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**Manual on the Establishment and Operation of a Law Clinic**

**Best Practices, Comparative Models,**

**and Monitoring Mechanisms**

**– For Use of Law Schools in Kuwait –**

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# Introduction

**How Do You Use this Manual?**

This manual is designed to provide step by step instructions on the establishment and operation of law clinics in Kuwait. The manual is divided into seven parts that cover: Defining the Objectives of the Law Clinic; Selecting the Topics of the Law Clinic; Constructing the Elements of the Law Clinic; Operating the Law Clinic; Designing a Course on Law Clinics; Overcoming Obstacles in the Establishment and Operation of a Law Clinic; and Establishing Exchange Programs between Kuwaiti Law Clinics and Law Clinics around the World.

These issues are addressed in light of comparative models and utilize a list of best practices from different law clinics around the world. Every part is followed by a list of questions that assist in monitoring and evaluating the performance of the law clinic.

The manual also contains sixteen exercises that may be used by the instructor to further the goals of the clinic. Many of these exercises are based on the Kuwaiti laws and policies.

The manual is intended to be used by the instructor of the law clinic, students who are taking the course on law clinics or providing services for the clinic’s clients, as well as concerned individuals or organizations who are interested in assessing the work of the clinic.

# Part One: Defining the Objectives of the Law Clinic

## 1. The Concept of a Law Clinic

1.1. Law clinics are programs that teach law students lawyering skills through practical experience in the provision of legal assistance to people in need and advocate for issues concerning the public interest while providing the students with a sense of volunteerism and community service.

1.2. Law clinics provide legal assistance to those with no other means of accessing it and thus provide legal aid for the needy, the poor, and the disadvantaged.

1.3. Law clinics serve as vehicles for social change, advocates for human rights, and leaders of legislative reform. They educate marginalized communities about their rights, investigate and report on human rights violations, and defend victims of human rights abuses.

## 2. The Origin of the Term “Law Clinic”

2.1. The concept of free legal aid dates back to at least 1495, when King Henry VII of England required judges to assign counsel to the poor.

2.2. The earliest reference to clinical legal education appears in 1901 when a Russian professor, Alexander Lyublinsky, observed that the teaching methods followed in a medical school, in which medical students had to acquire clinical training, should also be applied in law schools, such that law students would also be required to receive clinical training during their legal studies. Consequently, the term “law clinic” was born.

## 3. Law Clinics as Means of Legal Aid

### 3.1. The Tradition of Legal Aid through Law Clinics

Traditionally, law clinics function as a means of legal aid for the poor and socially disadvantaged members of the community. They hear the case, research the legal issues, and if necessary they take the case to court, representing their clients for free.

### 3.2. The Right to Legal Aid in International Legal Instruments

3.2.1. Universal Declaration of Human Rights (1948)

Article 10: Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

3.2.2. International Covenant on Civil and Political Rights (1966)

Article 14 (3): In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: (b) To have adequate time and facilities for the preparation of his defense and to communicate with counsel of his own choosing; (d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;

### 3.3. The Right to Legal Aid in the Arab Charter on Human Rights (2004)

Article 12: All persons are equal before the courts and tribunals. The States parties shall guarantee the independence of the judiciary and protect magistrates against any interference, pressure or threats. They shall also guarantee every person subject to their jurisdiction the right to seek a legal remedy before courts of all levels.

Article 13 (1): Everyone has the right to a fair trial that affords adequate guarantees before a competent, independent and impartial court that has been constituted by law to hear any criminal charge against him or to decide on his rights or his obligations. Each State party shall guarantee to those without the requisite financial resources legal aid to enable them to defend their rights.

#### Exercise 1: Understanding the distinction between the “right to seek legal remedy” and the “right to a fair trial”

The Arab Charter, which Kuwait has ratified, provides, in Article 48, that: (1) The States parties undertake to submit reports to the Secretary-General of the League of Arab States on the measures they have taken to give effect to the rights and freedoms recognized in this Charter and on the progress made towards the enjoyment thereof.

Write a shadow report on the government’s implementation of Articles 12 and 13 explaining how the Kuwaiti people are guaranteed the “right to seek legal remedy” and the “right to a fair trial”.

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### 3.4. The Right to Legal Aid in the Kuwait Constitution

Article 34 of the Kuwait Constitution states that, “An accused person is presumed innocent until proved guilty in a legal trial at which the necessary guarantees for the exercise of the right of defense are secured.”

####

## 4. Law Clinics as a Means of Promoting Social Change

4.1. There is also a second function of law clinics which is engaging in advocacy and policy work in addition to or instead of representing clients. The participating students attempt to pressure for policy changes by the government or suggest legislative reform by drafting a bill and lobbying for its adoption, often in cooperation with local NGOs and other civil society organizations.

4.2. Promoting social change may take the form of lobbying, drafting legislation or, less commonly, bringing a test case to attempt to set a legal precedent. Another way to influence policy decisions is to have students engaged in monitoring a government’s human rights obligations through fact-finding, reporting, and publication work.

**Fordham University – Urban Policy & Legislative Advocacy Clinic**

Social Change does not come easily. In Fordham’s Urban Policy & Legislative Advocacy Clinic, students work outside of the courtroom to develop creative solutions to problems faced by New York City’s poor and disenfranchised. Students work with community-based organizations to advocate for change in the legislature, and with city and state officials.

To be effective policy advocates clinic students:

• Interview clients and other interested parties

• Conduct extensive legal and social science research

• Draft policy papers as well as legislative and regulatory solutions

• meet with community leaders and elected officials

Students are not just “policy advocates” - they are lawyers doing policy advocacy. They are creating innovative, systematic solutions to the dilemmas faced by the clients of the organizations with whom the clinic works.

Ultimately, students are creating new paths to social justice. By learning how to be change agents, advocating for creative legal and policy-based solutions in legislative and governmental offices, clinic students learn valuable lessons in lawyering and bring the voices of the excluded to the corridors of power.”

#### Exercise2: Rights of the Accused in the Kuwaiti Criminal Justice System

According to Article 32 of the Kuwait constitution, “No crime and no penalty may be established except by virtue of law, and no penalty may be imposed except for offences committed after the relevant law has come into force.” Article 34 states that “(1) An accused person is presumed innocent until proved guilty in a legal trial at which the necessary guarantees for the exercise of the right of defense are secured. (2) The infliction of physical or moral injury on an accused person is prohibited.”

Draft a policy paper on the rights of the accused recommending ways to ensure compliance with international human rights standards.

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## 5. Law Clinics as Means of Enhancing Practical Skills of Students

### 5.1. Practical Skills

Law clinics are designed to enhance the practical skills of students through: (1) Combining substantive law with procedural law; (2) Analyzing a problem from the beginning, rather than the end, as done in the Socratic method, traditionally taught in common law systems and sometimes utilized in civil law systems; (3) Improving problem-solving abilities and creative thinking in solving legal issues; (4) Enhancing the ability to work with a partner and in small groups; (5) Empowering the students by encouraging them to make all decisions related to a case under the supervision of the professor.

### 5.2. Lawyering Skills

Law clinics also enhance traditional lawyering skills including: interviewing, investigating, drafting memoranda, and providing counseling in a particular case.

## 6. What is the Mission of the Law Clinic?

Before establishing a new law clinic, substantive research must be conducted to identify the key issues that the clinic should deal with. What are the most pressing social and legal issues in the environment in which the clinic will be working? These considerations will form the basis of the mission statement of the clinic.

### 6.1. Drafting the Mission Statement: Examples of Mission Statements from U.S. Law Clinics

**University of Notre Dame – The Law School**

**Legal Aid Clinic**

The Notre Dame Legal Aid Clinic’s mission is to provide effective learning opportunities for law students in the basic skills of law practice through (1) client representation; (2) classroom instruction; and (3) individual mentoring. In fulfilling this mission, the Clinic will strive to serve unmet legal needs of the poor and under-represented in keeping with the Judaeo-Christian tradition of working for social justice.

In keeping with the Clinic’s mission, and with the aspirations and ideals of the Notre Dame Law School, the clinical faculty will endeavor –

1. To inculcate high standards of ethical practice by reflecting with students on their legal obligations as attorneys and the moral dimensions of law practice;

2. To encourage students to become leaders in improving the administration of justice and to incorporate public service as an integral component of their legal careers;

3. To contribute to the development of the law and the improvement of legal education through scholarly and other professional activities.

**Wake Forest University School of Law**

**Innocence and Justice Clinic**

The Innocence and Justice Clinic serves two primary missions:

1. Provide Wake Forest students with a hands-on clinical legal education opportunity.
2. Identify, investigate and advance credible wrongful conviction claims by inmates convicted of felonies in North Carolina.

**Rutgers School of Law**

**Child Advocacy Clinic**

The Child Advocacy Clinic (CAC) has a twofold mission of (1) serving the needs of children and families who are at risk and living in poverty in Newark and the surrounding areas, and (2) educating law students to be thoughtful and highly skilled practitioners. Students in the CAC engage in a variety of activities including direct advocacy, community education and outreach, and policy and program development. In addition, where beneficial to meet the needs of the children and families with whom the clinic works, the CAC collaborates with students and faculty from the other clinical programs at Rutgers School of Law–Newark as well as the other professional schools at Rutgers University and many professionals in the community.

**6.2. Sample Mission Statement of a Law Clinic Serving Vulnerable Population in Kuwait**

The mission of the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Law Clinic is to –

(1) Serve the needs of members of vulnerable populations such as women, children, the elderly, the poor, refugees, ethnic, religious, and linguistic minorities, and victims of human trafficking (*please include or delete relevant terms*) in Kuwait, and

(2) Educate law students of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ University to be thoughtful and highly skilled practitioners by encouraging them strive to advance social justice in Kuwait. Students will identify potential clients, admit and receive their cases, research the legal issues, provide legal advice and assist lawyers in representing these clients in court. Students will also engage in advocacy work and community education and outreach.

(3) Cooperate with the network of Kuwaiti Pro-Bono Lawyers to fulfill the tasks of the clinic.

(4) Engage the NGOs community and other elements of the civil society.

## Monitoring Mechanisms

1. Are the goals of the law clinic well defined?

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2. Does the mission statement of the law clinic reflect its objectives?

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3. Is the law clinic accessible to those who are in need of legal aid?

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4. Does the law clinic incorporate any projects that promote social change?

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5. How is the law clinic designed to enhance practical skills of the students?

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# Part Two: Selecting the Topics of the Law Clinic

## 1. Types of Law Clinics

### 1.1. Law Clinics and Community Based Clinics

1.1.1 Law clinics are based in law schools. Students receive academic credit for participation in the clinic, and the clinic is supervised by full-time faculty members.

1.1.2. Community based clinics focus on organizations (i.e. service providers, NGOs, small businesses). Community-based programs often direct their efforts on street law and legal literacy, rather than just individual client representation.

### 1.2. General Practice Clinics and Specialized Clinics

1.2.1. General Practice Clinics provide students with experience on working with clients on a wide spectrum of cases, from family law to property rights to labor issues. Generally, a greater emphasis is placed on instruction in lawyering skills than in other clinics.

1.2.2. Specialized Clinics focus on a particular area of the law, often based upon community need. Specialized clinics are able to handle more complex cases and address more specific social justice issues. A clinic may concentrate on one of the following issues: (1) Family law clinics where students gain practical experience addressing cases of child custody, divorce, etc.; (2) Criminal justice clinics and juvenile justice clinics; (3) Human rights clinics give students the opportunity to work on projects, both domestically and internationally, dealing with the most pressing human rights concerns of our day; (4) Environmental law clinics offer services to environmental advocacy organizations and administrative agencies on a broad range of environmental matters; (5) Immigration clinics where non-citizens find help for removal and asylum proceedings.

### 1.3. Client Representation and Policy and Advocacy Clinics

1.3.1. Law clinics are traditionally established to provide representation for clients.

1.3.2. Policy and advocacy clinics generally attempt to pressure for policy changes and/or social change. This may be done through: (1) lobbying, (2) drafting legislation, (3) submitting amicus curiae briefs to courts, (4) conducting legal research, (5) bringing test cases to court to attempt to set a legal precedent, (6) community organizing, (7) human rights monitoring and reporting, and (8) street law campaigns.

## 2. Which Function Should the Law Clinic Perform?

### 2.1. Teaching Students vs. Serving the Community

Depending on the mission that the law clinic aims to pursue, the efforts of the clinic staff can either focus on the education of the university’s student body or on the social justice mission, like serving clients or advocating for a social purpose. In Kuwait, newly established law clinics should focus on both, training future lawyers and advancing access to justice.

### 2.2. Representation vs. Advocacy

Likewise, it must be decided, whether a clinic will perform the function of representing clients in need of legal aid or advocating for social change. In Kuwait, newly established law clinics should carry out both tasks and represent clients as well as take on advocacy projects. The advocacy work can focus on the rights of vulnerable groups, such as drafting model laws on the rights of persons with disabilities or the rights of the elderly.

## 3. Should the Clinic Specialize in a Specific Area of the Law?

Gauging the needs of the community and of potential clients for the clinic, decide whether the clinic should specialize in one or more areas of law and which ones these are. The following questions can play a role in determining the focus of the law clinic:

* Are there any specific shortcomings of the legal aid system?

The law clinic can help to fill gaps in the available system of legal aid, for example if a specific group of people or a specific legal issue is excluded from it.

* Is there a certain legal issue that is most pressing in the community?

Based on the geographical, social, historical, and political setting in which the law clinic will operate, this can range, for example, from enforcing labor rights to guaranteeing freedom of speech.

* Which groups are most underrepresented in the legal system?

Vulnerable groups are almost always underrepresented due to their lack of financial resources, lack of education about the services available to them, and due to the sheer amount of demand for legal aid, which far surpasses its availability. While the legal needs of vulnerable groups will likely be great in all communities where law clinics start operating, some communities will observe greater needs from certain segments of the vulnerable population than others. For example, religious minorities will face more persecution in some areas than in others or the presence of refugees in a community may be greater than elsewhere in the country.

## 4. Defining Vulnerable Population

### 4.1. Lack of International Consensus on the Definition of Vulnerable Persons

The concept of a “vulnerable person” describes someone who has the status of a victim or someone who is weak, needy, impoverished, ill, disadvantaged, or discriminated against. There is no one definition of vulnerable groups in international human rights law, as the determination of whether members of a particular group are “vulnerable” will depend on local context. International documents tend to characterize vulnerable groups in accordance with the specific right or topic that is at the core of the document.

Regarding victims of human trafficking, for example, the travaux préparatoires to the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children refer to vulnerability as “any situation in which the person involved has no real and acceptable alternative but to submit to the abuse involved.” The Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women considers women vulnerable to violence “by reason of, among others, their race or ethnic background or their status as migrants, refugees or displaced persons. Similar consideration shall be given to women subjected to violence while pregnant or who are disabled, of minor age, elderly, socio-economically disadvantaged, affected by armed conflict or deprived of their freedom.”

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#### Exercise 3: Defining a Victim of Trafficking as Vulnerable

Case Factual Background (see U.S. v. Elizabeth P. Castaneda, 239 F.3d 978; 2001 U.S. App. LEXIS 1422): Castaneda co-owned the Mood & Music Night Club in Saipan, Commonwealth of the Northern Mariana Islands, and recruited waitresses and singers for her club from the Philippines. In 1997, three women (referred to throughout by their initials, B.G.S.N., O.S.G., and L.V.S., to protect their privacy) were hired at Castaneda’s recruiting office in the Philippines for jobs in the club ranging from waiting tables to singing. Castaneda personally interviewed and hired B.G.S.N. and participated in the hiring of the other women. Castaneda told the applicants that the job included “greeting customers at the door of the club with a kiss, sitting with the customers, and perhaps holding their hands.” The women were offered a salary of $3.05 per hour and a one-year contract in exchange for a placement fee of 15,000 pesos (approximately $500). The women signed a booklet entitled “Personnel Rules and Policies,” which prohibited the employees from engaging in prostitution and stated that any employee who resigned prior to the expiration of the contract would bear the cost of the return airline fare back to the country of origin. B.G.S.N. arrived in Saipan on July 5, 1997; O.S.G. and L.V.S. arrived on July 24. According to the plea agreement: B.G.S.N and the other women employees were forced to line up for selection by male customers to accompany them to private “VIP rooms.” There, the waitresses and singers employed at “Mood and Music” were made to provide sexual services, as defined in Title 6, Commonwealth Code, Section 1341(e), for the customers, namely the “touching of any person by oneself or another, for the purpose of sexual arousal or gratification, aggression, degradation, or other similar purpose.” The men who chose to use these rooms were required to pay $5.00 per hour and to purchase drinks which were delivered every twenty minutes by the unselected waitresses. According to the plea agreement, B.G.S.N. and the other women complained on several occasions to the manager of the night club and to Castaneda that “the men were groping them in the private ‘VIP rooms,’ and that this was not what they were hired to do,” but to no avail. The three women stopped working at the Mood and Music Nightclub in August, 1997, when B.G.S.N. filed a complaint with the FBI. On November 13, 1997, Castaneda was indicted for the transportation of B.G.S.N., O.S.G., and L.V.S. for purposes of criminal sexual activity in violation of the Mann Act, 18 U.S.C. § 2421. On October 21, 1998, Castaneda pleaded guilty to the count of the indictment relating to B.G.S.N. In the plea agreement, the defendant and the government stipulated that other than adjustments for her role as an organizer and for acceptance of responsibility, and a possible downward departure for substantial assistance to the government, no other adjustments were appropriate. The plea agreement thus contemplated a total offense level of 13. In its Presentence Investigation Report (PSR), however, the U.S. Probation office recommended an additional two-level vulnerable victim enhancement pursuant to U.S.S.G. § 3A1.1(b). Castaneda was sentenced on April 4, 2000.

The district judge denied Castaneda’s motion objecting to the imposition of 980 239 FEDERAL REPORTER, 3d SERIES the vulnerable victim enhancement and stated,

I do believe that these victims were particularly vulnerable. They had left their home in the Philippines. Some of them were married with children. And the reason they left home and their loved ones was to come to Saipan to get a job to be able to send money back home, and support their family. And in doing that, they borrowed great sums of money 15,000 pesos to finance this. So I think that they were vulnerable. They couldn’t just pack up and go home. They financially were vulnerable to the position of the defendant in this case.

Including the two-level vulnerable victim enhancement, the district court determined that the total offense level was 15, resulting in a guideline range of 18 to 24 months. Castaneda received a downward departure from the guideline range of her offense for substantial assistance to the authorities, and was sentenced to 12 months imprisonment. Castaneda timely appealed her sentence.

Question: Is the vulnerable victim enhancement doctrine applicable in this appellate case or should Castaneda’s sentence be vacated and remanded?

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### 4.2. “Vulnerable Persons” in Kuwait

For the purposes of this Manual, vulnerable groups shall include: women, widows, orphans, the disabled, detainees and the incarcerated (including juveniles), religious, ethnic, linguistic, and sexual minorities, the impoverished, the elderly, domestic workers, internally displaced persons (IDPs), returnees, and victims of human trafficking. The Kuwait Labor Law (Law No. 6 of 2010) does not adequately protect foreign domestic worker rights.

**The ILO Convention 189 Concerning Decent Work for Domestic Workers** considers foreign domestic workers “particularly vulnerable to discrimination in respect of conditions of employment and of work, and to other abuses of human rights.”

**Article 1**

For the purpose of this Convention:

* (a) the term ***domestic work*** means work performed in or for a household or households;
* (b) the term ***domestic worker*** means any person engaged in domestic work within an employment relationship;
* (c) a person who performs domestic work only occasionally or sporadically and not on an occupational basis is not a domestic worker.

**Article 2**

* 1. The Convention applies to all domestic workers.
* 2. A Member which ratifies this Convention may, after consulting with the most representative organizations of employers and workers and, where they exist, with organizations representative of domestic workers and those representative of employers of domestic workers, exclude wholly or partly from its scope:
	+ (a) categories of workers who are otherwise provided with at least equivalent protection;
	+ (b) limited categories of workers in respect of which special problems of a substantial nature arise.
* 3. Each Member which avails itself of the possibility afforded in the preceding paragraph shall, in its first report on the application of the Convention under article 22 of the Constitution of the International Labour Organisation, indicate any particular category of workers thus excluded and the reasons for such exclusion and, in subsequent reports, specify any measures that may have been taken with a view to extending the application of the Convention to the workers concerned.

**Article 3**

* 1. Each Member shall take measures to ensure the effective promotion and protection of the human rights of all domestic workers, as set out in this Convention.
* 2. Each Member shall, in relation to domestic workers, take the measures set out in this Convention to respect, promote and realize the fundamental principles and rights at work, namely:
	+ (a) freedom of association and the effective recognition of the right to collective bargaining;
	+ (b) the elimination of all forms of forced or compulsory labour;
	+ (c) the effective abolition of child labour; and
	+ (d) the elimination of discrimination in respect of employment and occupation.
* 3. In taking measures to ensure that domestic workers and employers of domestic workers enjoy freedom of association and the effective recognition of the right to collective bargaining, Members shall protect the right of domestic workers and employers of domestic workers to establish and, subject to the rules of the organization concerned, to join organizations, federations and confederations of their own choosing.

**Article 4**

* 1. Each Member shall set a minimum age for domestic workers consistent with the provisions of the Minimum Age Convention, 1973 (No. 138), and the Worst Forms of Child Labour Convention, 1999 (No. 182), and not lower than that established by national laws and regulations for workers generally.
* 2. Each Member shall take measures to ensure that work performed by domestic workers who are under the age of 18 and above the minimum age of employment does not deprive them of compulsory education, or interfere with opportunities to participate in further education or vocational training.

**Article 5**

Each Member shall take measures to ensure that domestic workers enjoy effective protection against all forms of abuse, harassment and violence.

**Article 6**

Each Member shall take measures to ensure that domestic workers, like workers generally, enjoy fair terms of employment as well as decent working conditions and, if they reside in the household, decent living conditions that respect their privacy.

**Article 7**

Each Member shall take measures to ensure that domestic workers are informed of their terms and conditions of employment in an appropriate, verifiable and easily understandable manner and preferably, where possible, through written contracts in accordance with national laws, regulations or collective agreements, in particular:

* (a) the name and address of the employer and of the worker;
* (b) the address of the usual workplace or workplaces;
* (c) the starting date and, where the contract is for a specified period of time, its duration;
* (d) the type of work to be performed;
* (e) the remuneration, method of calculation and periodicity of payments;
* (f) the normal hours of work;
* (g) paid annual leave, and daily and weekly rest periods;
* (h) the provision of food and accommodation, if applicable;
* (i) the period of probation or trial period, if applicable;
* (j) the terms of repatriation, if applicable; and
* (k) terms and conditions relating to the termination of employment, including any period of notice by either the domestic worker or the employer.

**Article 8**

* 1. National laws and regulations shall require that migrant domestic workers who are recruited in one country for domestic work in another receive a written job offer, or contract of employment that is enforceable in the country in which the work is to be performed, addressing the terms and conditions of employment referred to in Article 7, prior to crossing national borders for the purpose of taking up the domestic work to which the offer or contract applies.
* 2. The preceding paragraph shall not apply to workers who enjoy freedom of movement for the purpose of employment under bilateral, regional or multilateral agreements, or within the framework of regional economic integration areas.
* 3. Members shall take measures to cooperate with each other to ensure the effective application of the provisions of this Convention to migrant domestic workers.
* 4. Each Member shall specify, by means of laws, regulations or other measures, the conditions under which migrant domestic workers are entitled to repatriation on the expiry or termination of the employment contract for which they were recruited.

**Article 9**

Each Member shall take measures to ensure that domestic workers:

* (a) are free to reach agreement with their employer or potential employer on whether to reside in the household;
* (b) who reside in the household are not obliged to remain in the household or with household members during periods of daily and weekly rest or annual leave; and
* (c) are entitled to keep in their possession their travel and identity documents.

**Article 10**

* 1. Each Member shall take measures towards ensuring equal treatment between domestic workers and workers generally in relation to normal hours of work, overtime compensation, periods of daily and weekly rest and paid annual leave in accordance with national laws, regulations or collective agreements, taking into account the special characteristics of domestic work.
* 2. Weekly rest shall be at least 24 consecutive hours.
* 3. Periods during which domestic workers are not free to dispose of their time as they please and remain at the disposal of the household in order to respond to possible calls shall be regarded as hours of work to the extent determined by national laws, regulations or collective agreements, or any other means consistent with national practice.

**Article 11**

Each Member shall take measures to ensure that domestic workers enjoy minimum wage coverage, where such coverage exists, and that remuneration is established without discrimination based on sex.

**Article 12**

* 1. Domestic workers shall be paid directly in cash at regular intervals at least once a month. Unless provided for by national laws, regulations or collective agreements, payment may be made by bank transfer, bank cheque, postal cheque, money order or other lawful means of monetary payment, with the consent of the worker concerned.
* 2. National laws, regulations, collective agreements or arbitration awards may provide for the payment of a limited proportion of the remuneration of domestic workers in the form of payments in kind that are not less favourable than those generally applicable to other categories of workers, provided that measures are taken to ensure that such payments in kind are agreed to by the worker, are for the personal use and benefit of the worker, and that the monetary value attributed to them is fair and reasonable.

**Article 13**

* 1. Every domestic worker has the right to a safe and healthy working environment. Each Member shall take, in accordance with national laws, regulations and practice, effective measures, with due regard for the specific characteristics of domestic work, to ensure the occupational safety and health of domestic workers.
* 2. The measures referred to in the preceding paragraph may be applied progressively, in consultation with the most representative organizations of employers and workers and, where they exist, with organizations representative of domestic workers and those representative of employers of domestic workers.

**Article 14**

* 1. Each Member shall take appropriate measures, in accordance with national laws and regulations and with due regard for the specific characteristics of domestic work, to ensure that domestic workers enjoy conditions that are not less favourable than those applicable to workers generally in respect of social security protection, including with respect to maternity.
* 2. The measures referred to in the preceding paragraph may be applied progressively, in consultation with the most representative organizations of employers and workers and, where they exist, with organizations representative of domestic workers and those representative of employers of domestic workers.

**Article 15**

* 1. To effectively protect domestic workers, including migrant domestic workers, recruited or placed by private employment agencies, against abusive practices, each Member shall:
	+ (a) determine the conditions governing the operation of private employment agencies recruiting or placing domestic workers, in accordance with national laws, regulations and practice;
	+ (b) ensure that adequate machinery and procedures exist for the investigation of complaints, alleged abuses and fraudulent practices concerning the activities of private employment agencies in relation to domestic workers;
	+ (c) adopt all necessary and appropriate measures, within its jurisdiction and, where appropriate, in collaboration with other Members, to provide adequate protection for and prevent abuses of domestic workers recruited or placed in its territory by private employment agencies. These shall include laws or regulations that specify the respective obligations of the private employment agency and the household towards the domestic worker and provide for penalties, including prohibition of those private employment agencies that engage in fraudulent practices and abuses;
	+ (d) consider, where domestic workers are recruited in one country for work in another, concluding bilateral, regional or multilateral agreements to prevent abuses and fraudulent practices in recruitment, placement and employment; and
	+ (e) take measures to ensure that fees charged by private employment agencies are not deducted from the remuneration of domestic workers.
* 2. In giving effect to each of the provisions of this Article, each Member shall consult with the most representative organizations of employers and workers and, where they exist, with organizations representative of domestic workers and those representative of employers of domestic workers.

**Article 16**

Each Member shall take measures to ensure, in accordance with national laws, regulations and practice, that all domestic workers, either by themselves or through a representative, have effective access to courts, tribunals or other dispute resolution mechanisms under conditions that are not less favourable than those available to workers generally.

**Article 17**

* 1. Each Member shall establish effective and accessible complaint mechanisms and means of ensuring compliance with national laws and regulations for the protection of domestic workers.
* 2. Each Member shall develop and implement measures for labour inspection, enforcement and penalties with due regard for the special characteristics of domestic work, in accordance with national laws and regulations.
* 3. In so far as compatible with national laws and regulations, such measures shall specify the conditions under which access to household premises may be granted, having due respect for privacy.

**Article 18**

Each Member shall implement the provisions of this Convention, in consultation with the most representative employers and workers organizations, through laws and regulations, as well as through collective agreements or additional measures consistent with national practice, by extending or adapting existing measures to cover domestic workers or by developing specific measures for them, as appropriate.

**Article 19**

This Convention does not affect more favourable provisions applicable to domestic workers under other international labour Conventions.

**Article 20**

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

**Article 21**

* 1. This Convention shall be binding only upon those Members of the International Labour Organization whose ratifications have been registered with the Director-General of the International Labour Office.
* 2. It shall come into force twelve months after the date on which the ratifications of two Members have been registered with the Director- General.
* 3. Thereafter, this Convention shall come into force for any Member twelve months after the date on which its ratification is registered.

**Article 22**

* 1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.
* 2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention within the first year of each new period of ten years under the terms provided for in this Article.

**Article 23**

* 1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organization of the registration of all ratifications and denunciations that have been communicated by the Members of the Organization.
* 2. When notifying the Members of the Organization of the registration of the second ratification that has been communicated, the Director-General shall draw the attention of the Members of the Organization to the date upon which the Convention will come into force.

**Article 24**

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations for registration in accordance with Article 102 of the Charter of the United Nations full particulars of all ratifications and denunciations that have been registered.

**Article 25**

At such times as it may consider necessary, the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

**Article 26**

* 1. Should the Conference adopt a new Convention revising this Convention, then, unless the new Convention otherwise provides:
	+ (a) the ratification by a Member of the new revising Convention shall ipso jure involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 22, if and when the new revising Convention shall have come into force;
	+ (b) as from the date when the new revising Convention comes into force, this Convention shall cease to be open to ratification by the Members.
* 2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

**Article 27**

The English and French versions of the text of this Convention are equally authoritative.

####

#### Exercise 4: Foreign Domestic Worker Rights in Accordance with the Kuwait Labor Law

#### In accordance with the Kuwait Labor Law (Law No. 6 of 2010), foreign domestic workers have little protection under the law. Read the following articles and write a memorandum on how the Kuwait Labor Law can increase its protection of foreign domestic workers.

#### Article 10- The employer shall be prohibited from employing foreign manpower unless the competent authority has granted them a permit to work for him. The Minister shall issue a resolution setting forth the procedures, documents and fees that shall be paid by the employer. In the event of refusal, such refusal shall be justified by stating the reason thereof, and the reason for such refusal shall not be related to the amount of the capital, otherwise the decision shall be absolutely null and void.

#### Employers shall not bring workers from outside the country or hire workers from inside the country then fail to provide them with employment at his own entity, or subsequently be found not to have a an actually need for them. The employer shall bear the expenses of the worker's return to his country. In the event where the worker -stops working for his employer and joints the service of another employer, the latter shall bear the cost of the worker's return to his country after the original sponsor has reported that the worker has been absent from work.

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**4.3. The UN Human Trafficking Case Law Database**

The Human Trafficking Case Law Database of the United Nations Office on Drug and Crime provides information on cases of all types of human trafficking from around the world. Listed below are five cases of trafficking for the purpose of domestic service.

1. United States v Calimlim

The defendants, a wealthy Filipino couple residing in the United States brought a 19-year old girl from the Philippines to the U.S. to work as their housekeeper. Upon her arrival, the defendants confiscated the girl’s passport and other personal documents. For 19 years, the plaintiff worked for couple and during this time, she was locked in her room when guests arrived, prohibited to leave the house unaccompanied, denied medical and dental services, not paid her full salary, allowed only restricted communication with her family, work 17 hours days seven days a week, and threatened with arrest and deportation. The defendants were charged and convicted in 2008 on charges of obtaining and conspiring to obtain forced labor and harboring and conspiring to harbor an alien for private financial gain.

1. 940 Ls 6500 Js 38/09 (494/09)

The defendant recruited an African national to work in a hair salon in Hamburg, Germany. Once in Germany, the plaintiff had her passport confiscated and was forced to work 13 hours a day in the hair salon, which was located in a cellar. The plaintiff was also forced to cook and perform domestic work; the defendant also tried unsuccessfully to force the plaintiff into prostitution. The defendant was found guilty of human trafficking for labor exploitation and trafficking for the purpose of sexual exploitation.

1. United States v Fang Ping Ding

The plaintiff, a Chinese national, was recruited in China to work abroad in the United States on a B1/B2 visa. The defendant confiscated her passport and vise upon arrival to the U.S. The plaintiff was forced to work as a domestic servant without pay, and continually physically abuse and threatened, and unable to leave the house unaccompanied. The defendant was found guilty of unlawful conduct regarding documents in furtherance of forced labor and conspiracy to harbor an illegal alien.

1. 3 St Js 723/05

The defendant ran an Ethiopian restaurant in Berlin, Germany, and recruited an Ethiopian woman to work in the restaurant. She signed an employment contract and was promised a monthly wage, shelter, food and medical care from the defendant. Rather, she was forced to work 85 hours a week in addition to completing domestic service duties. The defendant confiscated her passport and threatened her with deportation and torture. The defendant was charged and convicted of trafficking for the purpose of forced labor, usury, and fraud.

1. Siliadin v France

The plaintiff, a young girl French national of Togolese descent, was forced into domestic servitude as an unpaid housemaid by the defendant. The plaintiff was initially promised that she would work until her plane ticket costs were reimbursed and then she would attend school under an immigration status. In reality, her passport was confiscated and she worked seven days a week without pay. The defendant was found guilty of obtaining performances of services without pay under article 4 of the European Convention on Human Rights.

## STANDARD EMPLOYMENT CONTRACT

## BETWEEN FOREIGN DOMESTIC WORKER AND EMPLOYER

## Memorandum of Agreement made this day\_\_\_\_\_\_\_\_\_ between \_\_\_\_\_\_\_\_ Employer hereafter called the first party, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, and \_\_\_\_\_\_\_\_\_\_(Employee), a \_\_\_\_\_\_\_\_\_ National, bearing passport No. \_\_\_\_\_\_\_\_\_dated \_\_\_\_\_\_\_. Hereinafter called the Second Party.

## BOTH THE PARTIES AGREE AS FOLLOWS:

## 1. The employee (Second Party) agrees to serve the Employer (First Party) or his representative/s

## as \_\_\_\_\_\_\_\_\_\_\_\_.

## 2. The First Party agrees to pay \_\_\_\_\_\_\_\_\_\_ Monthly Salary to the second party.

## 3. This agreement shall remain in force for a period of two years from the date of arrival of the Employee in the Sultanate.

## 4. The First Party is responsible to provide food and accommodation to the Second Party during the period of contract.

## 5. The First Party is liable to insure the Employee with an approved insurer against any responsibility which might incur as a result of application of \_\_\_\_\_\_ Labour Law \_\_\_\_\_ or compensation of occupational injuries or illness, Law No. \_\_\_\_\_\_\_\_ for the illness or injuries sustained by the Employee due to an accident, in the course of his/her duties.

## 6. The Employee is entitled to one month paid leave every two years.

## 7. On termination or completion of contractual period the Employer is liable to pay service benefits to the Employee for the period of service time. However the Employee shall not be entitled to any Service Gratuity if He/She has served less than one year with the Employer.

## 8. The Employee shall be entitled to free passage to his/her Country and back on earned annual leave and on termination of the contract, unless or otherwise, if the termination of the contract comes from the employee himself/herself.

## 9. The Employee may break the contract without notice and retain his/her legal rights as per the service contract if the Employer does not fulfill his obligation towards the Employee.

## 10. The Contract shall be renewed automatically to the same period if none of the parties has shown the desire to terminate the contract.

## 11. Both the parties agree to accept the arbitration of the Director of Labour, \_\_\_\_\_\_\_\_\_\_\_\_, in case of any dispute which may arise over the enforcement of the contract.

## 12. Three copies of this contract have been made, one for each of these Parties and one for the Director of Labour, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

## 13. In the event of death, the Employee’s body will be sent back to his/her country at the expense of the Employer.

## Monitoring Mechanisms

1. How broad does the law clinic define the concept of vulnerable population?

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2. What type of vulnerable population did the law clinic receive this semester?

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3. Does the law clinic fill a gap in the Kuwaiti legal aid system that limits legal aid to criminal cases?

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4. How many cases that involve members of the vulnerable population, especially domestic workers, were handled by the law clinic?

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5. Did the law clinic consult NGOs that address domestic worker rights?

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# Part Three: Constructing the Elements of the Law Clinic

## 1. Design of the Physical Infrastructure of the Clinic

### 1.1. Location

A law clinic can be established either at the university’s law faculty or in a separate building. When designing the physical space, several aspects should be taken into consideration.

### 1.2. Premises

The clinic will require space to conduct private interviews with potential and actual clients, space in which the students may conduct research and complete the relevant administrative tasks, and a room sufficiently large to hold a seminar. While the seminars and lectures may be hosted in a classroom, a dedicated space that the students can count on is a key element to fulfilling the other functions of the clinic. Frequently, multiple clinics will share interview rooms to save space and money. As the clinic is providing legal services, having a reception area will prove helpful in reassuring potential clients of the clinic’s capabilities and reinforces a spirit of professionalism among the students.

### 1.3. Case File Storage

For ongoing cases, a secure space for storing case files that is easily accessible by the students is required. Moreover, the same legal issue may come up repeatedly in the life of the clinic. It is therefore useful to maintain an ordered repository of past students’ work that current students may consult. Case file storage must be organized to ensure confidentiality of the information.

### 1.4. Office Supplies and Technical Equipment

1.4.1. The rooms should be equipped with desks, chairs, bookshelves, filing cabinets, office supplies, and the necessary technical equipment.

1.4.2 Office supplies include pens, paper, including mailing paper with the official clinic letterhead, envelopes, stamps, staples, etc.

1.4.3. Technical equipment should at a minimum include computers, a printer, a telephone with answering machine, fax machine, and a photocopy machine. The clinic will need at least a couple of computers for the storage of materials on which the students are currently working. Confidentiality concerns may require that these be dedicated solely to the clinic and protected by a password.

1.4.4. Check List:

The physical infrastructure of a law clinic should provide for the following:

* Adequate space for seminars and student work;
* Private room or area for conducting client interviews;
* Reception area to receive clients;
* A secure space for storing and maintaining client records that is easily accessed by students; and
* Equipments necessary for the operation of the clinic.

## 2. The Organization of the Clinic

### 2.1. The Organization Chart of the Law Clinic

### 2.2. The Law Clinic Staff

#### 2.2.1. What Should be the Composition of the Clinic’s Staff?

The size of the clinic’s administrative and educational staff and their hierarchy must be decided:

* How many instructors should the clinic have?
* Which qualifications should be required for each instructor?
* How can their adequate training be guaranteed?
* What relationships of authority or collegial collaboration should be encouraged among the clinic staff?

#### 2.2.2. Choosing Instructors

Law clinic supervisors need to decide, in light of the clinic’s basic goals, how to design the classroom component so that it confers the relevant knowledge and skills for students to successfully implement the clinic’s mission. Supervisors, in cooperation with law faculty, should decide if the course will be taught by clinical staff or if other professors and instructors will be recruited.

#### 2.2.3. Recommendations for Law Clinic Staff

Discuss and address, at an early stage, the nature of the relationship among members of the teaching and support staff:

* Define the responsibilities of the clinical staff:

What are the specific responsibilities of the Director? The Associate Director? The Program Coordinator? Who reports to whom?

* Decide on the decision-making process:

Who makes managerial decisions? Are decisions made by the director or through consensus?

* Ensure that Clinic teaching and support staff receive adequate and continuous training:

Allow & facilitate training, networking, and observation opportunities for clinic staff; encourage clinic staff to handle 1-2 cases in subject matter of clinic (i.e. family law, child law, etc.) before supervising students.

####

#### 2.2.4. Student-Supervisor Relationship

Discuss and address the nature of the relationship between supervisors and students:

* In the clinical model, supervisors do not direct, but guide.
* Clinical experience is learning-by-doing.
* Non-directive vs. directive supervision:

 There should be a tendency in clinical teaching to be as least directive as possible. Directive teaching would mean that the professor tells students exactly what to do. Non-directive supervision, however, gives the students more autonomy and enables them to experience what it is like to be a lawyer, rather than a law clerk.

### 2.3. The Law Clinic Students

#### 2.3.1. Recruiting Law Students through Advertisement

For most law school courses, the only advertising of courses is a catalogue description of the course.

More elaborate advertising may be necessary, both to recruit a large pool of potential applicants and to apprise those potential applicants about what to expect. The advertising could include posters and brochures to be distributed among the student body.

However, the law school may provide the law clinic as a compulsory course. In this case, all students are required to take the course. Nonetheless, a selection process may still be necessary to choose a small number of students who are going to be handling the cases in the clinic.

#### 2.3.2. The Student Selection Process

 Ways to select students who may participate in the clinic can include:

* interview with the each student,
* formal application process of interested students,
* academic performance and class ranking,
* submission of a writing sample, etc.

Requirements for joining the legal clinic may include:

* age of the student,
* grade/term student must have completed,
* specific course pre-requisites,
* interest in human rights,
* knowledge of the English language,
* academic performance, required grade point average, etc.

**Sample Course Application Form**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ University Faculty of Law**

**Law Clinic Information and Application**

**Fall 2012**

**What is the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ University Law Clinic?**

The \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ University Law Clinic is a community-based law school program that provides students with practical training, while also providing pro-bono legal services and representation to underrepresented and disadvantaged clients. Students selected to participate in the semester-long legal clinic program will provide assistance to members of vulnerable population, by assisting pro-bono lawyers in the community with the preparation of cases who may then represent clients in court. Students will work closely with local civil society organizations to identify possible clients, and will collaborate with clinical professors to interview and advice clients, conduct research, collect evidence, study case law, and draft legal arguments.

**Application Procedure and Deadline**

If you are interested in enrolling in the law clinic in Fall 2012, please submit your completed application to Professor \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ by email (\_\_\_\_\_\_\_\_@\_\_\_\_). Please note that you must complete the attached questionnaire and submit your *curriculum vitae* with the entire application. Students are strongly encouraged to complete the application process prior to the end of the application period.

**Application deadline is \_\_\_\_\_\_\_\_\_\_\_\_\_ 2012 at \_\_\_\_\_\_\_\_ am/pm.**

Students will receive notice via e-mail if they have been selected for an interview. All students not selected in the first round will be put on a waiting list for consideration in the event that someone selected in the first round is unable to accept.

Please note: You will automatically be placed on the waiting list and will not receive an e-mail unless a spot opens up.

After the application period has passed: Sometimes a space in the clinical program become available after the application period has passed. Students will be notified by e-mail if a space becomes available before the beginning of the fall 2012 semester.

**Law Clinic Application Fall 2012**

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Academic year: \_\_\_\_\_\_\_\_\_\_\_\_\_\_

Phone: Home \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Mobile \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Email Address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_:

Courses you have taken or will be taking related to the subject matter of the clinic(s) for which you are applying:

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Please list all extra-curricular activities or obligations (including journals, jobs, etc.) in which you will be engaged next semester and the hours per week you expect to spend on each:

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How did you learn about the clinic? \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Please describe any work experience or background that is relevant to the clinic:

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Please discuss your reasons for wanting to take the clinic. Also please indicate your level of interest in continuing in the clinic during subsequent semester(s):

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**Please return this application and a copy of your curriculum vitae by email (\_\_\_\_\_\_\_\_\_\_@\_\_\_\_\_\_) by \_\_\_\_\_\_\_\_\_ 2012 \_\_\_\_\_\_\_am/pm.**

For further information please contact:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_University, Law Clinic

Address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Email: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Telephone: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

### 2.4. Establishing a Referral System with Pro-Bono Lawyers

2.4.1. In the absence of student practice rules which allow law clinic students to represent clients in court, a referral system with lawyers willing to work with the law clinic on a pro-bono basis must be established. Pro-bono lawyers work on a voluntary basis to help clients with their case.

2.4.2. It is helpful if the law clinic has a contact database of lawyers willing to cooperate with the clinic. Once the law clinic receives a case, it contacts one of the lawyers in its network of volunteers. While the student generally prepares the case and conducts research to assist the lawyer’s work, the lawyer is the one to be litigating the case in court. The student should be present at all stages of the trial.

**ABA Model Rules of Professional Conduct**

**Rule 6.1 Voluntary Pro Bono Publico Service**

Every lawyer has a professional responsibility to provide legal services to those unable to pay. A lawyer should aspire to render at least (50) hours of pro bono publico legal services per year. In fulfilling this responsibility, the lawyer should:

(a) provide a substantial majority of the (50) hours of legal services without fee or expectation of fee to:

(1) persons of limited means or

(2) charitable, religious, civic, community, governmental and educational organizations in matters that are designed primarily to address the needs of persons of limited means; and

(b) provide any additional services through:

(1) delivery of legal services at no fee or substantially reduced fee to individuals, groups or organizations seeking to secure or protect civil rights, civil liberties or public rights, or charitable, religious, civic, community, governmental and educational organizations in matters in furtherance of their organizational purposes, where the payment of standard legal fees would significantly deplete the organization's economic resources or would be otherwise inappropriate;

(2) delivery of legal services at a substantially reduced fee to persons of limited means; or

(3) participation in activities for improving the law, the legal system or the legal profession.

In addition, a lawyer should voluntarily contribute financial support to organizations that provide legal services to persons of limited means.

#### Exercise 5: Promoting Volunteerism among Kuwaiti Lawyers

Write a memo to the Kuwait Bar Association to consider establishing rules to encourage volunteer work among Kuwaiti lawyers.

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### 2.5. Establishing a Referral System with Civil Society

Law clinics should cooperate with all elements of civil society and engage them in their work.

**The Five Elements of Civil Society**

A – Academic institutions

C – Corporations, the private sector

M – The media

N – Nongovernmental organizations/NGOs

R – Religious institutions

#### Exercise 6: Establishing a Link with NGOs and other Elements of Civil Society

For example, NGOs can be useful for referring clients to the law clinic. The media and corporations can create awareness for the work of the clinic by conducting and financing public awareness campaigns. Religious leaders can speak about how religious principles protect human rights.

Instruct the students to compile a list of NGOs helping the different members of the vulnerable population, especially domestic workers, in Kuwait.

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## Monitoring Mechanism

1. How accessible are the premises of the law clinic to the general public?

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2. Does the design law clinic protect the privacy of the clients and the confidentiality of the information of the case?

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3. To what extent are judges and lawyers engaged in the operation of the law clinic?

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4. Did the clinic staff receive any training?

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5. How would you grade student performance at the law clinic?

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6. Does the law clinic have a database of pro bono lawyers who are volunteering work for the clinic?

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7. Does the law clinic have a list of NGOs who are expected to refer cases to the clinic?

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# Part Four: Operating the Law Clinic

## 1. Advertising the Work of the Law Clinic

In order to identify victims of human rights violations and to reach out to potential new clients, the work of the law clinic should be advertised widely, not only on the university campus but in the local community.

**Means of Advertising**

* **Print Publications:**
	+ Print brochures and posters about the clinics work.
	+ Distribute them among students and in places that are accessible by potential clients such as other legal aid service institutions, government offices, shelters for victims of human rights violations, etc.
* **Cooperation with NGOs:**
	+ NGOs can advertise the clinic’s work in their own publications and outreach campaigns.
	+ As NGOs work on the ground and come in contact with victims of human rights violations, they can refer potential clients to the law clinic.
* **Public Service Announcements:**
	+ Public Service Announcements can be made in radio and television.
* **Word of Mouth**
	+ Students and clients should be encouraged to talk about the clinic’s services to their families, friends, neighbors, etc. to reach out to potential new clients.
* **Town Hall Meetings**
	+ Public events such as town hall meetings are a good opportunity to inform the local community about the clinic’s services.

#### Exercise 7: Designing a Brochure for the Law Clinic

Instruct the students to design a brochure for the law clinic to advertise about the clinic and make a list of entities and locations targeting potential clients.

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## 2. Determining Office Hours

The office hours of the law clinic will be during workdays. The clinic administrator should be present at all times. Students working at the clinic are expected to spend a certain time a week at the clinic during office hours to receive case applications/legal services requests and help the clinic administrator with administrative tasks, such as corresponding with clients and pro-bono lawyers and case filing.

Potential clients will contact the legal clinic with legal questions and request its services. Clinical staff will decide whether or not the application will be accepted and a case opened.

## 3. Taking a Case Application

Potential clients can contact the law clinic by phone, email, fax, or regular mail. A law clinic student taking a case application should obtain all the information necessary to complete the Request Legal Services Form noting on the form the potential client’s situation and what he or she wants, any referring lawyer or agency, dates that may trigger time periods, and home and/or work addresses.

The law clinic staff member should tell a person seeking representation that the case will be referred to a clinical staff member and/or a pro-bono lawyer and that a member of the clinic staff will be getting back in touch as soon as possible.

Unless it is an emergency case, the person should be told that it may be several days before the clinic will be able to call back and schedule an appointment. For the meantime, the student handling the application should give the potential client his or her name as the person to contact if further questions arise before someone is assigned to the case.

**Sample Request Legal Services Form**

**Contact Information:**

Name (Last, First)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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Address (Street, City, Postal Code)

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Phone Number

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Best way and time to be contacted

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Type of Case:

 🞎 marriage 🞎 child custody 🞎 human trafficking

 🞎 divorce 🞎 alimony

 🞎 domestic violence 🞎 other, please specify

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Factual Summary:**

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Date \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Place \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

## 4. Inquiry into the Merits of the Case Application

The law clinic staff member should then discuss the case briefly with the clinic supervisor.

## 5. Intake Decision

The clinic supervisor and the law clinic student will then make one of several decisions:

* The law clinic student should obtain additional information.
* The case should be assigned, either to the law clinic student handling the inquiry or to one or more other clinic staff members. If the case seems to involve extensive research, the person seeking representation should be informed that investigations are under way whether or not the clinic can provide any assistance.
* The case should be declined and the law clinic student should report to the person inquiring that the clinic is not in a position to help. If a case is declined, referral recommendations should be considered. Basic legal advice regarding statutes of limitations, or other time limits should be given if possible.
* If the case is declined, the law clinic student handling the inquiry should close it. After reporting to the declined client, the student should file the Declined Application Form and attach it to the original Request Legal Services Form indicating specifically what the person was told, whether any referral recommendation was made, and what advice, if any, was given about time limits. In most cases, the declined client should be sent a letter confirming the conversation. A copy of the letter should be attached to the Declined Application Form.

**Sample Declined Application Form**

Name of applicant

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Case received on

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By (student name)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Reason for declining the case:

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Was a referral recommendation given?

 🞎 no

 🞎 yes, please specify agency/lawyer

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 🞎 other recommendations made, please specify

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Was the applicant given advice on potential time limits for the case?

 🞎 no 🞎 yes

Was a letter confirming the conversation sent to the applicant?

 🞎 no 🞎 yes (please attach to form)

## 6. Case Opening Procedure

### 6.1. Confidentiality

A central aspect of ethical client representation is the duty of confidentiality. Students and other staff working at the law clinic must abide by this obligation. It includes information obtained through the professional relationship with the client, the disclosure of which would be embarrassing or detrimental to the client.

The obligation applies to information gained through the representation, irrespective of whether it is obtained through the client directly or through another source. Unless the client gives expressive consent to sharing information, all information relating to the representation should be treated as confidential.

While such confidential information may need to be shared with other students or staff working on the case within the clinic, no such confidential information may be disclosed to anyone outside the clinic without the consent of the client.

**A Comparative Model of Rules on Confidentiality: District of Columbia Rules of Professional Conduct**

**Rule 1.6 - Confidentiality of Information**

(a) Except when permitted under paragraph (c), (d), or (e), a lawyer shall not knowingly:

(1) reveal a confidence or secret of the lawyer’s client;

(2) use a confidence or secret of the lawyer’s client to the disadvantage of the client;

(3) use a confidence or secret of the lawyer’s client for the advantage of the lawyer or of a third person.

(b) “Confidence” refers to information protected by the attorney-client privilege under applicable law, and “secret” refers to other information gained in the professional relationship that the client has requested be held inviolate, or the disclosure of which would be embarrassing, or would be likely to be detrimental, to the client.

(c) A lawyer may reveal client confidences and secrets, to the extent reasonably necessary:

(1) to prevent a criminal act that the lawyer reasonably believes is likely to result in death or substantial bodily harm absent disclosure of the client’s secrets or confidences by the lawyer; or

(2) to prevent the bribery or intimidation of witnesses, jurors, court officials, or other persons who are involved in proceedings before a tribunal if the lawyer reasonably believes that such acts are likely to result absent disclosure of the client's confidences or secrets by the lawyer.

(d) When a client has used or is using a lawyer’s services to further a crime or fraud, the lawyer may reveal client confidences and secrets, to the extent reasonably necessary:

(1) to prevent the client from committing the crime or fraud if it is reasonably certain to result in substantial injury to the financial interests or property of another; or

(2) to prevent, mitigate or rectify substantial injury to the financial interests or property of another that is reasonably certain to result or has resulted from the client’s commission of the crime or fraud.

(e) A lawyer may use or reveal client confidences or secrets:

(1) with the informed consent of the client;

(2)(A) when permitted by these Rules or required by law or court order; and (B) if a government lawyer, when permitted or authorized by law;

(3) to the extent reasonably necessary to establish a defense to a criminal charge, disciplinary charge, or civil claim, formally instituted against the lawyer, based upon conduct in which the client was involved, or to the extent reasonably necessary to respond to specific allegations by the client concerning the lawyer's representation of the client;

(4) when the lawyer has reasonable grounds for believing that a client has impliedly authorized disclosure of a confidence or secret in order to carry out the representation;

(5) to the minimum extent necessary in an action instituted by the lawyer to establish or collect the lawyer's fee; or

(6) to the extent reasonably necessary to secure legal advice about the lawyer’s compliance with law, including these Rules.

(f) A lawyer shall exercise reasonable care to prevent the lawyer’s employees, associates, and others whose services are utilized by the lawyer from disclosing or using confidences or secrets of a client, except that such persons may reveal information permitted to be disclosed by paragraphs (c), (d), or (e).

(g) The lawyer’s obligation to preserve the client’s confidences and secrets continues after termination of the lawyer’s employment.

(h) The obligation of a lawyer under paragraph (a) also applies to confidences and secrets learned prior to becoming a lawyer in the course of providing assistance to another lawyer.

(i) For purposes of this rule, a lawyer who serves as a member of the D.C. Bar Lawyer Counseling Committee, or as a trained intervener for that committee, shall be deemed to have a lawyer-client relationship with respect to any lawyer-counselee being counseled under programs conducted by or on behalf of the committee. Information obtained from another lawyer being counseled under the auspices of the committee, or in the course of and associated with such counseling, shall be treated as a confidence or secret within the terms of paragraph (b). Such information may be disclosed only to the extent permitted by this rule.

(j) For purposes of this rule, a lawyer who serves as a member of the D.C. Bar Practice Management Service Committee, formerly known as the Lawyer Practice Assistance Committee [see footnote], or a staff assistant, mentor, monitor or other consultant for that committee, shall be deemed to have a lawyer-client relationship with respect to any lawyer-counselee being counseled under programs conducted by or on behalf of the committee. Communications between the counselor and the lawyer being counseled under the auspices of the committee, or made in the course of and associated with such counseling, shall be treated as a confidence or secret within the terms of paragraph (b). Such information may be disclosed only to the extent permitted by this rule. However, during the period in which the lawyer-counselee is subject to a probationary or monitoring order of the Court of Appeals or the Board on Professional Responsibility in a disciplinary case instituted pursuant to Rule XI of the Rules of the Court of Appeals Governing the Bar, such information shall be subject to disclosure in accordance with the order.

(k) The client of the government lawyer is the agency that employs the lawyer unless expressly provided to the contrary by appropriate law, regulation, or order. 21. Case Management Procedures

### 6.2. Assigning the Case

If the clinic decided to accept the case, it will be assigned to one or more law clinic students.

### 6.3. Making Appointments for New Clients

These will be responsible for contacting the client and scheduling an appointment for an initial interview. The interview can take place at the clinic or at the client’s location.

### 6.4. Conducting the Initial Interview

A personal interview with the client is one of the most important techniques to receive adequate information about a case. In addition to asking clients for information, facts of the case and persons involved, law clinic students must also provide clients with relevant information about the case procedure.

Students should take notes during the entire interview.

1. The interview should start with the student introducing her/himself and explaining that she/he has been appointed to work with the client, together with the supervisor of the law clinic and/or a pro-bono lawyer who will represent the client in court should the case end up being taken to court. To get the client’s trust, it will be helpful to briefly mention some cases that the clinic and/or the student have successfully dealt with in the past.
2. Students should explain their obligation of confidentiality to the client and that no information told in the interview will be released to third parties.
3. It is important that the client signs the Retainer Agreement. As some clients may have limited reading abilities or little previous experience with legal representation, students should make sure that they understand the form and the implications of legal representation. If the client needs more time to decide whether or not the clinic should act as a legal representative, she/he can send the signed agreement per mail. However, the client should be reminded that the clinic cannot start working on the case before it receives the signed Agreement.
4. The student should ask about the details of the case including when the events started, how long a certain behavior has been going on, all relevant places, and all parties involved. Names of the parties, their relationship to the client, and their involvement in the case should be carefully written down. If the client is aware of any persons who could be helpful with fact finding for the case and verifying information, their contact details should be collected. If applicable, contact information of the legal representative of the opposing party should be noted down.
5. From the beginning of the interview, students should aim to establish a good relationship to the client. The client should build up trust in the student’s and the law clinic’s abilities to handle the case with the necessary expertise and caution and to find a solution that will truly help the client. Students should thus explain that the clinic and/or the student have been successful in handling previous cases dealing with similar issues. The student should explain that she/he will fight on the side of the client and represent her/his interests throughout the entire process.
6. Once all the relevant information pertaining to the case has been collected, the student should explain the next steps to the client. This includes details about the communication between the student, the clinic supervisor, and the assigned pro-bono lawyer, and also the communication with the potential lawyers of the opposing party. If it seems that the case will be brought before court, procedures leading up to a trial and in the courtroom should be explained.
7. Before ending the interview, the client should be given time to ask all questions she/he may have.

**Client Interviewing Check List**

* Introduce yourself and the law clinic’s work
* Explain that you work under supervision of the law clinic staff/pro-bono lawyers and who they are
* Describe your obligation to confidentiality
* Let the client sign the “Retainer Form”
* Build a relationship of trust with the client
* Ask about the details of the case, including
	+ exact facts of the case
	+ start/duration of the events
	+ relevant places
* Ask about all parties involved in the case, including
	+ their role in the case
	+ their relationship to the client
* Ask who could be contacted for obtaining more facts and verifying information and note down their contact details
* Ask if the opposing party has legal representation and get their contact information
* Explain the next steps, including
	+ communication between law clinic staff
	+ communication between lawyers
	+ court proceedings
* Ask for additional questions

**Sample Retainer Agreement**

1. Retainer:

a. I hereby retain the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ University Law Clinic (“Clinic”) to act as my legal representative in the following matter:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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b. I understand that Clinic has agreed to represent me only in the matter listed above. Should there be a question in the future about representation on an appeal or about help with a different problem, I understand that the Clinic will have to weigh that request for legal service against the other requests it receives.

c. I understand and agree that I will be represented by a law student working under the supervision of a lawyer employed by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ University/the clinic supervisor/a law professor/a pro-bono lawyer assigned to the case *(please mark applicable options)*.

2. Confidentiality

I understand that the Clinic has a duty to keep information about me and this case confidential. Normally, no such information will be shared with anyone outside of the Clinic without my consent, except for information that must be shared in order for the Clinic to carry out its representation. We authorize the Clinic to consult and share information on a confidential basis with other lawyers, experts, investigators or consultants if, in the Clinic’s opinion, such a consultation would help the Clinic to provide better representation.

3. The Clinic’s Teaching Mission

I understand that the Clinic is a teaching law institution and that students, staff, and supervising lawyers will have to discuss the case among themselves in order to ensure the best possible representation. I also agree that Clinic students, staff, and supervising lawyers may discuss the case among themselves in a classroom setting for educational purposes so long as the discussion remains confidential.

4. Fees and Costs

I understand that the services of the Clinic are provided at no cost to me. I agree, however, to pay any filing fees or other court costs if they cannot be waived by the court. If legal representation fees are awarded by a court in connection with the case, I agree that they will be paid to the Clinic.

5. Cooperation

I understand that the Clinic will work vigorously on my behalf and will keep me regularly informed about the status of the case. I agree to cooperate with and assist the Legal Aid Clinic in our case, to provide complete and truthful information when requested by any of the Clinic staff members, to be present at all scheduled hearings and meetings and to respond promptly to phone calls, letters, and other communication received from the Clinic.

6. Withdrawal from Case

I understand that if I do not inform the Clinic of a change of address within 30 days of the change, or if I repeatedly fail to respond to letters or telephone calls from Clinic, the Clinic may assume that I no longer want it to serve as my legal representative and may seek to withdraw from the case.

7. Satisfaction

I understand that if I am not satisfied with the services of the Clinic, I am free to discharge the Clinic as my legal representative.

8. Goals of Consultation

I understand that I have the right to decide the goals to be pursued in this case. I also have the right to decide whether or not to accept any offer of settlement made by the opposing party. I agree that the Clinic will be primarily responsible for deciding which legal procedures to follow in the case.

9. File Retention

I have been informed that the Legal Aid Clinic will keep my file and any documents it contains for 10 years after the case is closed and that at the end of those 10 years the file will be destroyed. I understand that I may request a copy of my file or documents within it at any time, except for documents created by the Clinic that were either in draft form or were created for purely internal purposes.

By signing this agreement, I acknowledge that it has been explained to me by the Clinic staff member named below, and that I have had an opportunity to ask questions and receive an explanation regarding any part of it I did not understand.

Date \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Place \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signed \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Client’s name \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Law Student/Supervisor \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

#### Exercise 8: Interviewing a Victim of Human Trafficking

Case Factual Background: The plaintiff, a Sri Lankan woman, was trafficked for the purpose of domestic servitude in Jordan. The defendant was charged with the crime of human trafficking as defined in Article 3 of the Jordanian Law No. 9 of 2009. The defendant took 265 Dinars from the plaintiff in consideration for procuring a domestic worker from Sri Lanka, without a residency ID or a work permit. The worker was never paid and she escaped. The defendant was sentenced with a fine of 1,000 Dinars.

Question: The NGO refers the woman to your law clinic. She appears for an initial interview asking your help in filing for damages, indicting the perpetrators, and applying for a residence permit. With a partner, conduct a role play and fill out the following questionnaire.

**Identification of a Victim of Trafficking – Questionnaire**

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Source of Information: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Personal status of the victim:

Age \_\_\_\_\_\_\_\_\_\_

Gender

🞎 Male 🞎 Female

Marital Status:

🞎 Single 🞎 Married 🞎 Divorced Number of Children: \_\_\_\_\_\_\_\_\_\_

Nationality \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Country of Origin/State/Municipality/City/Village \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Country of Destination/State/Municipality/City/Village \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Acts of trafficking. Indicate recruitment, transportation, transfer, harboring or receipt of a person.

How was the victim recruited?

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Was the victim offered a job?

🞎 Yes 🞎 No

Was the victim asked to accompany the trafficker for other purposes (tourism, marriage, other purposes)? \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Other? \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Did the victim cross international borders?

🞎 Yes 🞎 No

Was the victim transported from one place to another within the national border?

🞎 Yes 🞎 No

How did the victim cross these borders?

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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Were falsified travel documents provided for the person or did the person use their own documents?

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Illegal means of trafficking. Indicate the presence of force, fraud or coercion.

How did the victim get in contact with the trafficker?

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Did the trafficker approach him or her?

🞎 Yes 🞎 No

Did he/she pay the trafficker to be transported to the place of the proposed employment?

🞎 Yes 🞎 No

Did he/she consent to being recruited?

🞎 Yes 🞎 No

Please add comments:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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Was the victim promised a job by the recruiter?

🞎 Yes 🞎 No

What type of job was the victim offered?

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Did the victim obtain this job through an advertisement?

🞎 Yes 🞎 No

Did the job offered above materialize in reality?

🞎 Yes 🞎 No

Was the victim taken to the country where the job was promised?

🞎 Yes 🞎 No

Was he/she taken somewhere else?

🞎 Yes 🞎 No

Please add comments:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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Was the victim abducted?

🞎 Yes 🞎 No

Was the victim kidnapped?

🞎 Yes 🞎 No

Were payments made to a person who exercises a power of control over the trafficking victim?

🞎 Yes 🞎 No

Was payment made to the parents or the guardian of the child?

🞎 Yes 🞎 No

Was payment made to a third party to buy the victim of trafficking?

🞎 Yes 🞎 No

Physical coercion:

Was the victim beaten or otherwise physically harmed?

🞎 Yes 🞎 No

Legal coercion:

Was the victim threatened to be reported as an illegal alien unauthorized worker to the legal authorities in the event of refusal to comply with the demands of the trafficker?

🞎 Yes 🞎 No

Psychological coercion:

Was the victim threatened by harm to themselves or to his/her family if he/she did not/does not cooperate with persons who recruited, transported, received, or are harboring the victim?

🞎 Yes 🞎 No

Please add comments:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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Illicit Purpose: (Exploitation)

Under what circumstances is the victim in the foreign country/region other than his/her region of origin?

Working in a strip club?

🞎 Yes 🞎 No

Working in a massage parlor?

🞎 Yes 🞎 No

Working as a domestic servant?

🞎 Yes 🞎 No

Was/is the victim asked to perform sexual services with clients in any of the places mentioned above?

🞎 Yes 🞎 No

Please add comments:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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Working in a brothel?

🞎 Yes 🞎 No

Working in an agricultural setting/mining?

🞎 Yes 🞎 No

Working on the street for begging?

🞎 Yes 🞎 No

Other forms of labor?

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Explain the condition of servitude, enslavement, or practices similar to slavery in which the victim finds him or herself.

Were the victim’s travel documents taken away from the victim upon arrival in the foreign country?

🞎 Yes 🞎 No

Was the victim confined and not allowed to contact others?

🞎 Yes 🞎 No

Is the victim receiving the payment that was promised during recruitment?

🞎 Yes 🞎 No

Is the victim able to keep any or some of the money that he/she earns?

🞎 Yes 🞎 No

If not, who keeps the money? \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Is the victim free to leave the job whenever he/she wants to?

🞎 Yes 🞎 No

Is/was the victim given drugs?

🞎 Yes 🞎 No

Was the victim raped?

🞎 Yes 🞎 No

Does/did he/she experience other forms of physical abuse?

🞎 Yes 🞎 No

Please add comments:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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Additional questions may be added according to the circumstances of a particular case of trafficking.

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## 7. Writing a Memo on the Initial Interview

Within 24 hours of the initial meeting, the student should write a detailed memo on all information obtained during the interview. The memo should be sent to the law clinic supervisor and/or assigned pro-bono lawyer.

## 8. Filing the Case

The memo should be filed in the client’s folder together with all other documents and forms pertaining to the case. The clinic administrator is responsible for creating a case number and ensuring that all documents are filed correctly and that the Case Status Form is updated regularly.

## 9. Case Development

After the case has been opened, it will be discussed between the student responsible for the case and the supervisor. A pro-bono lawyer will be assigned to work on the case and to provide legal court representation.

### 9.1. Discussing the Initial Interview with the Supervisor

Once the student has conducted the initial interview and sent the memo to the supervisor, a meeting to discuss it thoroughly should be set up. During this meeting, all details of the case should be discussed to decide on the steps to be taken. A pro-bono lawyer should be assigned to the case and the student will be responsible for all future correspondence with the lawyer.

### 9.2. Researching the Applicable Law

To support the work of the pro-bono lawyer, the student will research the applicable law and write a legal memorandum. All legal memoranda as well as research papers or case precedents should be filed in the client’s folder.

#### Exercise 9: Finding the Applicable Law to a Particular Case

Case Factual Background (*confer Sabbithi v. Al Saleh, 605 F. Supp. 2d, 122 D.D.C. 2009*): The plaintiffs worked for the defendant, a diplomat, and his wife in Kuwait for a period ranging from five and a half years to eight and a half months. In Kuwait, the plaintiffs allegedly worked seven days a week, for long hours each day, and were paid between 35 Kuwaiti dinar (approximately $121 U.S. dollars) and 40 KD (approximately $138 U.S. dollars) per month. The defendants signed a contract before coming to the United States promising to pay the plaintiffs $1,314 dollars per month but they failed to comply with the provisions of the contract and instead sent wages of 70 KW (approximately $242 dollars) to 100 KD (approximately $346 dollars) per month to their families overseas. In addition, the plaintiffs’ passports were taken away from them and they were threatened with physical harm. Finally, they escaped. The plaintiffs argued that “human trafficking is a profitable commercial activity that results in severe human rights violations” and that bringing plaintiffs from Kuwait to the United States to work as domestic servants constituted human trafficking and thus was a commercial activity which is an exception to diplomatic immunity.

Question: How do you go about researching the relevant national law and the applicable international norms?

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Sample Case Status Form**

Case File Number:

Student Name:

Client Name:

Date and Site of Case Intake:

Area of Case:

A. Case Status

 🞎 Case Open

 🞎 Received Signed Retainer Agreement

 🞎 Filed Initial Interview Memo

 🞎 Assigned Pro-Bono Lawyer

Name and Contact Details: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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 🞎 Enclosed Legal Memoranda, Case Precedents, and other Research Papers

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 🞎 Court Hearings/Trial Scheduled

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 🞎 Case Closed (Please fill out Case Closing Form)

B. Briefly describe the current status of resolution of your case:

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**10. Corresponding with pro-bono lawyer and preparing for court representation**

The student is responsible for corresponding with the pro-bono lawyer, updating the supervisor and the clinical administrator on the proceedings, and assisting the lawyer with the preparations for the trial.

## 11. Case Closing

Once the case has been litigated in court or the student, together with the supervisor and assigned lawyer has decided that there are no more steps to be taken to remedy the case, it should be closed.

### 11.1. Closing Letter

A closing letter should be sent to the client explaining why the case is being closed, the status of any pending matters, and returning all documents to the client after copies have been made for the file.

### 11.2. Case Closing Form

The Case Closing Form should be filled out by the student and signed by the supervisor.

**Sample Case Closing Form**

Case File Number:

Student Name:

Client Name:

Date and Site of Case Intake:

Area of Case:

Case Closed

 🞎 letter sent to client

 🞎 memo sent to law clinic

Reason for Case Closure

 🞎 matter resolved or case referred

 🞎 client did not want to pursue case

 🞎 lost contact with client

 🞎 case outside Legal Clinic parameters ( i.e., traffic; criminal; frivolous)

Status of Case Resolution

 🞎 1 Provided general information only

 🞎 2. Advocated on behalf of client

 🞎 3. Court appearance – please specify details and outcomes of proceedings

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 🞎 4. Referred case – to where or to whom?

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 🞎 5. Completed forms or obtained documents for client – please specify

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How much time did you spend on the case?

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Client’s last known address:

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Approval for Closing

Supervisor Signature \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

## Monitoring Mechanisms

1. Was the law clinic brochure distributed to individuals and organizations that are in contact with the vulnerable population, including domestic workers, in Kuwait?

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2. Check whether the law clinic has the following forms:

* Request Legal Services Form
* Declined Application Form
* Retainer Agreement
* Case Status Form (to be regularly updated)
* Case Closing Form

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3. Does the law clinic have the adequate resources including library records to provide the students with information on the applicable laws related to the rights of the vulnerable population, especially domestic workers?

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4. What was the level of the students’ involvement in the case once it was referred to a pro bono lawyer for a legal representation?

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5. Provide statistics regarding cases accepted, cases declined, number of cases were the outcome of the case was satisfactory to the client?

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# Part Five: Designing a Course on Law Clinics

## 1. Design of the Clinical Curriculum

Most law clinics are accompanied by a clinical course offered by the university which students are required to take in order to enroll in clinical work.

### 1.1. Priorities of the Course

1.1.1. When instructors are designing the curriculum for the law clinic course, they need to specify the major goals of the course and clarify how the material taught will improve students’ legal problem solving skills and abilities.

1.1.2. The priority of the course may be –

* instructing substantive knowledge, for example, children’s rights law, employment discrimination, and rights of prisoners;
* educating students to think in a process-oriented manner, for example, how to research a particular legal question and how to analyze a statute;
* teaching a specific skill, for example, how to interview clients, identify victims of human right violations, draft a pleading, represent a client in a settlement conference, or work with people from diverse backgrounds;
* encouraging debates on broader issues of justice or equality, for example, how to analyze access barriers in a local court system, how to provide legal assistance to underserved population; or
* acquiring professional self-awareness, for example, understanding how well one communicates with a client or collaborates with colleagues.

### 1.2. Focus on Teaching Lawyering Skills:

1.2.1. Clinical legal education is traditionally used to teach lawyering skills such as –

* interviewing and counseling clients,
* legal writing and drafting,
* fact finding,
* case analysis, and
* trial preparation and trial advocacy.

1.2.2. However, a clinical course can also be used to teach substantive and procedural law.

## 2. A Guide on Teaching a Course on Law Clinics:

2.1. A guide should be developed to cover the above mentioned topics and other issues that are relevant to the establishment and operation of a law clinic.

2.2. This guide may be divided into 15 units that will include: (1) Access to justice: international standards; (2) The right to be heard in court and the right to legal aid: constitutional mandate in the criminal justice system; (3) The vulnerable groups: assisting the needy, the poor, and the disadvantaged; (4) Legal ethics and professional responsibility: defining the relationship between a student and a client; (5) Delivering legal services through pro-bono work: the concept of voluntarism; (6) Defining the relationship between the student and the pro-bono lawyer; (7) Understanding and responding to client needs: gender sensitivity and special needs of children; (8) Preparing a case: evidence collection and interviewing a client; (9) Researching and writing a legal memorandum: enhancing skills for law students; (10) Litigation skills: oral arguments and written advocacy; (11) Case close-out; (12) Drafting human rights legislation; (13) Policy analysis and legal reform; (14) Civil society representation of clients; (15) Comparative models of law clinics.

#### Exercise 10: Rules of Legal Ethics and Professional Responsibility

Draft a list of other obligations that an attorney must carry out in performing his work and representing a client.

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## 3. Clinical Teaching Methods

As the essence of clinical education is experiential, clinical classes rarely include lectures. Some traditional reading material may be assigned to students on lawyering skills essential for clinical work. These are usually best taught by involving students in exercises of some kind. In a clinical course, lectures are replaced with clinical teaching methods, such as:

### 3.1. Role Plays

* Scene is set by the instructor but students are free to take situation to preferred direction.
* Students are expected to reflect on and act out a legal experience they have encountered.
* Students understand and analyze the situation/problem, identify the solution, then resolve the conflict.
* Role plays are conducted in groups or with a mix of students.

### 3.2. Moot

* Case samples are provided by the teacher for students to be studied, understand legal issues involved, prepare arguments, and defend in a court-like environment.
* ‘Mini Moot’ is a type of moot that involves a judge to facilitate the proceedings between two or three groups (plaintiff and defendant) of students each represented by a lawyer.
* Judge makes judgment and debriefs all students.
* Formal court attire is required.

### 3.3. Mock Trial

* Conducted with students as many as found in a street court. All actors are represented including witnesses and observers.
* Instructor teaches and guides students on the process of a trial.
* Students learn how to make opening statements, lead evidence, cross-examine, re-examine, and make closing statements.

### 3.4. Case Studies

* Students study, debate, judge, and resolve real case studies in a court room scenario in three groups as lawyers for plaintiffs and defendants and as judges.
* Students (defendants or plaintiffs), in their own groups, discuss the case, the relevant laws, and legal implications and make arguments later to be presented by a nominated group spokesperson.
* Students (judges) presented with arguments make decisions.
* The instructor debriefs by informing students of what played out in the course of the real case.

### 3.5. Small Group Discussions

* Students are grouped in not more than five members and are given a topic to discuss within a certain time frame.
* A group nominated rapporteur will report back to the class (other groups) for a general discussion.
* The instructor will summarize and debrief.
* This learning style can be used with other styles like in moot preparations or case studies.

### 3.6. Debates

* Students are provided with controversial topics that will generate disagreements among them.
* Students will take opposite positions (in favor or against) the topic and discuss within their group.
* Group members select a student to debate on their behalf but with their support.
* Likewise, other group will respond to the other group with their own arguments.
* Observing students vote for the group which presented better arguments in the debate.

## 4. Course Evaluation Criteria

4.1. The center of the clinical experience is the actual case and so the biggest part of the evaluation of the student’s work should be directed at the student’s ability to take responsibility for the cases and do all the work that is necessary in order to defend the client’s interests. Moreover, the goal of the clinical experience is the development of lawyering and professional skills.

4.2. As such, there are five main evaluation criteria, but those are not exhaustive:

(1) Case Planning

This area encompasses all the planning necessary to develop a case: the research, the investigation, the meetings, the witnesses’ interviews and so on. The student’s ability to adapt a plan when there are new developments or lack of development despite expectations should be taken into consideration. This also encompasses the planning of supervision meetings, including the preparation of questions and a perfect knowledge of the next steps the students need to take for the development of the case.

(2) Professional Responsibility

This criterion takes into considerations the adherence to the ethical rules of the practice of law. Knowing those rules and being able to see how they are applied to the case at hand will be evaluated, as well as being able to recognize the presence of ethical concerns in a case. This also takes into account the meeting of deadlines, the establishment of appropriate client-lawyer relationships, management of the workload, and punctuality.

(3) Skills Development

A wide variety of lawyering skills should be evaluated, such as: interviewing, counseling, fact investigation, legal research, writing, pre-hearing preparation, and hearing performance.

(4) Classroom Activity

The classroom work is also an extremely important component of the clinic work. It is expected that students are ready to discuss all assigned readings, participate in simulations, and contribute to all discussions in class. The participation should be pertinent, as students should be prepared for class discussions at the same level that they are prepared for supervision sessions.

(5) Reflection

Students should be reflecting on their work every step of the way. The reflection is not merely a review of what happened, but a critical analysis of the work. Students have to be able to discuss their reflections with their supervisors and use what they learned to guide them into new tasks and decision making.

**Sample Course Evaluation Form**

**Semester: \_\_\_\_\_\_\_\_\_\_\_\_\_\_ Year: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

Course Objectives:

Were the objectives and the requirements of the course clearly stated?

🞎 Yes 🞎 No

Were the methods used (lectures, practical exercises, role plays, etc.) well suited for teaching clinical skills?

🞎 Yes 🞎 No

Is the size of the class appropriate?

🞎 Yes 🞎 No

Did the course enhance your practical legal skills?

🞎 Yes 🞎 No

Do you think you have a better understanding of the concept of effective legal aid?

🞎 Yes 🞎 No

Was the amount of coursework and assignments reasonable?

🞎 Yes 🞎 No

Is the credit given for this course adequate and commensurate with the credit for non-clinical courses?

🞎 Yes 🞎 No

Would you recommend this course to fellow students?

🞎 Yes 🞎 No

Suggestions and Comments:

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Instructor:

Was the instructor consistently well prepared for class?

🞎 Yes 🞎 No

Did the instructor demonstrate a strong understanding of clinical methodology?

🞎 Yes 🞎 No

Did the instructor exhibit strong knowledge and skills in dealing with clients?

🞎 Yes 🞎 No

Did the instructor establish high standards and encourage you to do your best work?

🞎 Yes 🞎 No

Did the instructor encourage independent learning and active problem solving?

🞎 Yes 🞎 No

Was the instructor regularly available to provide you with the assistance and feedback needed to succeed in the course?

🞎 Yes 🞎 No

Suggestions and Comments:

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Clinic Staff:

Are you pleased with the clinic facilities?

🞎 Yes 🞎 No

Did the clinic staff provide you with enough guidance and assistance to successfully work on the case?

🞎 Yes 🞎 No

Was the communication with the assigned pro-bono lawyer effective and helpful?

🞎 Yes 🞎 No

Suggestions and Comments:

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**Sample Instructor Questionnaire**

**Semester: \_\_\_\_\_\_\_\_\_\_\_\_\_\_ Year: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

Clinical Course:

Do you think the method of student selection attracts an adequate student body for the class?

🞎 Yes 🞎 No

Did the students regularly attend the course?

🞎 Yes 🞎 No

Does the course curriculum give the student sufficient guidance to succeed in the clinical work?

🞎 Yes 🞎 No

Did you see an improvement of the students’ skills and knowledge by the end of the course?

🞎 Yes 🞎 No

Suggestions and Comments:

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Clinical Work:

Do you think the law clinic attracts a sufficient number of cases?

🞎 Yes 🞎 No

Would you recommend reconsidering ways of advertizing the work of the clinic?

🞎 Yes 🞎 No

Suggestions and Comments:

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Cooperation:

Are you pleased with the invited guest lecturers, i.e. adjunct professors, lawyers, and judges?

🞎 Yes 🞎 No

Would you describe your relationship to the students as rather collegial than directive and supervisory?

🞎 Yes 🞎 No

Are you pleased with the cooperation with NGOs?

🞎 Yes 🞎 No

Are you pleased with the network of pro-bono lawyers and their work for the law clinic?

🞎 Yes 🞎 No

Suggestions and Comments:

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## Monitoring Mechanisms

1. Does the school have a course on law clinics?

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2. Does the course on law clinics cover laws of legal ethics and professional responsibility?

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3. Is the instructor providing the students with alternative teaching methods other than lectures?

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4. Is the course syllabus that includes the course description and the assigned materials distributed among students in the beginning of the semester?

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5. Was the course evaluation form filled out by the students?

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# Part Six: Overcoming Obstacles in the Establishment and Operation of a Law Clinic

## 1. Lack of Acceptance of Clinical Legal Education in Faculties of Law

1.1. As clinical legal education is still a fairly new concept in the Arab world, the establishment of a law clinic may face criticism simply due to the fact that deans and professors at faculties of law and officials at governmental bodies competent for accreditation of law schools/approval of new courses (ministry of justice, ministry of education, etc.) are not familiar with the advantages of clinical legal education.

1.2. Options:

* The benefits for students, universities, potential clients, and the community at large should be emphasized and continuously communicated to the university, the faculty of law, the competent ministries, etc.
* Forming a network or a professional association of those deans and professors of law dedicated to the expansion of clinical legal education nationwide will certainly prove beneficial. This network can be used to educate and influence decision-makers, to recommend reforms of the legal profession, the judicial system, and the system of legal aid and to encourage changes in standard law curriculum nationwide. The network should also engage NGOs, pro bono lawyers, student groups, and local bar associations.

## 2. Securing Adequate and Sustained Funding

2.1. As current university budgets do not provide funding for the establishment and operation of a law clinic, available funds must either be re-allocated or new sources must be explored. Holding the costs of the clinic at a minimum is essential.

2.2. Options:

* Hiring recent law school graduates to manage the case load and supervise legal clinic students is a promising strategy.
* A trust mechanism can be set up through the network to fund and support development of clinical legal education nationwide. This enables donor organizations to contribute to a visible umbrella organization which is in charge of allocating the available funding so that individual clinics do not compete for donations.
* The school should incorporate salaries for the administrative staff of the law clinic in its budget.
* The school should provide an allowance or honorarium for the instructor who teaches the course on law clinics the same way the school provides such an allowance or honorarium who teach other courses.

## 3. Lack of Student Practice Rules and Little Trust in the Ability of Students

3.1. One of the biggest issues that clinical legal education may face in Kuwait is the fact that students may not be allowed to represent clients in court.

3.2. Options:

* To overcome this obstacle, the law clinic can employ a referral system, whereby clients who are served by the clinic will be referred to a pro bono lawyer if they need representation in court. However, the student must remain involved in all phases of the case by interviewing the client, preparing the case file, working with the lawyer to prepare legal arguments and written briefs, and being present at the trial.
* The law clinic can also directly hire lawyers willing to work on clinical cases on a pro-bono basis.
* Another option is to work with law students in the process of obtaining a doctoral degree who are allowed to represent clients in court.
* As there is little trust in the lawyering abilities of law students in general, it should be advocated for a significant change in the law school curriculum designed to enhance the skills of the students and induce them to actively participate in the educational process. Opening law clinics only to students of the third and fourth year after they have been trained in different legal traditions and been selected through a rigorous application process will also help to overcome this issue.

**3.3. Comparative Model on Student Practice Rules**

**United States District Court for the Northern District of New York**

**Rules Regarding Student Practice in the Northern District of New York**

**General Order 13**

1. A law student appearing as a Student Practitioner may with the court’s approval, under supervision of an attorney, appear on behalf of any person, including the United States Attorney, who has consented in writing on the form prescribed by the clerk.

2. The attorney who supervises a student shall in compliance with this Rule:

(a) Be a member of the bar of the United States District Court for the Northern District of New York.

(b) Assume personal professional responsibility for the student's work.

(c) Assist the student to the extent necessary.

(d) Appear with the student in all proceedings before the court unless his presence is waived by the court.

(e) Indicate in writing his consent to supervise the student.

3. In order to appear, the student shall:

(a) Be duly enrolled in a law school approved by the American Bar Association.

(b) Have completed legal studies amounting to at least four semesters, or the equivalent.

(c) Be recommended by either the dean or a faculty member of his or her law school as a student practitioner. This recommendation may be withdrawn by the recommender at any time by mailing a notice to the Clerk or by termination by the court without notice of hearing and without showing of cause.

(d) Neither ask for nor receive any compensation or remuneration of any kind for his services from the person on whose behalf s/he renders services, but this shall not prevent an attorney, legal aid bureau, law school, public defender agency, a State, or the United States from paying compensation to the eligible law student, nor shall it prevent any agency from making proper charges for its services. Neither the student, nor anyone on the student’s behalf, shall seek recovery of attorneys’ fees from an adverse party for the services rendered by the student as a Student Practitioner.

(e) Certify in writing that s/he is familiar with the federal procedural and evidentiary rules as well as the local rules of this court. The student practitioner shall complete and file an application for admission as a student practitioner on the form supplied by the Clerk.

(f) Upon filing such application with the Clerk of the Court, in proper form, the Clerk shall file the order approving the student practitioner in the case in which they will appear. The application shall also contain information on the expected date of graduation from law school. The applications for student practitioners will be maintained by the Attorney Registration Clerk.

(g) A student practitioner may appear and render services pursuant to this Rule after approval of the application by a District Court Judge or Magistrate Judge and until the results of the first New York State bar examination subsequent to the student's graduation has been published.

4. The law student so enrolled and supervised in accordance with these rules, may:

(a) Appear as counsel in court or at other proceedings when consent of the client or his authorized representative or the United States Attorney when the client is the United States, and the supervising attorney have been filed, and when the court has approved the student's request to appear in the particular case.

(b) Prepare and sign motions, petitions, answers, briefs, and other documents in connection with any matter in which s/he had met the conditions of (a) above; each such document shall also be signed by the supervising attorney and shall be filed in the case file.

5. Forms approved by the court for use in connection with this Rule shall be available in the Clerk’s Office and on the Court’s website, www.nynd.uscourts.gov.

6. Effective Date.

General Order #13 as revised was approved by the Court on the 6th day of March, 2009.

#### Exercise 11: Student Practice Rules

Write a memo to the Kuwait Bar Association to consider adopting rules that allow students to participate in the lawyering process.

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## 4. Restriction of Law Professors to Practice Law

4. 1. Some countries without student practice rules allow law clinic directors to personally litigate a case in court after it has been prepared by the student. As this is not possible, the entire core staff of a legal clinic cannot represent clients in court and the pro bono referral system must be applied

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## 5. Lack of Resources

5.1. There is a lack of scholarship on clinical legal education in the Arabic world. This includes a lack of trained professors to teach clinical legal education and to manage a law clinic as well as a general lack of academic resources in the Arabic language.

5.2. Options:

* An emphasis should be put on organizing workshops for clinical professors for training, discussion, and sharing of best practices, conducting exchanges and study tours for professors to clinics domestically and internationally to expose them to different models.
* Publishing articles in the Arabic language in established law journals or starting a new journal devoted to clinical legal education for clinical professors to share clinical pedagogy, curriculum ideas, training resources, and lessons learned should be promoted.
* Collaboration with the Global Alliance for Justice Education, an international network of law professors dedicated to improving clinical legal education and access to justice worldwide through improved legal education should be encouraged.

## 6. Growing Numbers of Students

6.1. While clinical topics and practical skills can be incorporated into courses taken by all students, such as professional responsibility and rules governing the relationship between the lawyer and the client, only 20-30 students per semester will have the opportunity to participate in the law clinic under the supervision of a professor.

6.2. Options: Law schools should thus consider establishing more than one clinic to broaden the participation of students in clinical legal education.

**Monitoring Mechanisms**

1. Does the school include salaries and other expenses of the law clinic in its annual budget?

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2. Does the law clinic employ lawyers or pro bono lawyers or law graduates who have a license to practice law to assist with the work of the clinic?

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3. How many students are working in the law clinic? And how many are taking the law clinic course?

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4. Did representatives of the Ministry of Higher Education and Scientific Research visit the law clinic?

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5. How are law school faculty members involved in the clinic in addition to the professor who is directing the law clinic?

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# Part Seven: Establishing Exchange Programs between Kuwaiti Law Clinics and Law Clinics around the World

## 1. The Global Movement of Law Clinics

 Beginning of 20th century: First law clinics are established at U.S. law schools.

1960s: Clinical legal education spreads to other common-law countries, i.e. Great Britain, Canada, and Australia.

1970s: Several universities in African countries adopt the clinical model.

1990s: The clinical movement spreads to Southeast Asia, Central and Eastern Europe, Latin America, and China.

2000s: First legal clinics are established at universities in the Middle East.

## 2. The Development of Law Clinics in the United States

2.1. This “first wave” of clinical legal education involved law students volunteering to provide legal advice to serve a social justice mission. By the late 1950s, 35 of 126 ABA-approved law schools offered some kind of clinical program.

2.2. A “second wave” of CLE which spanned from the 1960s through the late 1990s, was rooted in the demands of law students for more relevant and practical training and the increased availability of funding through the Ford Foundation and the Department of Education. It evoked greater interest in CLE among professors and university staff and led to the development of special clinical curricula.

2.3. A “third wave” of CLE, starting in the year 2000, sees increased collaboration between faculty and students, further integration of clinical curricula in the traditional teaching schedules, and practical lawyering skills and professional values as part of the core curriculum. Every one of the more than 200 accredited law schools in the United States has some sort of clinical program, in accordance with the accreditation requirements of the American Bar Association.

2.4. Establishing a link between Kuwaiti law clinics and law clinics in the United States

2.4.1. In the United States, presently all law schools accredited by the American Bar Association (ABA) – approximately 200 law schools – offer in-house clinical courses, externships, or both. The ABA accreditation of law schools assures that students receive an adequate legal education.

2.4.2. In order to be accredited, an ABA committee conducts onsite evaluations to assess campus infrastructure, staff, enrollment, fiscal health, tuition, technology, and extracurricular activities. Moreover, the ABA actively encourages law schools to set up clinics. The possibility for students to engage in real-life practice is actually a requirement for a law school to be accredited.

**ABA Standards for Approval of Law Schools 2011–2012**

Standard 302. CURRICULUM

(a) A law school shall require that each student receive substantial instruction in:

(1) the substantive law generally regarded as necessary to effective and responsible participation in the legal profession;

(2) legal analysis and reasoning, legal research, problem solving, and oral communication;

(3) writing in a legal context, including at least one rigorous writing experience in the first year and at least one additional rigorous writing experience after the first year;

(4) other professional skills generally regarded as necessary for effective and responsible participation in the legal profession; and

(5) the history, goals, structure, values, rules and responsibilities of the legal profession and its members. ABA Standards for Approval of Law Schools 2011–2012 21

(b) A law school shall offer substantial opportunities for:

(1) live-client or other real-life practice experiences, appropriately supervised and designed to encourage reflection by students on their experiences and on the values and responsibilities of the legal profession, and the development of one’s ability to assess his or her performance and level of competence;

(2) student participation in pro bono activities; and

(3) small group work through seminars, directed research, small classes, or collaborative work.

2.5. Comparative Models: Examples of Law Clinics in the U.S.

* Family Law Clinics give students practical experience in family law cases through litigation, negotiation, and court proceedings assisting clients who seek child custody, support, divorce, adoption, or civil remedies for domestic violence;
* Criminal justice clinics where students interview and counsel clients, conduct fact investigation, draft motions, examine witnesses, file sentencing memoranda, and argue on behalf of their clients on charges such as assault, drug possession, theft, unlawful entry, and destruction of property;
* Juvenile justice clinics provide legal representation to adolescents in conflict with the law or address issues of juvenile justice generally;
* Human rights clinics in which students work on projects and cases, representing clients in federal and regional courts, monitoring and reporting on human rights violations in collaboration with civil society, and advocating for improved human rights legislation, both domestically and internationally;
* Mediation clinics teach students how to conduct mediation for civil cases, address matters of domestic relations, and provide services for contracts, dependency-neglect issues, juveniles, probation, and families;
* Environmental law clinics allow students to represent environmental advocacy organizations before courts and administrative agencies for a broad range of environmental matters, including endangered species, public lands, air quality, and public health;
* A human trafficking clinic provides representation for victims of human trafficking, addressing issues of recruitment, transportation, harboring, and receipt of people for the purposes of slavery, forced labor, and servitude, and assisting victims to enforce their rights in court and applying for special visas;
* Child law clinics allow students to represent children who have been abused or neglected, have violated the law, or are otherwise in need of legal assistance;
* Elder law clinics focus on the legal problems of older adults, relating to health law and health care coverage, guardianships, and other litigation focused on mental capacity issues, wills, nursing home negligence litigation, handicap and age discrimination cases, and pension rights;
* Immigration clinics provide assistance to non-citizens in removal proceedings, to underprivileged foreign-born individuals seeking asylum, to prisoners of various nationalities held at American military facilities and detention sites worldwide.

2.4.6. The International Human Rights Clinics at The Johns Hopkins University is designed to teach students skills for careers in international human rights advocacy and protection. Each student taking the course has the opportunity to gain practical experience in international human rights through clinical work with The Protection Project. Such work may include, writing a human rights report, drafting a model law or fact-finding mission, developing human rights education materials and programming, conducting research, etc.

## 3. Establishing a link between Kuwaiti law clinics and law clinics in the Middle East and North Africa

### 3.1. Egypt

3.1.1. Alexandria University Faculty of Law Legal Clinic officially incorporated the concept of clinical legal education into the University Statute in December 2009. In cooperation with The Protection Project at The Johns Hopkins University School of Advanced International Studies and the Ministry of Justice of the Arab Republic of Egypt and with the support of the U.S. Agency for International Development, Alexandria University officially established the first law clinic in Egypt.

3.1.2. The Clinic is managed by an Executive Director, who is a full-time member of the law faculty; an Associate Director, who is an associate lecturer; and a Legal Clinic Program Coordinator, who is a recent law graduate and alumna of AUFL.

3.1.3. Each year, 20-30 third and fourth-year law students are selected through a competitive process to participate in the clinic, which is comprised of three components:

First: The Classroom Component: The Practical Training Course offered to 3rd and 4th year law students is taught by members of the law faculty, practicing legal professionals, and representatives from the Ministry of Justice. The course consists of 8 units and includes the following topics: (1) Code of professional responsibility and client-lawyer relationship; (2) Researching and writing a legal memorandum: enhancing lawyering skills for law students; (3) Enhancing access to justice for women in family courts and filing a civil action on behalf of a victim; (4) Preparing for a case: evidence collection, interviewing a client; (5) Enhancing access to justice, especially through family courts, with a particular focus on violence against women; (6) Delivering legal services through pro-bono work; (7) Comparative models of legal clinics; (8) Civil society representation of clients.

Second: Client Representation: Students in the legal clinic facilitate access to justice for victims of domestic violence and/or human trafficking through: (1)Networking with local NGOs to notify public of services available through the law clinic; (2) Identifying if a case is suitable for representation by the clinic; (3) Collecting evidence and victim testimony; (4) Researching and drafting legal arguments and oral advocacy; (5) Notifying the client of available legal remedies; and (6) If necessary, referring the case to pro bono lawyers (alumni referral network), who may represent the case in court, with the students in attendance.

Third: Human Rights Monitoring and Advocacy: The Legal Clinic at Alexandria University engages students in a number of advocacy, research, and educational projects and activities, including: (1) Realizing a joint research project with the Georgetown Law Community Justice Project on a comparative analysis of family courts and access to justice for women; (2) Conducting research on the rights of Egyptian migrant workers abroad; (3) Developing of a model law on legal aid; (4) Drafting a model law on the establishment and operation of non-governmental organizations in cooperation with Columbia Law School Community Enterprise Clinic; (5) Conducting public civic education on constitutional rights and political participation in cooperation with the Bibliotheca Alexandrina.

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### 3.2. Iran

The Mofid University Legal Clinic was established in 2006 in Qom, Iran. With its premises on the grounds of Mofid University, its students, working under the supervision of Mofid University law professors and in cooperation with pro-bono lawyers, offers legal advice to numerous residents of Qom city in matters of family law. The clinic pursues two main objectives: (1) legal empowerment of socially disadvantaged individuals and groups through providing free legal services; (2) Training law students in legal skills and preparing them to assume social responsibilities. The clinic is unique in that it offers not only legal, but also psychological advice to clients. The clinic has also engaged in a number of activities in addition to direct client assistance, including the facilitation of the first network of pro-bono lawyers in Iran, and holding workshops for other universities in the country on developing clinical legal education. Approximately 30-40 students are being trained at the clinic each semester, and nearly 25 pro-bono lawyers are cooperating with the clinic.

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### 3.3. Turkey

The legal clinic in Istanbul Bilgi University is a two semester course for law students. The first semester is aimed at developing a students’ knowledge of social issues, such as poverty and social exclusion as well as honing their interview and communication skills. The second semester has the students using their practical skills in the field, either working with clients unable to afford legal aid or, with the permission of the Ministry of Justice, working with inmates to address their legal options during and after their imprisonment. Anadolu University will commence a legal clinic program in 2012.

### 3.4. Palestine

A Human Rights Clinic was established at Al Quds University in 2006. It was the first accredited clinic in the Arab World and it is designed to operate under occupation. The clinic is year-long course for which students receive 6 credits. The clinic provides students with theoretical training in international human rights and humanitarian law as well as practical training in lawyering skills and it gives students the opportunity to practice skills in real-life setting. Students volunteer with local NGOs (1 day/week, minimum 4 hrs) and provide walk-in hours to Palestinians at the East Jerusalem community center, where they advise on residency and identification issues, social welfare, and other questions relating to Israeli law. Students also collaborate with NGOs on advocacy campaigns, including anti-illegal settlement campaigns, right to education campaigns, and anti-honor killing campaigns.

### 3.5. Yemen

The Economic Development Clinic was established in partnership between the School of Business and School of Law at Sana’a University. The goal of the clinic is to offer practical skills training and educate small business owners about their rights (for example, terms of micro-credit loans protecting their businesses and contract enforcement). The clinic began operations in Fall 2011. Students in the business school advertise services to the business community, while students from the law school provide legal consultation.

### 3.6. Lebanon

Newly established law clinics in Beirut Arab University in Lebanon, University of Jordan in Jordan, University of the United Arab Emirates in the United Arab Emirates, and Sultan Qaboos University in Oman, and Islamic University in Gaza.

## Monitoring Mechanisms

1. Does the law clinic work in collaborating with other law clinics in Kuwait?

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2. Does the law clinic corporate with law clinics in other Arab universities?

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3. Does the law clinic have any links with law clinics in the United States?

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4. Which best practices, if any, did the law clinic learn from comparatives models from law clinics around the world?

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5. What contacts did the law clinic develop by attending regional and international conferences, if any?

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