to their standing in the organisation. An enquiry from a single individual on a personal matter would not have raised these client care and professional conduct issues.

*b. Case Study 2 – Advice to individuals wishing to set up an LLP<sup>67</sup>*

*Type of Client:* Two individuals who wished to set up in business as an LLP.

*Assistance provided:* Initial advice in relation to choice of business ownership, the suitability of an LLP and the cost and process for incorporating an LLP. Drafting of an LLP agreement, and a contract to be entered into with a third party supplier.

*Work undertaken by students:* Initial interview, research, advice interview, written letter of advice, further research, drafting, second advice interview, second written letter of advice, and provision of LLP agreement and contract.

*Points of note:* Students had to consider a number of professional conduct issues. Firstly, they had to consider whose name the file could be opened in: the file could not be opened in the name of the LLP, because whilst an LLP is a separate legal entity, it had not yet been incorporated at the time we were instructed. Students also had to consider other issues, for example, could we take instructions from just one of individuals and what we would need to do in the event the individuals disagreed and a conflict of interest arose?

#### **F. Challenges and Opportunities**

Following a review by the SRA, there are significant changes being proposed to the education and training of solicitors in England and Wales.<sup>68</sup> This presents both an opportunity and challenge for many law schools. The main changes being proposed are the introduction of a centrally set common exam (Solicitors Qualifying Exam, commonly referred to as 'SQE') and a more flexible concept of qualifying work experience<sup>69</sup>. SQE will assess both legal knowledge and practical skills and is anticipated to replace the LPC.<sup>70</sup> It is likely that a significant number of aspiring solicitors will continue to obtain their qualifying work experience by undertaking a formal training contract at a law firm.<sup>71</sup> However, in the future a greater variety of experience, obtained across a range of workplaces

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<sup>67</sup> See note 56.

<sup>68</sup> See T4T Resources (Solicitors Regulation Authority) <<https://www.sra.org.uk/sra/policy/training-for-tomorrow/resources.page>> accessed 30 October 2017.

<sup>69</sup> The SRA intends to retain a period of 2 years. See Solicitors Regulation Authority, 'A new route to qualification: The Solicitors Qualifying Examination (SQE) Summary of responses and our decision on next steps' (Solicitors Regulation Authority 2017), 9.

<sup>70</sup> The target date for implementation will be no earlier than September 2020. See Solicitors Regulation Authority, 'A new route to qualification: The Solicitors Qualifying Examination (SQE) Summary of responses and our decision on next steps' (Solicitors Regulation Authority 2017), 2.

<sup>71</sup> As stated by the SRA – see 'How is this more flexible than the current system?' section of 'Closed Consultations' (Solicitors Regulation Authority, 25 April 2017) [https://www.sra.org.uk/sra/consultations/solicitors-qualifying-examination.page#heading\\_toc\\_j\\_9](https://www.sra.org.uk/sra/consultations/solicitors-qualifying-examination.page#heading_toc_j_9) (accessed 30 October 2017).

including student law clinics, can count if the institution so chooses.<sup>72</sup> It has been suggested that these reforms will lead to clinical methods being more integrated into law degrees and that law schools that have already embraced CLE appear best placed to adapt to the proposed changes.<sup>73</sup> Indeed, Northumbria Law School has recently revalidated its suite of law programmes and clinic and experiential learning have been even more deeply embedded at the heart of everything it does. However, there is still a lot of uncertainty about when the proposed changes will come into effect and the how universities can best prepare their students for such centrally set assessments.<sup>74</sup> This is a significant challenge to Law Schools who need to plan curriculum changes years in advance.

It is notable that commercial and corporate work contributes the most revenue to the overall market for legal services provided by solicitors in the UK.<sup>75</sup> Commercial firms also tend to offer higher starting salaries than high street firms offering legal aid and advice on other personal matters.<sup>76</sup> As law students in the UK now pay more to study than they ever have in the past<sup>77</sup>, it is not surprising that many students are drawn to commercial practice and would prefer to align their any clinical work accordingly. A number of our students have also told us that whilst they have decided they do not want a legal career, they chose to work in the Business and Commercial Clinic because they thought it would be the most useful for applying for graduate schemes and other positions. Accordingly, we view business law clinics as an opportunity to satisfy student demand, teach students about commercial law through experiential learning and help graduate employability. It is possible to do all this whilst simultaneously satisfying a reconceptualised social justice agenda, but there is work to be done in persuading all clinicians to ascribe to this view as noted above.

#### **IV. The Israeli Perspective**

##### **A. Brief Overview of the Legal System in Israel**

Israel is a parliamentary democracy. The parliament (Knesset) has 120 members and passes laws. The executive branch, usually reflecting a broad coalition of various representations in Israeli society, pass regulations. Israeli law, reflecting the nation's history, comprises an assortment of laws and legal systems derived from the various religious communities<sup>78</sup>, former colonial rulers (the British and the Ottoman Turks), and new laws developed over the last seventy years of independence.

The state's ideology is governed by the rule of law; "the basic approach is secular, liberal, and rational."<sup>79</sup> In general, Israel's legal system itself is a mixture of common law and some aspects of civil

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<sup>72</sup> See 'Work based learning' section of 'Closed Consultations' (Solicitors Regulation Authority, 25 April 2017) <[https://www.sra.org.uk/sra/consultations/solicitors-qualifying-examination.page#heading\\_toc\\_i\\_9](https://www.sra.org.uk/sra/consultations/solicitors-qualifying-examination.page#heading_toc_i_9)> accessed 30 October 2017.

<sup>73</sup> Vicky Kemp, Tine Munk, and Suzanne Gower, Clinical Legal Education and Experiential Learning: Looking to the Future (University of Manchester 2016), 40 available at <<http://www.law.manchester.ac.uk/about/news/Headline-509119-en.htm>> accessed 30 October 2017.

<sup>74</sup> The SRA's target date for implementation is September 2020 but progress has been slower than expected and the most people now believe this date is not achievable.

<sup>75</sup> Solicitors Regulation Authority, 'The Changing Legal Services Market' (Solicitors Regulation Authority 2015), 10.

<sup>76</sup> For example, most city firms are offering starting salaries of £40,000-£44,000 for first year trainees – See survey data at 'How much will you earn as a trainee solicitor?' (Target Jobs) <<https://targetjobs.co.uk/career-sectors/law-solicitors/advice/310759-how-much-will-you-earn-as-a-trainee-solicitor>> accessed 30 October 2017. This is more than double the Law Society recommended minimum of £20,276 in London and £18,183 outside of London.

<sup>77</sup> Universities can now charge up to £9,250 per year.

<sup>78</sup> Especially in the area of family law.

<sup>79</sup> A. Barak, *Some Reflections on the Israeli Legal System and Its Judiciary*, vol 6.1 ELECTRONIC JOURNAL OF COMPARATIVE LAW, (April 2002)

law, including concepts such as good faith and the role of judges to fill gaps in statutes.<sup>80</sup> In lieu of a written constitution, Israel has a set of eleven basic laws that are often treated with constitutional regard, e.g., setting out civil rights and relationships between different aspects of the government. The Israeli court system is stratified into three parts and each of the approximately 500 judges in the system are ostensibly appointed by the apolitical head of the state, the President. A mostly apolitical appointment committee presents the President with the candidates. The lowest courts, magistrates, have jurisdiction over many types of lesser civil and criminal cases. The district courts have jurisdiction over all residual criminal and civil matters not under the magistrate's jurisdiction, as well as appeals from the magistrate court. The Supreme Court, which has both jurisdiction as an appellate court for the two lower courts, as well as for administrative cases, is composed of twelve justices who must retire by the age of 70.

### **B. Overview of CLE and Business Law Clinics in Israel**

Clinical legal training in Israel began in the 1990s. Since then, universities have become even more aware of the pedagogical value of clinic, as well as the added value to the communities that they serve, and even the universities themselves. Clinics can be a major factor in the students' choice of which university to apply to (based on internal polls done by various universities). Universities and students appreciate how the practical experience provided by the clinics helps create professional lawyers. The fact that clinics have become a compulsory component in many of the universities reflects this.

Israeli clinics tend to focus on underprivileged communities and legal aspects of a social and personal nature, such as human rights, social change, public policy, victims of domestic abuse, representation of criminal defendants, and children's rights. More recently, commercial legal clinics have emerged - with the IDC Legal Clinic for Start-Ups being the only clinic in Israel that focuses on Start-Ups<sup>81</sup>. This is surprising in light of Israel's position as a 'Start-Up Nation'<sup>82</sup> with a heavy focus on entrepreneurship.<sup>83</sup> However, it is posited that the lack of Start-Up clinics may reflect conventional wisdom that legal clinics should be for those in need; a perspective which overlooks the abundance of positive effects that such Start-Ups have on the community, the students and on the country as a whole<sup>84</sup>.

### **C. History of the IDC Legal Clinic for Start-Ups at the Interdisciplinary Center Herzliya**

The Interdisciplinary Center ("IDC") is a privately funded university located in the central city of Herzliya. Not long after its establishment in 1994, the IDC set up legal clinics as part of the Radzyner Law School. Initially the clinics focused on social welfare issues; this is still the majority of the clinics' focus<sup>85</sup>. Examples include clinics focusing on the rights of the mentally disabled, refugees and immigrants' rights, social legislation, street law, whistle-blower's defence, and international criminal

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<sup>80</sup> Id.

<sup>81</sup> This is accurate as of January 2018 to the best of the author's knowledge. Other universities have been considering the idea and it is expected that more business law clinics will be established in the near future.

<sup>82</sup> Dan Senor and Saul Singer, *Start-Up Nation, the Story of Israel's Economic Miracle* (New York: Hachette Book Group, 2011).

<sup>83</sup> Tel Aviv is listed 5<sup>th</sup> on the 2015 Global Start-Up Ecosystem Ranking, available at <https://blog.startupgenome.com/the-2015-global-startup-ecosystem-ranking-is-live/>.

<sup>84</sup> John Gruidl, Brock Stout and Deborah Markley "Entrepreneurship as a Community Development Strategy" in Rhonda Phillips and Robert Pittman (eds) *An Introduction to Community Development* (New York: Routledge, 2015).

<sup>85</sup> IDC Legal Clinics - <https://www.idc.ac.il/en/schools/law/clinics/pages/home.aspx>.

and humanitarian law. The clinics are yearly programs, and all law students are required to participate in at least one clinic during their final year of study.

The IDC Legal Clinic for Start-Ups (the "IDC Clinic"), officially called the Gladstone-Nir Legal Clinic for Start-Ups, was established in June 2014 with the help of generous private supporters. The Clinic functions as a technology orientated, full-service quasi-law firm and provides free legal counsel to entrepreneurs from underrepresented communities in Israel who are working on a technological venture/Start-Up or a social venture. Examples of technological ventures include mobile applications, service orientated websites, and software. The underrepresented communities include new immigrants, residents of peripheral areas, people with low socio-economic backgrounds, women and minorities such as Arabs, Ultra-Orthodox Jews or Druze<sup>86</sup>.

The IDC Clinic's aim is to empower underrepresented entrepreneurs by providing legal and business counsel. The Clinic's social justice goals are represented in its client choice. While women comprise approximately 50% of the Israeli population and hold high-ranking positions in all industries and all levels of government, they inhabit less than a quarter of core technology positions.<sup>87</sup> Similarly, Arabs and Ultra-orthodox Jews each comprise 20% of the population, and yet only 2% to 4% of the high-tech industry<sup>88</sup>.

Since its inception in 2014, the IDC Clinic has helped more than 100 entrepreneurs, and indirectly assisted hundreds more through its events, referrals to external service providers, and through its online resources.<sup>89</sup> These resources include easy access to mentors, business and legal information resources and a selection of draft legal documents (a project that is currently in trial stage).

#### ***D. About the IDC Legal Clinic for Start-Ups : Structure, Work, Funding, Supervision and Student Selection and Assessment***

##### **a. Structure of the Clinic**

The IDC Clinic runs from October until the end of July, and is managed by a director - an experienced commercial lawyer. The director has 2-3 assistants (students who graduated from the IDC Clinic the previous year and are in their final year), and together they train, guide and manage 18 to 20 law students who work in pairs. Additionally, there is an academic advisor - a senior member of faculty in the law school - who provides academic guidance if needed. Table 2 provides a visual summary of the IDC Clinic structure.

*Table 2 – Structure of the IDC Clinic*

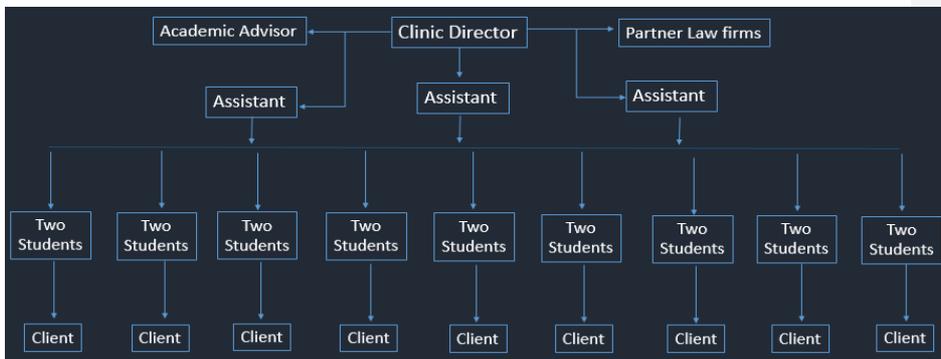
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<sup>86</sup> Also spelled Druse. The Druze are a small Middle Eastern religious sect. The Druze numbered more than 1,000,000 in the early 21<sup>st</sup> Century and live mostly in Lebanon, with smaller communities in Israel, Syria and Jordan.

<sup>87</sup> See, generally, Inbal Orpez "Israeli High-tech Women Say Sexual Harassment Plaguing Industry" (27 July 2017), available at: <https://www.haaretz.com/israel-news/.premium-sex-harassment-rampant-in-israeli-high-tech-1.5435590> (visited 19 February 2018).

<sup>88</sup> See, generally, John Reed "Israel's tech companies slow to hire ultra-Orthodox and Arabs" (22 March 2016), available at <https://www.ft.com/content/e96608e2-c900-11e5-a8ef-ea66e967dd44> (visited 19 February 2018).

<sup>89</sup> IDC Legal Clinic Website - <http://legalstart.idc.ac.il/about-us/>



### b. Type of work undertaken in the Clinic

The IDC Clinic runs much like a high-tech department in a law firm, covering almost all legal aspects required by an early stage Start-Up. This typically includes provision of documents such as confidentiality agreements, founders' agreements, terms of use, privacy policies, waivers and transfers of rights, licenses, Software as a Service agreements, and company incorporation agreements. The IDC Clinic also provides legal opinions, with regard to foreign laws and some intellectual property issues.

Students are divided into five teams, which help run and advance the IDC Clinic: Client Recruitment, Fundraising, Marketing and Events, Article's Team and the Website Team. In terms of their client work, students work in pairs maintaining the same partner for the duration of the academic year. This allows students to appreciate the collaborative nature of most law practices. It also provides cover: if one of the pair is unavailable, the other will be sufficiently familiar with the case to progress it.

After the initial training period, each pair is assigned a client and a meeting is scheduled. Prior to meeting, the students meet with the director and an assistant to discuss the legal issues that might arise (often based on the materials sent by the client) and receive advice on how to conduct the meeting efficiently. Client meetings are held on campus, and last about two hours. Once a client signs the necessary engagement document and provides an overview of their venture, the students determine what legal issues require their attention and advise the client on them. The intention is that the students lead the meetings, with the director only intervening sparingly, when necessary.

Following the meeting, the students submit a summary outlining the legal issues that need to be addressed and the documents that need to be drafted. The summary provides a general road map of the legal services that will be provided. After the receiving the client's approval, the students begin working on the first document.

Students are encouraged to see themselves as the lead lawyers, and to actively advance their client's legal needs. A few days after sending a document to the client, the students receive new guidelines for the next document. This cycle continues throughout the academic year, including during the exam period. Approximately 90% of the documents are prepared in English, with the remainder in Hebrew.

### c. Funding and client selection

The IDC Clinic does not charge for its services, and accepts clients who otherwise could not afford counsel. The clients are expected, however, to cover all administrative and filing costs directly.

Notwithstanding the above, in the engagement letter, there is a 'success clause' which states that should a client raise above a threshold amount of money, in investments or annual income, and subject to receiving a minimum amount of documents from the IDC Clinic, they agree to donate a specified amount of money to the IDC Clinic, or 1% of the company's shares, at the discretion of the IDC Clinic. To date, a handful of clients have either donated the above success fee or allocated 1% of their shares.<sup>90</sup> This model was based on another Israeli non-profit organization called 'Tmura'<sup>91</sup>.

In addition to the success clause, the IDC Clinic has three main funding sources: (1) private donations – the majority of the IDC Clinic's funding; (2) funding in-kind by the university<sup>92</sup>, and (3) partnerships with law firms and private companies (usually in the high-tech field). Such law firms have a mutual interest in the social goals of the IDC Clinic, and in some cases they are also interested in obtaining direct access to the clinic students as high value interns<sup>93</sup>. Additionally, the IDC Clinic applies for various grants<sup>94</sup>.

The IDC Clinic begins to market its services prior to the academic year. Accepted students play an active role in client recruitment. The primary source of new clients comes from hubs, accelerators, incubators, shared work-spaces and other organizations in the Israeli Start-Up eco-system. The IDC Clinic also advertises on social media. Despite the significant increase in the number of candidates, it remains difficult to find clients who fit within the IDC Clinic's criteria. These criteria include:

1. the majority of founders must be from one of the underrepresented communities, or the venture needs to be a social Start-Up;
2. the Start-Up needs to be technologically orientated;
3. the Start-Up team needs to present a minimal level of talent, professionalism and commitment; and
4. the Start-Up needs to show potential and be at a stage in their life-cycle where the IDC Clinic can provide added value.

From the list of potential clients, the IDC Clinic selects ten core clients, usually comprised of two to four entrepreneurs per venture. The IDC Clinic further assists an additional 10 to 20 walk-in clients, typically entrepreneurs with one or two specific legal issues.

#### **d. Student selection, support and supervision**

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<sup>90</sup> A ratio which is consistent with the success rate of Start-Ups and the fact that it usually takes at 1-2 years until higher funding amounts are received.

<sup>91</sup> 'Tmura' means to give back. Early stage Start-Ups donate a percentage of their shares and when these Start-Ups have an 'exit' event (for example, they are sold or have an initial public offering (IPO)), the organisation profits from the shares that they hold. See the 'Tmura' organization: <http://tmura.org/>.

<sup>92</sup> Office space and equipment, administrative and technical support, meeting rooms and other on campus facilities, and academic support (lecturers).

<sup>93</sup> In Israel, in order to receive your lawyer's license, you are required to do a 1.5-year internship at a law firm after completing your law degree. The large commercial law firms see great value in the clinic students due to the fact that they have hands-on, practical legal experience, with real clients and real legal documents – a fact that substantially decreases the law firms' training time and enables the students to 'hit the ground running'.

<sup>94</sup> To date, we have been unsuccessful in raising any funds through grant filing. This is most likely due to the fact that the non-governmental organisations who offer the grants prefer funding more explicitly socially orientated projects..

The student application process begins the year before the students join the IDC Clinic. Applications are open to law students in their 2<sup>nd</sup> or 3<sup>rd</sup> year with an average of at least 85 and a good level of English. Applicants are initially screened via their CVs, transcripts, and letters of recommendations. Applicants that pass this stage are interviewed to assess their English, their ability to think outside of the box and analyse legal issues that they are unfamiliar with, and their personality. Approximately one out of every three applicants are selected. The selection process is challenging in order to deter applicants who are intimidated by hard work.

Students receive extensive guidance and training. A 15 page guidebook is provided which explains the work in the IDC Clinic and how it should be done. The guide includes directions for drafting and editing documents and for correspondence with clients. New students are required to write a paper based upon relevant set reading as well as undergo 3 days of intensive training. The training includes professional and practical lectures from top-tier lawyers and entrepreneurs with a focus on the legal issues that they are most likely to encounter in the IDC Clinic ( e.g. non-disclosure agreements, intellectual property waivers, founders' agreements, terms of use, privacy policies—as well as legal skills relating to incorporation, taxation, employment, and intellectual property law). Additionally, the students learn about non-legal matters, such as basic technical terms<sup>95</sup>, the life cycle of a Start-Up (business and legal perspectives), and how to professionally conduct a meeting with a client. Throughout the year, students attend bi-weekly lectures on both legal and business aspects and visit successful Start-Up companies. Students also present their work and discuss their learning experiences in front of their peers. A new experiential component includes experiencing the process of creating a Start-Up - from idea to the creation of a most viable product (MVP)<sup>96</sup>. This was included to develop students' appreciation of their clients' needs. A large majority of the students' work is closely reviewed by the director, the assistants, or both. The students receive specific guidelines for the drafting of each document. Additionally, they receive a template document and in some cases a questionnaire for the client. Students are encouraged to read at least 2-3 similar documents from competing businesses of a similar nature. After reviewing the materials, students meet with the director in order to ask questions and receive guidance. The director and assistants review all work product and all documents undergo at least one round of corrections. Students who wish to receive more in-depth explanations of the review are encouraged to meet with the assistant or director. Supervision is extremely time consuming. The director is covered by professional liability insurance as part of a wider policy taken for all the clinic managers<sup>97</sup>.

#### **e. Assessment**

Students receive between 6 and 8 academic credits<sup>98</sup> for their successful completion of the IDC Clinic, and each receive a grade between 0 - 100<sup>99</sup>.

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<sup>95</sup> This lecture is delivered by a senior programmer (also known as developer or coder), who explains basic terms that entrepreneurs use when describing their Start-Up, such as APIs, Open Source Code and 'libraries', scripts, adaptive websites etc.

<sup>96</sup> An MVP is the initial and most basic version of a product or service (for example a mobile application) which enables the entrepreneurs to see how users respond to it and if there is a need in the market, before the invest more time and effort in a final, more comprehensive, version.

<sup>97</sup> There are no specific regulations that determine which type of insurance is needed for law clinics. Therefore, the clinics are insured similarly to law firms – a collective policy for all the clinic managers.

<sup>98</sup> A law degree in Israel requires a student to undergo courses which earn them a total of 140 academic credits, usually over a period of 3-4 years. At the IDC almost all students study a dual first degree, for example Law and Business or Law and Government, and therefore need to complete courses in the total of approx. 200 credits.

<sup>99</sup> Universities in Israel use a numeric grading system. A student would have to do something fairly extreme to receive a failing grade (below 60) in a clinic - for example: they would need to miss numerous lectures/lessons

The IDC Clinic grade is divided as follows:

- 50% - practical legal work (client meeting, document drafting and any related work, including correspondence with the client and IDC Clinic team). The work is graded based on the quality of the drafting, timely submission and observance of guidelines, effort and time invested.
- 25% - extra-curricular projects. The students are graded based on the quality of the work and their willingness to volunteer.
- 15% - attendance (mandatory) and active participation in class. Students are not graded on the amount of times they participate, but rather on the quality of their contribution and their ability to add value to the discussions.
- 10% - exercises, assignments and quizzes.

In most cases, students do not receive a numeric grade per assignment, but rather written and oral feedback. Throughout the year the director emphasises to the students that the grades are not important in comparison to the true value that they are receiving from the program<sup>100</sup>.

Students also employ self-assessment. At the end of the year, students are requested to send an email in which they describe the legal documents they have drafted, which extra-curricular projects they have worked on, when and how they volunteered, and what grade they deserve, along with a short explanation. Additionally, they are requested to assess (1 out of 10, 10 being the best) their partner and their teammates in the extra-curricular teams. This method has numerous benefits as it gives the students an opportunity to reflect on the work they have done and what they have achieved, it prepares them for the grade that they are going to receive,<sup>101</sup> and it gives the director insight as to how the student perceives his work and efforts during the year. The self-assessment also provides the director with additional insights as to how other students performed. The self-assessment may, in some cases, influence the grade given.<sup>102</sup>

Moderation is done mainly internally, by the director and the assistants. In cases where the students work on a project with an external professional, for example when working with a lawyer from a partnering law firm, the external professional will provide a grade and this grade will have weight in the assessment.

#### ***D. Anonymised Case Studies***

##### **a. Case Study 1 – Advice to seed stage Start-Up complicated by founder separation**

*Type of Client:* A seed stage Start-Up, at pre-incorporation stage managed by two female founders. Development stage of advanced e-commerce software.

*Assistance provided:* Students provided typical legal services needed by early stage Start-Ups, including general counsel and assessment of their legal needs and advice in relation to intellectual property rights. Students drafted commercial agreements and provided opinions and reviews of documents.

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and/or not fulfil their requirements despite numerous warnings by the clinic director. Although the bell-curve method is used in Israeli universities, it is not used in grading of clinics at the IDC.

<sup>100</sup> Whilst we are not so naïve as to say that this causes the students to abandon the importance that they so often ascribe to grades, we can say that the subject seems to be forgotten by them and their focus turns to the receiving of positive verbal or written feedback.

<sup>101</sup> Surprisingly, year after year, the students' assessment of themselves is very accurate.

<sup>102</sup> For example, if an assignment or task was overlooked or under-appreciated by the director.

*Points of note:* Within 2 months of joining the IDC Clinic, one of the founders decided to leave the venture. The second founder continued the venture and wished to remain with the IDC Clinic. The continuing founder requested our advice and assistance regarding the separation. The students drafted a separation agreement but were unsure as to who was the client and whose interests they should represent: those of the remaining founder? The leaving founder? Both? Or perhaps those of the venture itself (a future company with its own rights)? The IDC Clinic decided to continue to represent the company via the remaining founder, and negotiated a fair separation agreement between the two founders. The remaining founder eventually found a new partner and today their Start-Up is thriving.

#### **b. Case Study 2 – Seed stage Start-Up requiring cross-jurisdictional advice**

*Type of Client:* A seed stage Start-Up prior to incorporation, managed by two entrepreneurs - one of which was located in Israel and the other in Northern America, both of whom worked for employers. Development stage of a plugin (software) targeted at the online gaming (not gambling) industry.

*Assistance provided:* Students provided typical legal services needed by early stage Start-Ups (see above). Specifically, they reviewed relevant local laws in order to determine if the entrepreneur's current employer would have any potential intellectual property ownership in the venture. The students also drafted a comprehensive legal opinion on the question of whether or not the service provided by the venture was legal in certain countries.

*Points of note:* Whilst many lawyers limit their scope of services to the Israeli law, the IDC Clinic believes that this is not a feasible solution for high-tech lawyers due to the fact that the majority of Israeli Start-Ups target the international market. The IDC Clinic team was unsure as to what extent they could represent both the Israeli law as well as foreign laws. Subject to disclosure and caveats, the students elected to service all of the client's needs, including those regarding foreign jurisdiction.

#### **E. Challenges and Opportunities**

We expect the number and variety of Israeli commercial law clinics to expand substantially in the coming years. As universities seek to further distinguish themselves in an already competitive environment, we will likely see a move towards further specialisation and increased experiential learning opportunities. Nevertheless, clinics still face existential challenges in Israel including a general lack of funding and questions about the professional standing of the clinic directors within the university.

With increased diversity within law schools themselves, students may be particularly incentivised to provide services to their own minority and disadvantaged communities. These might be especially valuable to both the law school and target clients. Students from disadvantaged communities may be best positioned to interact with, or draw out, clients from a similar background, who might otherwise be suspicious of large predominantly non-minority institutions. In addition, these interactions may attract a greater number of minority and marginalized groups to the opportunities of legal education.

Universities should start to consider the ways in which their wider student body can gain from business law clinics. For example, business law clinics can assist non-law students to commercialise and monetise their concepts and innovations. Accordingly, business law clinics have the potential to stimulate and help grow entrepreneurial programs within universities. This can also bring in tangible monetary benefits to institutions who might otherwise have to pay for external services to support entrepreneurship.

Another area ripe for innovation in commercial clinics lies in the growing international and cross-border nature of transactions. Students, particularly those in Israel and other non-US countries, can benefit greatly from collaborative work with their peers in other commercial clinics across the world. Not only is this experience invaluable for inculcating students with an appreciation of the vast differences between legal and social climates, but it will also allow them to start working as young professionals to bridge these polarising gaps. Further, students will also benefit from developing relationships with their future international colleagues.

Clinics might also seek future funding from non-traditional sources. For example, with increasing efforts to innovate in the area of legal-tech, i.e., the further incorporation of technology into the practice of law (for example, in the areas of client acquisition, legal services and firm management) clinics can provide relatively cheap proving grounds for emerging technologies without the risk or cost typical of large firms. Like the partnerships described in earlier chapters, these interactions are similarly mutually beneficial: legal tech companies get to beta-test their products in near-real-life situations, and if successful, develop a future client base that already has an appreciation for the technology and clinics can receive remuneration for their beta-testing, as well as introduce their students to emerging legal-tech technologies. The IDC Clinic is currently negotiating a potential partnership of such nature.

## **V. The United States' Perspective**

### **A. Brief overview of Legal System in the United States**

The legal system in the United States is a common law system, based historically upon the British common law system. Unlike the British system with distinctions between the roles and requirements of solicitors and barristers, anyone who passes a state bar exam may practice before the courts of that state, may prepare legal documents, and may represent clients on the full array of contentious and non-contentious matters within that state. A lawyer admitted to practice in one state must take additional steps to seek admission to practice within the US Federal court system or to practice in the courts of other states. The rules for admission to practice in other states vary from state to state.

### **B. Overview of CLE and Business Law Clinics in the United States**

The United States has been at the very forefront of the CLE movement and has continued to grow dramatically over the past few decades<sup>103</sup>. Clinical programs play vital roles both in training American lawyers prior to their admission to the bar<sup>104</sup> and in providing valuable legal services to various underserved communities.

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<sup>103</sup> See, generally, Margaret Martin Barry, Jon C. Dubin and Peter A. Joy, "Clinical Legal Education for This Millennium: The Third Wave" (2000) 7 *Clinical Law Review* 1 and Jeff Giddings, Roger Burridge, Shelley A.M. Gavigan, and Catherine F. Klein, "The First Wave of Modern Clinical Legal Education: The United States, Britain, Canada, and Australia, in Frank S. Bloch (ed), *The Global Clinical Movement: Educating Lawyers for Social Justice* (Oxford: Oxford University Press, 2011) pp.3-22.

<sup>104</sup> Law is one of the few trades in which a practitioner may be admitted to practice without necessarily knowing how to practice. Most law school classes focus on doctrine and theory. Experiential opportunities like law school clinics have not generally been required for law school graduation or admission to the bar. Law school clinic participation, however, is the logical venue in which students may learn and practice the skills that will likely be

Initially, American law school clinics predominantly served impoverished constituencies and trained lawyers for careers in poverty or social welfare law<sup>105</sup>. In more recent years, however, law schools have extended the concept of the law school clinic to serve the needs of entrepreneurs and the Start-Up community. This expansion grew out of concerns that, in the Start-Up world, there were many potential entrepreneurs with great ideas who lacked access the legal resources needed to turn their ideas into sustainable businesses. Without access to legal support, these Start-Ups would never get their ideas off the ground, to the detriment of their communities, their potential consumers, and the general public.

### **C. History of the Brooklyn Law Incubator & Policy Clinic (BLIP) at Brooklyn Law School**

The Brooklyn Law Incubator and Policy (BLIP) Clinic functions as a full-service, technology-oriented law firm in which students provide transactional, policy, some litigation, and general legal counselling to tech-oriented Start-Up clients, innovators, and would-be entrepreneurs. BLIP grew out of the recognition that the next-generation attorney, representing next-generation clients, would need to have a broad-based understanding of transactional law, politics and policy advocacy, administrative law, international legal disparities, finance, technology, and entrepreneurship in order to adequately represent innovative entrepreneurs in an internet-enabled world. As such, unlike most clinics which tend to focus on just transactional, or litigation, or just policy support<sup>106</sup>, the BLIP Clinic works on all three types of legal service, transactional, policy, and litigation.

At the time of the BLIP Clinic's founding in 2008, there were few, if any, law schools training burgeoning attorneys to understand the full spectrum of procedural and substantive issues that will confront the 21<sup>st</sup> Century lawyer and client. BLIP was an effort to train this new generation of attorney who understands and can unify the myriad of issues that might confront innovating entrepreneurs in the digital world.

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required of them when they enter the profession. The American Bar Association recognised these deficiencies and amended its standards in 1981 to require that law schools "offer instruction in professional skills," removing the specific language of "counselling, the drafting of legal documents and materials, and trial and appellate advocacy." Peter A. Joy, *The Uneasy History of Experiential Education in U.S. Law Schools*, Dickson Law Review (forthcoming) 17-18 citing American Bar Association Section of Legal Educ. & Admissions to the Bar, Approval of Law Schools: American Bar Association Standards and Rules of Procedure (1973) at Standard (203)(a)(ii). The decision to make the language broader, Joy argues, "came on the heels of law schools offering more lawyering skills and clinical courses after the 'realization that there were important skills other than those inculcated by the case method.'" *Id.* At 16 citing ROBERT STEVENS, LAW SCHOOL: LEGAL EDUCATION IN AMERICAN FROM THE 1850S TO THE 1980S, 212 (1983).

<sup>105</sup> See n.2.

<sup>106</sup> Even at Harvard Law, known for its leadership in advancing law school education, the clinics are largely divided between transactional, litigation, and policy clinics, with little overlap between the skills and practices. See, e.g., Harvard's transactional law clinics (<http://clinics.law.harvard.edu/tlc/>) which focus on transactional practice without requiring students to explore policy and litigation matters related to representing the particular clients. Harvard's litigation clinics often addresses policy issues as a natural part of litigation, but will not typically integrate transactional skills. See, e.g., Harvard's Supreme Court Litigation Clinic, <http://hls.harvard.edu/dept/clinical/clinics/supreme-court-litigation-clinic/>. Harvard's policy-oriented clinics, generally do not incorporate either transactional or litigation experiences. See, e.g., Emmett Environmental Law and Policy Clinic, <http://hls.harvard.edu/dept/clinical/clinics/emmett-environmental-law-and-policy-clinic/>. This is the general approach to the law school clinic offerings throughout the US.

To date, BLIP has served well more than 1,000 clients and supported scores of non-client policy projects<sup>107</sup>. This might sound like a lot of clients and projects for one clinic to have handled over just nine years, but one must think of BLIP like a full-service law firm in which client matters might be of short duration, long duration, or intermittent. Often, BLIP might provide just one service for a client which might not require more than a few days or weeks of work.<sup>108</sup> BLIP keeps many clients on file so that there is always a worthwhile cross-section of projects from which the students to pick and choose.

At the time of BLIP's founding, there were no meaningful templates on how to build BLIP into a functional, sustainable, worthwhile clinic. In establishing the BLIP Clinic, therefore, the Brooklyn Law School faculty started from scratch and still continues to expand and evolve the processes and documents needed to represent innovative Start-Up clients.

#### ***D. About the BLIP Clinic: Structure, Work, Funding, Supervision, Student Selection and Assessment***

##### *a. Structure of the Clinic*

BLIP runs all year long, but students are accepted for a semester which runs from September to December and from January to May. BLIP sometimes runs a summer session from June to July.<sup>109</sup> BLIP typically includes approximately 36 students each semester, with around 4-10 students returning for a second semester and 26-32 students participating for the first time. Though this might sound like a large student population for a clinic to handle, BLIP has been structured so that workload and supervision are manageable. BLIP, particularly because of the existence of a few repeating students, enables students to learn from each other, in addition to learning from faculty, and allows BLIP to take on students with a variety of interests and experiences that greatly enhance group discussions and clinical experiences. Each student devotes about 170 hours to clinic work each semester. With 36 students, this amounts to more than 6000 student hours each semester. Fulltime BLIP faculty devote upwards of 40 hours each week to clinic work, not including other professorial, faculty, and community obligations and activities.

Each of the five to six teams typically includes two returning students, who serve as "senior associates" bringing client continuity from prior semesters and serving as case managers. Their goal, in addition to learning substantive law, is to learn how to manage clients and to delegate. As the semester progresses, the new students also get the opportunity to take the lead with incoming clients they select after they have watched faculty and their more seasoned colleagues work directly with the clients. Allowing the students to pick the client projects on which each takes lead is an important part of the experiential learning process for students.<sup>110</sup>

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<sup>107</sup> <https://www.brooklaw.edu/academics/clinicalprogram/blip/aboutblip?>

<sup>108</sup> For example, a client might just need to be incorporated or to protect its intellectual property. BLIP, however, because of its broad purview, might have clients who return with new issues after incorporation or IP protection, such as follow-up negotiations with clients and vendors or exploring securities or privacy regulations as they relate to advancing the business. If the client has not yet obtained funding or revenue, they may still be ripe for BLIP legal support.

<sup>109</sup> When BLIP does not run over the summer, faculty continue to service existing clients.

<sup>110</sup> "According to self-determination pedagogical theory, students will more fully engage in an educational activity when the goals of that assignment are aligned with students' philosophy. 'Feelings of autonomy are particularly strong when the task is perceived as being closely connect tot eh values, interests, and goals that

During a few semesters over the past decade, BLIP has had the luxury of having a post-graduate fellow who helps organise the client load and work on special projects. For intellectual property-related work, including trademarks and patents, BLIP employs adjunct faculty. For sophisticated legal work, BLIP has utilized the expertise of Brooklyn Law School faculty and external practitioners.

*b. Type of work undertaken in the clinic*

BLIP provides both routine and first-impression legal support and business guidance to Start-Ups, including but not limited to the following:

- advising clients on corporate structure and governance issues, including:
  - incorporation and document preparation;
  - state-by-state review in anticipation of incorporation;
  - international corporate structure options;
  - applying for not-for-profit status;
  - exploration of using the newly-established Vermont “Virtual” corporation as a corporate structure for internet-based Start-Ups; and
  - drafting of corporate documents, including partnership agreements, consulting agreements, confidentiality agreements, intellectual property assignment agreements, non-solicitation and non-compete agreements, licensing agreements, debt and equity agreements;
- advising telecommunications, Internet, broadcast and other media companies about their regulatory obligations;
- exploring interstate and international distinctions to advise clients on rollout/deployment strategies;
- advising on various intellectual property issues, including copyright, trademark, patent, and trade secrets counselling;
- guiding clients through the complexities surrounding such issues as defamation, indecency, Internet gaming, domain name control;
- working with clients on projects to promote government transparency, civic participation and better information flow between government and citizens;
- drafting of web documents, including terms of service and privacy policies;
- challenging statutes and regulations that would tend to limit technological advancement;

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constitute the core of one’s authentic self and identity ...” William Wesley Patton, *Getting Back to the Sandbox: Designing a legal policy clinic*, 16 Int’l J. of Clinical Legal Educ. 96, 104 (2011) citing Idit Katz and Avi Assor, *When Choice Motivates and When It Does Not*, 19 Educ. Psychol. Rev. 429, 432 (2006). The students become more engaged and invested in the client work when the students choose their clients.

- advocating before government entities on matters involving regulation reform to accommodate new internet-based technologies and services;
- counselling client in anticipation of possible antitrust lawsuit;
- researching foreign ownership rules in anticipation of client acquisition of broadcast licenses;
- working with clients on early-stage business and financing issues;
- commencing domain name infringement cases under the Uniform Domain Name Dispute Resolution Policy; and
- drafting amicus briefs<sup>111</sup>.

Students pursue two parallel paths in BLIP: a transactional lawyering path and a litigation/policy advocacy path. Table 3 provides an overview of transactional, litigation, and policy advocacy work.

Table 3 - Overview of transactional, litigation, and policy advocacy work at BLIP

Type of work	Support services BLIP students provide
Corporate/transactional work	<p>All BLIP students advise clients on corporate structure and governance issues. With regard to providing transactional and other business law support, students do the following:</p> <ul style="list-style-type: none"> <li>• identify ideas capable of evolving into <i>bona fide</i> businesses;</li> <li>• think creatively about how to take traditional business and legal concepts and apply them to new business ideas;</li> <li>• determine and resolve legal and policy hurdles;</li> <li>• design business and management structures;</li> <li>• manage early stage legal work for Start-Ups;</li> <li>• connect and build relations between clients, financiers, and entrepreneurs; and</li> <li>• work with business and technology schools and industry-based networks.</li> </ul>
Litigation	<p>While BLIP refrains from serving as primary litigation counsel, BLIP provides students with the opportunity to gain experience advocating for technology interests in the litigation, administrative hearing, or arbitration setting</p>

<sup>111</sup> A brief filed at court by a non-party to ongoing litigation which seeks to offer facts, analysis or a particular perspective on a case.

	depending on the needs of different BLIP clients.
Policy advocacy	<p>In order to advance policies and regulatory schemes that can better serve the ever-evolving needs of technology innovators and entrepreneurs, BLIP works with government legislators, policymakers, and jurists. These opportunities provide students with hands-on training to advocate on behalf of clients whose potential business models were never envisioned by existing laws and regulations.</p> <p>Students:</p> <ul style="list-style-type: none"> <li>• find clients or causes that are currently unrepresented or under-represented;</li> <li>• determine where and how statutes and regulations are insufficient to foster innovation, economic growth, and social good in the internet age;</li> <li>• design advocacy, lobbying, and political strategy;</li> <li>• draft pleadings, testimony, and proposed rules to advance new media and new technology and internet-based entrepreneurship;</li> <li>• interface with state, federal, and foreign agencies, legislative bodies, and tribunals;</li> <li>• support the work of industry-based associations, standards bodies and self-governance entities; and</li> <li>• research the state of laws and regulations affecting technology, internet users and entrepreneurs.</li> </ul>

BLIP students and faculty are conversant and skilled in US-specific law but are unable to give guidance on non-US law. As a result, BLIP began partnering with law schools around the world, thinking that it was important for small ventures with global aspirations to have competent counsel across jurisdictions. The result of these efforts inspired the European Commission to fund iLINC, a European network of law school incubators and Start-Up law clinics.<sup>112</sup> iLINC's main objective is to facilitate the provision of free legal support to Start-Ups while, at the same time, offering law students the opportunity to engage in professional practice. The BLIP Clinic has served as the primary US partner to

<sup>112</sup> <http://www.ilincnetwork.eu/>

the iLINC Network, providing US legal support to the European law school clinics and their clients, while obtaining legal support from the European law clinics for BLIP's own clients.

### c. Funding and client selection

BLIP does not charge for its services. Clients cover the costs of filings, such as incorporation fees, patent and trademark application fees, and court costs.<sup>113</sup> The BLIP Clinic has two sources of funding: (1) hard money from the school to support one faculty member and some administrative overhead; (2) soft money primarily from alumni donors to Brooklyn Law School's Center for Urban Business Entrepreneurship (CUBE), which pays for additional faculty and adjunct faculty legal support, as well as for events and community-oriented activities.

BLIP has a diverse client portfolio that, during a typical semester, includes more than 50 clients. BLIP receives several hundred client requests each semester, so whittling down the client list is often an intense process for students and faculty in advance of and throughout the semester. Those entrepreneurs and businesses seeking legal support use BLIP's online client intake form<sup>114</sup> which populates a database from which the student and faculty select clients, after debating the pedagogic and societal value of each client. BLIP selects clients based on a variety of factors such as the type and scope of work requested. BLIP clients are generally first-time entrepreneurs who otherwise could not afford counsel or whose particular legal needs are not amenable to traditional law firm support because such work would not be cost effective<sup>115</sup>. BLIP clients include an array of clients with both routine legal support needs (*e.g.*, incorporation and IP protection) and novel issues (*e.g.*, exploration of the legal issues surrounding artificial intelligence, Blockchain deployment, digital media protection, confidential data transfers, cybersecurity, and reconciling trans-border legal disparities). All BLIP clients are selected to help students develop their skills in representing clients they are likely to act for when they enter the profession, or to explore novel legal issues that the law and society will likely confront as the students enter the profession and society evolves in the Digital Age. Oftentimes, BLIP selects clients that may not have as much business promise as other prospective clients, on the premise that more promising clients may be able to avail themselves of *pro bono* law firm support from attorneys who see potential for client revenue down the line. BLIP is also designed to teach students how to work with potential difficult clients and clients who might be pursuing failed ventures and therefore might need additional guidance from counsel willing to help the client pivot.

BLIP does not advertise its services, but BLIP faculty and students attend community events most every night and weekend, participate and run intake sessions with the various incubators, accelerators, co-working spaces, and schools throughout New York and elsewhere, particularly where clients are looking for access to New York and US markets. As BLIP has grown, more and more clients find BLIP without any client outreach. When clients come to BLIP and have the resources to pay counsel, BLIP helps the client to find paid legal support.

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<sup>113</sup> Under most circumstances, the client, itself, will pay fees directly, rather than compelling BLIP to lay out the money and seek reimbursement.

<sup>114</sup> <https://applications.brooklaw.edu/blip/Pages/BLIPintakeForm.aspx>

<sup>115</sup> Students might pursue novel policy issues that might have broader implications for the Start-Up or innovative ventures community, but which might require hundreds of hours of attorney time, and would not make financial or resource sense for either the client or the law firm to pursue.

*d. Student selection, support and supervision*

BLIP receives more than 100 student applications each semester. This number has exceeded 140 students, but BLIP added a few prerequisites (classes in corporations and intellectual property) in part to cut down on applications, but also to ensure that all students come to BLIP with some requisite knowledge. A student's passion and demonstration that BLIP will play an important role in the student's career path is more important for student selection than grades. In part, this is based on a recognition and desire to allow students to shine and grow in non-exam learning environments.

BLIP faculty provides constant group and individual oversight of all student work. Students have the opportunity to communicate in person and electronically with all their clients, but nothing is communicated or distributed to a client or other party without direct faculty supervision and approval. Documents go through multiple drafts with constant review both by faculty and by the fellow students.

Without the luxury of a law firm document repository, BLIP has built its own library of model documents – both physical documents and online resources – to help students learn how to research and draft legal documents. The goal is to teach students not to do the routine work that is best left to paralegals, computers, or online resources, but to learn the subtleties and nuances of lawyering, to recognise that all situations are unique and that the sophisticated attorney is not a scribe or regurgitator of boilerplate. Students learn that there is nothing inherently wrong with using sample agreements as a guide but they must learn how to distinguish and determine which language is appropriate for a particular scenario.

Students also learn from one another – the successes and failures of their colleagues. BLIP students engage in “rounds,” in which students are obligated to discuss how they went about resolving an issue, what resources they used, and with whom they might have consulted. Students, if they are selected for inclusion in a second semester, are expected to provide some additional support and guidance to their first semester colleagues.

BLIP includes a weekly two-hour seminar. During BLIP Seminar, students and faculty discuss the current and evolving state of law, policy, technology, and business. The seminar includes skills training with procedural and substantive law education threaded throughout the semester so that students learn the basics of representing Internet and technology Start-Ups, as well as the basics of advocating before various administrative and legislative bodies. The seminars employ a variety of pedagogic tools to train students including real and simulated interviews. BLIP students engage in discussion across the range of issues (e.g., intellectual property, corporate structure and governance, contract drafting, negotiations, technological changes, and policy reform) that confront lawyers representing emerging technology, internet, media and other technology-oriented clients. Students are exposed to issues that affect not just the legal community, but also the worlds of politics, policy, business, and finance, and consider the host of legal and policy issues that have and will confront these communities as technological, political, and economic circumstances evolve. The seminars cover the nuts and bolts of representing tech-oriented Start-Ups as well as discussions of what the nature of the law and a lawyer will look like as technology evolves.

In the final analysis, however, each student reports directly to Faculty for oversight and analysis. Each student team meets with faculty at least a couple times a week to go over all the details of each student's work. Like all law school clinics in the US, BLIP, its Faculty, and students are covered by the Brooklyn Law School clinics' umbrella malpractice insurance.

*Assessment*

Each first semester BLIP student takes BLIP for three clinic credits and two seminar credits, amounting to approximately forty percent of the student's semester credit load. Each student devotes about 170 hours to client and project work in order to satisfy the three clinic credits.

At the end of the semester, students are assessed and graded on their abilities and progress in:

- acquiring practical, working knowledge of various fundamental substantive and procedural issues that entrepreneurs and their counsel regularly confront and will confront in the emerging world;
- their ability to recognise and manage the ethical issues facing Start-Up lawyers in practice;
- their professionalism and skill in interviewing and counselling client effectively;
- their ability to provide competent and professional legal services to clients;
- their oral and written communication skills;
- their demonstrated competency in legal drafting;
- their ability to work collaboratively and effectively with clients and colleagues;
- their ability to apply legal practice procedures for client intake, conflict analysis, file maintenance, project tracking, timekeeping, and scheduling;
- their ability to reflect, individually and as a member of a practice group, critically on decisions, strategies, and actions;
- their ability to recognize and improve upon their own challenges, strengths, and lawyering style; and
- their facility maneuvering through the ever-evolving landscape of traditional, novel, and emerging legal issues confronting innovative ventures and society.

All student work is reviewed and assessed by BLIP faculty throughout the semester, and each student posts their hours and all final work product to their page on the BLIP Clinic online repository. BLIP faculty compare notes on their perspectives of each student's performance. BLIP, like all clinics at Brooklyn Law, is graded on a curve with the average grade falling between B- to an A-. Many law school clinics in the US have opted not to grade students, but, given the importance of experiential legal education and a commitment to quality, BLIP faculty thought it essential to grade students on clinic work.

### ***E. Anonymised Case Studies***

#### *a. Case Study 1 – The socially-virtuous enterprise and the search for a viable corporate structure*

*Type of client:* A group of young entrepreneurs came to BLIP who wanted to revolutionize online social networks. They were irritated that many social media networks owned a user's content, identity, data, user logs, and other personal information. The founders developed a privacy-aware, intellectual property-protecting, personally-controlled, open source social network. The founders were the quintessential first-time entrepreneurs: they had a great idea but were unsure about how best to execute their vision. They were overwhelmed in a sea of corporate structure options, taxation issues, and intellectual property concerns. The conflict for these young entrepreneurs was that they wanted

both to do *good* and to do *well* – they wanted to become a multi-billion-dollar venture and also pursue the public good. They were conflicted about whether to become a for profit venture, a non-profit venture, or some sort of hybrid social enterprise.

*Assistance provided:* Students researched whether there was a new corporate model<sup>116</sup> which might enable the client to pursue both financial success and a broader public benefit agenda. BLIP students even explored the possibility of the creation of a novel corporate structure rubric and standards, which might better serve the needs of socially virtuous, internet-based ventures that might not otherwise readily fit into existing legal structures.

*Points of note:* The client ultimately chose a traditional Delaware C-Corp structure<sup>117</sup> in the hope of enticing venture capital funding and to avoid legal uncertainty. The problem for this Start-Up was that it failed to consider its revenue model, competing against other social networks (e.g., Facebook) that could offer their services for “free” because they sold user data to third party marketing partners. The lesson learned is that legal counsel for inexperienced first-time entrepreneurs might also need to function as *business* counsel and must help the client to understand and maneuver through the non-law issues. BLIP has also come to the view that existing corporate structures might not be suitable for 21<sup>st</sup> Century, globally-oriented ventures and has explored the creation of more suitable corporate structures.<sup>118</sup>

#### b. Case Study 2 -- The Globally-Oriented Start-Up

*Type of client:* This client’s business involved the transfer of medical records across states and also the globe, wherever a patient might need her medical records to be examined. For example, imagine an American tourist in Europe who might need medical attention and might need her medical records immediately and securely transferred in compliance with the laws and policies of multiple jurisdictions.

*Assistance provided:* In addition to traditional corporate structuring, IP protection, and contract drafting, the client needed access to sophisticated legal counsel surrounding medical, privacy, and cybersecurity laws of non-US jurisdictions. This was a matter where BLIP would have been able to draw on the iLINC network, mentioned above, in order to better serve its client’s needs, as BLIP has done with iLINC partners on other occasions.<sup>119</sup> The client, however, needed immediate counsel during the summer, and BLIP could not find counsel among the then current roster of European law schools. Through consult with pro bono and low bono<sup>120</sup> European counsel, the client was able to

<sup>116</sup> e.g., the Benefit Corporation, the Low Profit Limited Liability Corporation, the Flex-Purpose Corporation, or the Virtual Corporation.

<sup>117</sup> A Delaware C-Corp is the most traditional structure for a US-based venture seeking a relatively rapid growth trajectory, and potentially interested in seeking venture capital funding and possible public offering.

<sup>118</sup> For example, BLIP is working with the Legal Hackers movement – [www.legalhackers.org](http://www.legalhackers.org) – to create a new corporate structure for Blockchain ventures that do not readily fit into any of the existing corporate structures. C-Corps, LLCs, Non-profits, Benefit Corporations, L3Cs, and other hybrid structure do not readily accommodate the needs of globally distributed Blockchain ventures. BLIP is working to create a structure and find a friendly jurisdiction to allow for a massive, global cooperative structure that would provide some ownership and authority to each member of a Blockchain network.

<sup>119</sup> BLIP worked with the University of Amsterdam’s CLNC to help 3DHubs, a platform to allow any owner of a 3D printer to share its printer when not in use. BLIP and CLNC combined efforts to help 3DHubs build out its business in the US and globally, including helping to craft a global code of conduct for good actors in the 3D printing space (e.g., limiting the use of 3D printers for nefarious, unethical, or legally suspect purposes such as the printing of guns or the production of counterfeit goods).

<sup>120</sup> “Low bono” is the term used to describe when legal services are offered at a reduced rate to clients who could afford to pay something but not full law firm rates.

piece together a better understanding of cross-border data flows to best build its venture, to abide by disparate privacy laws, and to begin to build a platform to transform medical records across jurisdictions.

*Points of note:* The lessons learned in the context of helping a small venture with global ambitions helped BLIP to build relationships not just with US ventures looking for global reach, but to work with foreign ventures and their supporting counsel to provide a US landing strip and access to US markets in compliance with US law. Based on the experiences with small, but globally ambitious ventures, BLIP has built soft-landing documents focused on US corporate and IP law to help foreign ventures entering the US. BLIP has also helped, in the process, to build B.NYC,<sup>121</sup> New York City's official incubator for foreign ventures looking to build their business in the US. BLIP has also realized the need to join law school clinics, lawyers, and technologists to build global standards.<sup>122</sup>

#### **F. Challenges and Opportunities**

Through a combination of working with technology Start-Ups and interfacing with various communities of interest (technologists, entrepreneurs, financiers, policymakers, and non-US collaborators), BLIP students have become well positioned for successful roles in the technology world, both in private enterprise and with government. In addition, BLIP students may choose to take their careers beyond law to explore their own entrepreneurial or policy dreams. Whether or not BLIP graduates pursue careers in private law, in public law, in law-related careers, or in non-legal careers such as pursuing their own ventures, their legal training and ability to balance legal, technology, business, and societal issues has, so far, proven to give them edge to work and guide the world in the Digital Age.

The challenge now is to build global collaborations, not just between and among globally-distributed law school clinics, but also between and among law schools and technologist and business schools (and other potential collaborators) in a global network of networks. To this end, BLIP has participated in the launch of such networks as Legal Hackers<sup>123</sup> and the Legal Technology Laboratory<sup>124</sup>, both designed to connect law students with technologists and other partners to use innovative tools to improve the law and legal process and to adapt the law to better suit the demands of new ventures and an ever-changing global society.

#### **VI. Conclusions**

The analysis above has highlighted a number of commonalities but also a number of differences in approach (see Table 3 Summary Comparison Table below). The services provided within the three business law clinics are all free for clients at the point of use, although clients must fund any third party costs. The IDC model is unique amongst the case studies in that a success clause may entitle the clinic to receive money from the client at a later date. There is no unifying client selection criteria across the three clinics with each placing slightly different emphasis on educational value, type of work/client or the importance of assisting underrepresented communities.

It is clear that business law clinics are very attractive to students as all three clinics report demand consistently outstripping supply. As a result, IDC and BLIP employ competitive application processes.

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<sup>121</sup> <http://b-buildingbusiness.com/new-york/>

<sup>122</sup> For example, BLIP is working with tech-oriented law schools and lawyers around the world to build a global wiki on current and evolving Blockchain law and policy.

<sup>123</sup> <https://legalhackers.org/>

<sup>124</sup> <http://thelegaltechlab.com/>

All three clinics offer a significant amount of guidance and support to their students, the exact form of such support varies but typically includes written guidance, lectures or seminars and regular team meetings. The clinics are all in-house models with internal supervisory arrangements (although BLIP may use external practitioners on occasion for more complex work). The ratio of supervisor to students varies but is relatively low and all of the clinics demonstrate a real commitment to quality supervision with all work being thoroughly checked. As you would expect with relatively complex work, all the clinics report that maintaining a proper level of supervision is time consuming. All of the business law clinics reviewed are assessed and credit-bearing, as opposed to being extra-curricular. It seems logical, and constructively aligned, that students should be assessed predominantly on the work they have actually done whilst in the clinic. Accordingly, in all three clinics, a student's grade is largely determined by the practical work they have undertaken, although the Business and Commercial Law Clinic and the IDC Clinic's assessment also has an essay/assignment element.

All of the clinics appear to offer a rich, challenging, and varied educational experience to their students whilst simultaneously providing important assistance to entrepreneurs and businesses. They can also serve to bestow wider benefits on their teaching institutions in the form of supporting entrepreneurial activity within the student body. In all the jurisdictions there is a firm belief that there is a demand for increased experiential opportunities and that business clinics are, and will continue to be, a growth area for CLE. As the global network of business law clinics expands, so too should the opportunities for cross-jurisdictional collaboration like the BLIP clinic has already embraced. However, business law clinics face challenges in terms of funding and responding to regulatory change, and clinic directors should be given the same standing and recognition as other members of Faculty. It is particularly important that as business law clinics are founded or grow, they are sufficiently funded in order to ensure a quality student and client experience.

All the business law clinics scrutinised share a dual *raison d'être*: the education and development of their students combined with a desire to deliver a reconceptualised social justice agenda which embraces entrepreneurial activity in all its forms. Often more generalist legal clinics only have the capacity to provide advice and limit the scope of their work to matters which are not too complicated. In contrast, our analysis suggests an extremely wide range of work may fall within the deceptively simple label of 'business law clinic' and that in some jurisdictions business law clinics are prepared to delve into complex and very specialist areas of advice providing a more holistic client service which extends to drafting and obtaining cross border legal opinions. It is clear that in order to offer the kind of added value educational experience noted above, business law clinics require significant financial and administrative support from their institutions.<sup>125</sup> A new insight is that business law clinics should perhaps be seen as aspirational in terms of their vision and scope, setting a high benchmark for other types of clinic to aspire to.

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<sup>125</sup> IDC and BLIP also supplement this with private funding where available.

Table 3 – Summary Comparison Table

	<b>Business &amp; Commercial Law Clinic at Northumbria University</b>	<b>The IDC Legal Clinic for Start-Ups at Radzyner Law School, Israel</b>	<b>Brooklyn Law Incubator &amp; Policy Clinic (BLIP) at Brooklyn Law School, United States</b>
<b>Model</b>	In-house, full service. Students are supervised by lecturers who work in the Law School.	In-house, full service. Students are supervised by the clinic director and clinic assistants who graduated from the clinic the previous year.	In-house, full service (including transactional, litigation, and policy advocacy)
<b>Competitive student selection?</b>	No.	Yes.	Yes.
<b>Type of Work Undertaken</b>	<ul style="list-style-type: none"> <li>• Company (including Start-Up advice)</li> <li>• Social enterprise and charity</li> <li>• Commercial</li> <li>• Intellectual property</li> </ul>	All work relating to Start-Ups. Including: company incorporation, intellectual property, founders' agreements and various types of commercial agreements.	All work relating to Start-Ups. Including: company incorporation, intellectual property, contract negotiation and drafting, web documentation, litigation, and policy advocacy.
<b>Client selection method</b>	Primary consideration is whether the matter will be of educational benefit to the students. No means testing. Clients often could not afford to pay for legal advice.	Accepts clients who otherwise could not afford counsel. Specific criteria which must be met including founders must be from unrepresented communities and business must be tech orientated.	Clients selected based on a variety of factors such as the type/scope of work. Clients generally could not afford counsel or whose particular legal needs are not amenable to traditional law firm support.
<b>Funding</b>	Service is free. Clinic is funded by the Faculty.	Service is free*. Clinic is funded by private donations and the university.  * A 'success fee' may apply. See clarification in the "Funding" section.	Service is free. Clinic is funded by the law school. Some outside funding for adjunct faculty and to support community outreach and special projects.
<b>Supervision</b>	Supervisory ratio of 6 students to 1 supervisor (solicitor or barrister).  All work is checked and students are given extensive oral and written	By the clinic director and the assistants. A ratio of 1 (director) to 20 (students) or 1 (assistant) to 7 (students).  All work is checked by	Supervisory ratio of 8 – 12 students to 1 supervisor.  All work is checked, and students are given extensive oral and written feedback on their work. All

	feedback on their work. All work undergoes at least 1 cycle of corrections. Number of cycles of corrections will vary according to complexity of work etc.	both an assistant and the director, receives extensive oral and written feedback and undergoes 1-3 cycles of corrections before being sent to the client.	work undergoes at least 1 cycle of corrections. Number of cycles of corrections will vary according to complexity of work etc. Students also review each other's work.
<b>Insurance arrangements</b>	The clinic is covered by the University's indemnity insurance policy.	The director is covered by professional liability insurance as part of a wider policy taken for all the clinic managers.	BLIP, its Faculty, and students are covered by the Brooklyn Law School clinics' umbrella malpractice insurance.
<b>Compulsory or optional?</b>	Clinic is compulsory for all final year M Law degree Students. Students can indicate a preference to work in the Business and Commercial Clinic.	Compulsory. Students are required to select a clinic of their choice, or one of the substitute programs.	Quasi-compulsory. Each student at Brooklyn Law must complete an experiential opportunity, but it need not be an in-house clinic.
<b>Credit-bearing/ assessed?</b>	Credit-bearing, assessed module.	Credit bearing, assessed	Credit-bearing, assessed
<b>Type of assessment(s)</b>	Practical work portfolio (70% of overall mark). Two x 2,000 word reflective essays (30% of overall mark). 2 LPC assessments (marked on a competent/not yet competent basis.	Practical work - 50% Extracurricular projects - 20% Class participation and attendance + volunteering - 15%. Assignments and exercises - 15%	Final grade based on quantity and quality of written work, class participation, client interactions, community engagement, faculty with routine and novel legal and policy issues affecting emerging Start-Ups