

**NOT-FOR-PROFIT ORGANIZATIONS**  
**Fall 2013 – Professor Lloyd Mayer**

Tuesday, Thursday  
9:40 – 10:55 a.m., Biolchini 1310

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**Syllabus**

**Course Description**

This course will provide an overview of the laws that particularly apply to not-for-profit organizations in the United States. More specifically, the class will cover: the organization and operation of not-for-profit organizations (“NPOs”) under state law; the requirements for obtaining exemption from otherwise applicable taxes, primarily with respect to charitable organizations under federal law; the federal tax rules governing commercial activities of NPOs, private foundations, and charitable contributions; and the laws governing non-charitable NPOs. By the end of this course you will be able to advise members of NPO boards about their legal responsibilities and ensure compliance of NPOs with the state and federal laws that specifically apply to them.

*Pre/Co-Requisite:* There are no pre-requisites or co-requisites for this course. While some of the topics we will cover touch on general business association and federal income tax issues, I will provide overviews of those issues in advance of the relevant assignments so that you have sufficient information to be able to understand these topics.

**Required Course Materials**

- Fishman & Schwarz, *Nonprofit Organizations: Cases and Materials*, 4th ed. (Foundation Press 2010)
- *Student Update Memorandum* (2013) (available on the course website)
- Fishman & Schwarz, *Nonprofit Organizations: Cases & Materials: Statutes, Regulations, and Forms (Selected Sections)* (Foundation Press 2010)
- Additional materials that will be posted on the course website

**Course Website**

General course documents, handouts, IRS forms, selected class slides, and other materials will be posted on the Westlaw TWEN website for this course. You can register for and access TWEN at <http://lawschool.westlaw.com>. Instructions for TWEN are in the Student’s Guide to TWEN, available at <http://lscontent.westlaw.com/images/content/TWENStudGuide10.pdf>. If you encounter any problems, you can call TWEN Support 24/7 at 1-800-486-4876. You can also contact our Westlaw account manager or our Westlaw student reps, all of whom should be listed on the TWEN welcome page.

**Class Meetings: TuTh, 9:40 a.m. – 10:55 a.m., Biolchini 1310**

At this point I expect to hold all regularly scheduled class meetings **except for Thursday, October 17th**. In place of that meeting there will instead be a make-up class on **Friday, October 11th, 8:15-9:30 a.m., Biolchini 1310** (our regular classroom). I apologize for scheduling the make-up class so early on a Friday morning, but it was necessary in order to minimize the number of students with conflicts. That said, I realize that at least a couple of students will have to miss the make-up class to attend the regularly scheduled meeting of another course, and also that other students may not be able to make this meeting for a variety of legitimate reasons. I will therefore arrange to have the make-up class recorded and made available via the course website. I will also excuse any absences from the make-up class if you provide a reasonable explanation for why you will not be able to attend, even if that reason would not qualify for a formal “excused absence” from Peter Horvath.

## **Class Participation**

The class is divided into three panels. The panels have rotating responsibility for being “on call.” All members of the on call panel should be prepared to answer questions and discuss the required reading for that day. Because the panels are relatively small, you should expect to be called on when your panel is on call. Members of panels that are not on call for a given day should have read the required readings and are free (and encouraged) to participate in the discussion. For the benefits of doing so, see **Grading** below.

If you are unable to prepare for a class when your panel is on call or will be unable to attend that class, please notify me by email ([lmayer@nd.edu](mailto:lmayer@nd.edu)) **before the class** so that I do not call on you. Each student may use this “get out of class free” pass **once** during the term without penalty and without explanation. Students will also be excused without penalty – beyond the one permitted instance – if they obtain an excused absence from Peter Horvath or if the absence arises because of the observance of a religious holiday. Additional instances of lack of preparation (or absence) when your panel is on call may, however, lower your grade (see **Grading** below).

The three panels are assigned by the first letters of last names:

- Panel 1: A to G
- Panel 2: H to Ma
- Panel 3: Mb to Z

Panel 1 will be on call for the first class meeting. The full panel on call schedule is available on the course website. No panel will be on call for the review session.

Please note that no recording of the class is permitted without my expression permission in advance. If for any reason I need to record a class, I will provide notice of the recording at the beginning the applicable class meeting. Please note that the make-up class mentioned above will be recorded.

## Class Assignments

The class assignments for the entire term will be available on the course website by no later than our first class meeting. Please note the special instructions at the start of the assignments relating to materials you are asked to skim and to the problems we will cover in class. In addition to the materials listed in those assignments, I may provide additional handouts as we proceed.

## Final Examination & Grading

Grading will primarily be based on a three-hour final examination. The final exam will be “open book” in that any hard copy written materials may be used during the exam other than materials from the library. The final exam will be administered via computer. You will therefore need to arrange to have a laptop in order to take the exam.

Consistent quality class participation may increase your grade by one notch (*e.g.*, changing a B final exam grade to a B+). Failure to be in class or prepared when your panel is on call may decrease your grade by one notch (other than excused absences, religious holidays, and the one permitted pass; see **Class Participation** above). Out-of-class discussions will not affect your grade.

## Contact Information

The best way to reach me is via email, at [lmayer@nd.edu](mailto:lmayer@nd.edu). I can also be reached at my office number, 631-8057. I may forward particularly interesting questions or comments to the entire class, after deleting the sender’s identifying information.

My office hours for purposes of this course are **Monday from 10:00 to noon** and **Thursday from 11 to noon** when classes are in session, but I am available to meet with students at any other time that I am in the office (**Eck 1106**, in the Registrar/Student Services suite) and my door is open. I generally expect to be in the office from 8:30 to 5:00 each weekday when classes are in session, except when I am teaching this class or in a meeting. I will not be available to meet, however, on the following dates:

- Thursday, October 17th
- Friday, October 18th

If you would prefer to set a specific date and time to meet, whether during or outside of my office hours, please contact me.

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**Assignments**

**Skimming:** When you are asked to “skim” a statute or regulation please read the headings to understand the statute or regulation's scope but rely on the casebook for the details. When you are asked to “skim” any other type of document, please review the document as an aid for understanding the casebook reading but you are not responsible for the details of the document.

**Problems:** Many casebook assignments include problems. The specific problems we will cover in class are identified in each assignment (*e.g.*, “including problems 1(c), 1(d), 2 & 3 on pp. 89-90”). You may skip the other problems; when we are skipping an entire set of problems, I have noted this fact. For the Part Two (Organization and Operation) problems, if the casebook identifies a specific applicable law, please substitute instead the assigned Illinois statutory sections or, in the absence of any assigned or applicable Illinois sections, the assigned New York statutory sections.

**PART ONE: INTRODUCTION**

**Tuesday, August 27th: Overview**

*Fishman:* 1-19, 25-32, 39-45 (including the problem on p. 45)

*Update:* 1-6

*Selected §§:* Cal. Corp. Code § 5410 (p. 26)  
MNCA (3d ed.) § 6.40 (p. 127)

*Website:* Syllabus  
N.Y. Not-for-Profit Corp. L. § 515

**PART TWO: ORGANIZATION AND OPERATION**

**Thursday, August 29th: Formation**

*Fishman:* 47-58, 63-69, 72-79, 85 (including problem 2 (all parts) on p. 63 (but do not consider federal tax exemption issues) and problems (a) thru (f) on p. 85)

*Selected §§:* Cal. Corp. Code §§ 5111, 5130, 7111 (pp. 9, 38)  
Ill. Comp. Stat. ch. 805, §§ 105/103.05, 112.16 (pp. 59-61, 64-65)  
MNCA (3d ed.) §§ 2.01 to 2.06, 3.01 (pp. 115-19)  
*skim* Rev. Unif. Unincorp. Ass'n Act §§ 1 to 29 (pp. 249-58)  
Sample Articles of Organization, Bylaws, Trust (pp. 1006-18)

*Website:* N.Y. Not-for-Profit Corp. L. §§ 201, 204, 402  
Handout: Sample Organizational Meeting Resolutions

**Tuesday, September 3rd: Dissolution, Cy Pres, and Deviation**

*Fishman:* 85-105 (including problems 1(c), 1(d), 2 & 3 on pp. 89-90 and problems 3, 4 & 5 on pp. 104-05)

*Update:* 7-8 (section D)

*Selected §§:* reread Ill. Comp. Stat. ch. 805, §§ 105/112.16 (pp. 64-65)  
MNCA (3d ed.) §§ 14.01 to 14.09 (pp. 181-87)  
Principles of the Law of Nonprofit Orgs. § 460 (pp. 206-07)

**Thursday, September 5th: Distribution of Assets and Restructuring**

*Fishman:* 105-122

*Update:* 8-9 (section F)

**Tuesday, September 10th: Governance and the Duty of Care**

*Fishman:* 123-28, 134-58 (including problems (a), (c) & (d) on pp. 157-58)

*Selected §§:* Cal. Corp. Code §§ 5210, 5231 (pp. 10, 11-12)  
MNCA (3d ed.) §§ 8.01, 8.30, 8.40-8.42 (pp. 135, 143-44, 148-49)  
Principles of the Law of Nonprofit Orgs. § 315 (p. 199)

*Website:* N.Y. Not-for-Profit Corp. L. § 717

**Thursday, September 12th: The Duty of Loyalty and the Duty of Obedience**

*Fishman:* 163-89 (to end of page), 198-202 (including problems (d), (e), (g) & (h) on pp. 198-99)

*Selected §§:* Cal. Corp. Code §§ 5227, 5233-5236 (pp. 11, 12-16)  
Ill. Comp. Stat. ch. 805, §§ 105/108.60, 108.80 (pp. 61, 64)  
MNCA (3d ed.) §§ 8.60, 8.70 (pp. 157-58)  
Principles of the Law of Nonprofit Orgs. § 310 (p. 199)  
Sample Conflict of Interest Policy & Statement (pp. 1019-23)

*Website:* N.Y. Not-for-Profit Corp. L. §§ 715, 715-a, 716

**Tuesday, September 17th: Investment Responsibility and Enforcement**

*Fishman:* 202-37 (including the problem (all parts) on pp. 220-21; skip the problem on p. 212)

*Update:* 10-11

*Selected §§:* Cal. Corp. Code §§ 5240, 5241 (pp. 22-23)  
Rest. (Third) Trusts §§ 171, 227-228, 379, 389 (pp. 234, 235-36)  
Uniform Prudent Mgmt. of Inst. Funds Act §§ 3 to 6 (pp. 238-43)

*Website:* N.Y. Not-for-Profit Corp. L. §§ 513 to 514

**Thursday, September 19th: Regulation of Charitable Solicitation**

*Fishman:* 243-78, 284-89 (including problem 1 (all parts) on pp. 288-89)

*Update:* 12-13 (section B)

## **PART THREE: TAX EXEMPTION**

### **Tuesday, September 24th: Rationale and Exemption Introduction**

*Fishman:* 293-319, 548-51

*Update:* 14 (section B only), 19-20 (section F.2 only)

*Selected §§:* I.R.C. §§ 501(c)(3), 6033(a)(1) & (3), (i), (j) (pp. 322, 482-84, 490-91)  
Treas. Reg. § 1.501(c)(3)-1(a), (b)(1) to (5), (c)(1) & (2) (pp. 588-90)

*Website:* skim IRS Form 1023, IRS Form 990, IRS Form 990-EZ

### **Thursday, September 26th: Charitable Exemption**

*Fishman:* 319-343, 351-57 (including the problems (all) on p. 357; skip the problems on pp. 343-44)

*Update:* 14-15 (sections C.3.a and C.3.b)

*Selected §§:* I.R.C. § 501(m)(1) & (r) (pp. 332, 339-42)  
Treas. Reg. § 1.501(c)(3)-1(d)(2) (p. 593)

### **Tuesday, October 1st: Public Policy Limitation**

*Fishman:* 369-98 (including problems (all) on pp. 397-98)

*Website:* skim Schedule E to IRS Form 990

### **Thursday, October 3rd: Educational Exemption**

*Fishman:* 398-415 (including problems (a) thru (d) on pp. 414-15)

*Update:* 15 (sections C.5)

*Selected §§:* Treas. Reg. § 1.501(c)(3)-1(d)(3) (pp. 593-94)

### **Tuesday, October 8th: Religious Exemption and State & Local Exemptions**

*Fishman:* 415-431, 440-45 (including problems (a), (c) & (d) on pp. 430-31)

*Update:* 15-16 (sections C.6 and C.8)

### **Thursday, October 10th: Inurement, Private Benefit, and Intermediate Sanctions**

*Fishman:* 445-73 (including problems (a), (c), (d) & (g) on pp. 471-73)  
*reread United Cancer Council* (249-56)

*Update:* 16-18 (section D)

*Selected §§:* I.R.C. §§ 4958(a) to (c)(1)(B), (d) to (f) (pp. 466, 468-70)  
Treas. Reg. § 1.501(c)(3)-1(d)(1) (pp. 591-93)

### **Friday, October 11th, 9:40 a.m., Room 1140: Limitations on Lobbying**

*Fishman:* 474-508 (including problems (a) & (e) on pp. 506-08)

*Update:* 18 (section E.3)

*Selected §§:* I.R.C. §§ 501(h), 4911(a) to (d), (e)(2) & (3) (pp. 328-30, 417-20, 421)  
Treas. Reg. § 1.501(c)(3)-1(c)(3)(i), (ii) & (iv), (v) (pp. 590-91)

*Website:* skim IRS Form 5768

**Tuesday, October 15th: Political Campaign Limitations, § 501(c)(4), and § 527**

*Fishman:* 508-39 (including problems (all) on pp. 536-37)

*Update:* 18-19 (sections E.5 and E.7)

*Selected §§:* I.R.C. § 501(c)(4) (p. 322)  
skim I.R.C. § 527 (pp. 386-98)  
Treas. Reg. § 1.501(c)(3)-1(c)(3)(iii) (p. 591)  
Treas. Reg. § 1.501(c)(4)-1(a) (pp. 601-02)

**PART FOUR: OTHER TAX ISSUES**

***Commercial Activities and the Unrelated Business Income Tax***

**Tuesday, October 29th: Commercial Activities and the Unrelated Business Income Tax**

*Fishman:* 567-96 (including problems (all) on pp. 590-91)

*Selected §§:* I.R.C. § 502 (p. 342)  
Treas. Reg. § 1.501(c)(3)-1(e) (pp. 595-96)

**Thursday, October 31st: The Nature of an Unrelated Trade or Business**

*Fishman:* 603-35 (including problems 1(a) thru (f) & 2(f) on pp. 633-35)

*Update:* 21 (section D)

*Selected §§:* I.R.C. §§ 511(a) & (b), 513(a) to (c), (i) (pp. 354-55, 366-67, 371-72)  
Treas. Reg. § 1.513-1 (pp. 698-705)

**Tuesday, November 5th: Exclusions; Computation; Debt-Financed Income**

*Fishman:* 635-59 (thru note 1; including problem 1 (all parts) on p. 641; skip the problem on pp. 650-51)

*Update:* 21-22 (section F and G, through *Note 1- Strike Three*)

*Selected §§:* I.R.C. § 512(a)(1), (b)(1) to (5), (7) to (9) (pp. 355, 359-60, 361)

*Website:* skim IRS Form 990-T

***Private Foundations***

**Thursday, November 7th: Private Foundations Introduction**

*Fishman:* 703-32, 737-38 (including problems 1(a), (b) & (f) on pp. 737-38)

*Selected §§:* I.R.C. § 509(a) to (e) (pp. 350-52)

**Tuesday, November 12th: Information Reporting, Self-Dealing, and Taxable Expenditures**

*Fishman:* 764-66, 769-81 (including problems 1(a) thru (e) on pp. 780-81), 795-804  
(including problems (a) thru (e) & (i) on pp. 803-04)

*Selected §§:* I.R.C. §§ 4941, 4945, 4946(a)(1), (b) to (d) (pp. 429-33, 453-58, 459-60)

*Website:* skim IRS Form 990-PF

## ***Charitable Contributions***

### **Thursday, November 14th: Introduction & Basic Principles**

*Fishman:* 807-836

*Update:* 26-29 (sections A, B.1, and B.2)

*Selected §§:* I.R.C. § 170(a)(1), (c) (pp. 280, 287-88)

### **Tuesday, November 19th: What is a Charitable Gift?**

*Fishman:* 837-867 (including problems (a) thru (d) & (i) on pp. 865-67)

*Update:* 29 (section B.3)

*Selected §§:* I.R.C. §§ 170(f)(8), 6113, 6115 (pp. 301-02, 502-04)

Treas. Reg. §§ 1.170A-1(h), 1.170A-13(f)(1) to (7) (pp. 538-39, 570-71)

### **Thursday, November 21st: Noncash Contributions and Planned Giving**

*Fishman:* 867-891 (including problems 1(a) thru (g) on p. 888)

*Update:* 29 (section C)

*Website:* skim IRS Forms 8282, 8283

## **PART FIVE: OTHER TYPES OF NOT-FOR-PROFIT ORGANIZATIONS**

### **Tuesday, November 26th: Social Welfare, Labor, and Trade Organizations**

*Fishman:* 900-930 (including problems (all) on p. 930)

*Update:* 30-31

*Selected §§:* reread I.R.C. § 501(c)(4) (p. 322)

reread Treas. Reg. § 1.501(c)(4)-1(a) (pp. 601-02)

I.R.C. §§ 162(e), 501(c)(5), 501(c)(6), 6033(e) (pp. 277-80, 322, 487-88)

Treas. Reg. §§ 1.501(c)(5)-1, 1.501(c)(6)-1 (pp. 602-03)

*Website:* skim IRS Form 1024

### **Thursday, December 3rd: Other Types of Not-for-Profit Organizations**

*Fishman:* 931-951 (including problems 1(a) & (b) on pp. 947-48)

*Selected §§:* I.R.C. § 501(c)(7), (c)(8), (c)(10) & (i) (pp. 322-23, 330-31)

Treas. Reg. § 1.501(c)(7)-1 (pp. 603-04)

### **Tuesday, December 5th: Membership Associations**

*Fishman:* 952-956, 979-1005 (including problems (all) on p. 1002)

*Update:* 32-34

## **REVIEW SESSION**

### **Tuesday, December 10th: Review Session**

*Website:* Past Exams & Exam Answers (note that the exams before 2011 were 8-hour, take-home, open-book exams; the exam in 2011 and the exam this year will be a 3-hour, in-class, open-book exam)