

**NOT-FOR-PROFIT ORGANIZATIONS**  
**Fall 2017 – Professor Lloyd Mayer**

Monday, Wednesday  
2:00 – 3:15 p.m.  
Eck 2171

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**Syllabus**

**Course Description**

This course will provide an overview of the laws that apply to not-for-profit organizations (“NPOs”) in the United States. More specifically, the class will cover: the organization and operation of NPOs under state law; the requirements for obtaining exemption from otherwise applicable taxes, especially for charitable organizations under federal income tax law; the federal tax rules governing NPO commercial activities, private foundations, and charitable contributions; and the laws governing non-charitable NPOs. By the end of this course you will be able to advise NPO leaders 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 et al., Nonprofit Organizations: Cases and Materials, 5th ed. (2015)
- Fishman et al., Student Update Memorandum (2017) (available on course website)
- Fishman et al., Nonprofit Organizations: Statutes, Regulations, and Forms (2015)
- Additional materials that I will post on the course website

Please note that because the Law School’s exam software blocks access to materials on your computer and the Internet, you will **not** have access to electronic versions of the casebook, the statutory supplement, or other materials during the exam for this course.

**Course Website**

General course documents, handouts, IRS forms, class slides, and other materials will be posted on the Westlaw TWEN website for this course. You can register for and access TWEN through [Westlaw](#). Instructions for TWEN are in the [Student’s Guide to TWEN](#). 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 listed on the TWEN welcome page.

### **Class Meetings: MW, 2:00 – 3:15 p.m., Eck 2171**

Because of Law School-related travel, I need to cancel our regularly scheduled class meetings on Monday, September 11th and Wednesday, October 4th. There will therefore be make-up classes on the following dates:

- Friday, September 15th at 2:00 – 3:15 p.m. in Eck 2171
- Friday, September 29th at 2:00 – 3:15 p.m. in Eck 2171

I apologize for having to schedule the make-up classes on Friday afternoons, but it was necessary in order to minimize potential conflicts. The review session for the course will be the regularly scheduled last class meeting on Monday, December 4th. The make-up classes and the review sessions will be recorded.

### **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 to discuss the required reading for that day. Members of panels that are not on call for a given day are expected to have read the required readings and are free (and encouraged) to participate in the discussion. For the benefits of doing so, see **Final Examination & 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 (unless the reason is one that could not have been anticipated, such as a car accident on the way to campus). I will consider such absences or lack of preparation as excused if for one of the following reasons: family emergency; other emergency, such as a car accident; illness or other medical necessity; participation in other Law School curricular or co-curricular activities such as journal conferences, moot court competitions, and clinic hearings; or job interviews. Each student also has one “get out of class free” pass that they may use to excuse an absence or lack of preparedness when on call, again subject to you emailing me **before the class** to say you will be using your pass; if you use the pass, no explanation for the absence or lack of preparedness is required.

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

- Panel 1: A to I
- Panel 2: J to P
- Panel 3: Q thru Z

I may adjust these assignments after the first week of the course if the panels become unbalanced because of students adding or dropping the course.

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 is on call for the review session.

## **Class Assignments**

The class assignments for the entire term are available on the course website. Please note the instructions at the start of the assignments relating to materials you are asked to skim and to the problems we will cover in class. The assignments may change depending on the pace of class discussion and current events. If they do change, I will try to provide you with as much advance notice as possible. In addition to the materials listed in those assignments, I may provide occasional additional materials that I will distribute through the course website.

## **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 have a laptop in order to take the exam unless you have made other arrangements with Peter Horvath. Note that during the final exam you will **not** have access to materials stored on your computer or normally available through the Internet, including electronic versions of the casebook and statutory supplement.

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 and the one permitted pass; see **Class Participation** above). Multiple failures to be in class or prepared when your panel is on call may decrease your grade further, including possibly reducing it to a failing grade. Out-of-class discussions will not affect your grade.

## **Laptop Policy**

I allow the use of laptops during class both because grading in this course is based primarily on a final examination that can cover any of the many topics addressed in the course and because I provide some course materials electronically. Be aware, however, that there is a growing body of research indicating that taking notes longhand may lead to improved learning as compared to taking notes on a laptop. See, *e.g.*, Steven Eisenstat, [A Game Changer: Assessing the Impact of the Princeton/UCLA Laptop Study on the Debate of Whether to Ban Law Student Use of Laptops During Class](#), 92 U. Det. Mercy L. Rev. 83 (2015); Pam A. Mueller & Daniel M. Oppenheimer, [The Pen Is Mightier Than the Keyboard: Advantages of Longhand Over Laptop](#)

[Note Taking](#), 25 Psychological Science 1159 (2014). You may therefore want to consider taking notes longhand instead of typing them on your laptop.

You should also be aware that there is a growing body of research indicating that using laptops or other electronics to multitask while in class, such as by checking email, reduces comprehension for both the multitasker and those who can see their screen. See, e.g., Fari Sana et al., [Laptop Multitasking Hinders Classroom Learning for Both Users and Nearby Peers](#), 62 Computers & Education 62 (2013). So while I believe it is not a good use of class time for me to attempt to stop such multitasking, please consider avoiding such multitasking in order to limit distractions for both yourself and your classmates.

### **Contact Information**

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

I am generally available to meet with students at any time that I am in the office (**Eck 3155**, in the third-floor suite nearest the elevator). In general, I expect to be in my office when classes are in session from at least 8:30 to 12:00 and 2:00 to at least 4:30 on weekdays, except for when I am teaching this class or my other class this term that meets on Mondays and Wednesdays at 9:30 to 10:45 a.m.. The dates on which I expect to be out-of-town this term and so not available are:

- Monday, September 11th & Tuesday, September 12th
- Wednesday, October 4th thru Friday, October 6th
- Thursday, October 26th & Friday, October 27th
- Thursday, November 2nd & Friday, November 3rd
- Thursday, November 9th & Friday, November 10th

If you would prefer to set a specific day and time to meet, please just email 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 3, 4 & 5 on p. 89”). You may skip the other problems; when we are skipping an entire set of problems, I have noted this fact. For the problems in Part Two (Organization and Operation), if the casebook says to apply the law of “your jurisdiction” please apply 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**

**Monday, August 21st: Overview**

*Fishman:* 3-9 (stop at “This is not a new phenomenon.”), 12-15, 21-27, 30-31 (notes 1-3), 33-39 (including the problem on p. 39)

*Selected §§:* Cal. Corp. Code § 5410 (p. 25)  
N.Y. Not-for-Profit Corp. L. § 515(a) (p. 79)

*Website:* Syllabus (under General Course Materials)

**PART TWO: ORGANIZATION AND OPERATION**

**Wednesday, August 23rd: Formation**

*Fishman:* 43-53 (skip the Note on p. 53), 54-59, 63-65, 67-68 (stop after Note 1), 70-73 (including all problems on pp. 54 & 72-73)

*Update:* 3-4 (Limited Liability Companies)

*Selected §§:* Cal. Corp. Code §§ 5111, 5130, 7111 (pp. 9, 36)  
Ill. Comp. Stat. ch. 805, § 105/103.05(a) (pp. 56-57)  
N.Y. Not-for-Profit Corp. L. §§ 201, 204, 402 (pp. 68-69, 71, 71-73)  
*skim* Sample Articles of Organization, Bylaws, Trust (pp. 906-918)

*Website:* Handout: Sample Organization Meeting Resolutions

**Monday, August 28th: Cy Pres and Deviation**

*Fishman:* 73-89 (including problems 3, 4 & 5 on p. 89)

*Update:* 5 (Girard College)

**Wednesday, August 30th: Dissolution, Distribution of Assets, and Restructuring**

*Fishman:* 89-107 (including problems 1(c), 1(d), 2 & 3 on p. 93)

*Selected §§:* Ill. Comp. Stat. ch. 805, § 105/112.16 (pp. 61-62)

N.Y. Not-for-Profit Corp. L. § 513 (pp. 78-79)

**Monday, September 4th: Governance and the Duty of Care**

*Fishman:* 109-114, 120-122 (end of page), 127-144 (including all problems on pp. 143-144)

*Selected §§:* Cal. Corp. Code §§ 5210, 5231 (pp. 10-11, 12-13)

N.Y. Not-for-Profit Corp. L. § 717 (p. 88)

**Wednesday, September 6th: The Duty of Loyalty and the Duty of Obedience**

*Fishman:* 149-172, 179-184 (including problems (d), (e), (g) & (h) on pp. 179-181)

*Selected §§:* Cal. Corp. Code § 5227 (pp. 11-12)

Ill. Comp. Stat. ch. 805, §§ 105/108.60, 108.80 (pp. 58, 61)

N.Y. Not-for-Profit Corp. L. §§ 515(b), 715, 715-a, 716 (pp. 79, 84-86, 87)

*skim* Sample Conflict of Interest Policy & Statement (pp. 919-922)

*Update:* 31-33 (amendments to N.Y. Not-for-Profit Corp. L. §§ 515(b), 715, 715-a)

Monday, September 11th: NO CLASS

**Wednesday, September 13th: Investment Responsibility and Enforcement**

*Fishman:* 184-214 (including problem (all parts) on pp. 198-199; skip the problem on p. 193)

*Update:* 5-6 (The Role of the Attorney General)

*Selected §§:* Uniform Prudent Mgmt. of Inst. Funds Act §§ 3 to 6 (pp. 196-200)

**Friday, September 15th (MAKE-UP): Regulation of Charitable Solicitation**

*Fishman:* 219-221, 226-254, 259-264 (including problem 1 (both parts) on p. 264)

**PART THREE: TAX EXEMPTION**

**Monday, September 18th: Rationale and Exemption Introduction**

*Fishman:* 271-275, 276-279, 284-285, 287-289, 291-295, 508-511

*Update:* 7 (Form 1023-EZ), 12 (late filing Penalties)

*Selected §§:* I.R.C. § 501(c)(3) (p. 271)

Treas. Reg. § 1.501(c)(3)-1(a), (b)(1) to (6), (c)(1) & (2) (pp. 505-508)

*Website:* *skim* IRS Form 1023 (under IRS Forms)

**Wednesday, September 20th: Charitable Exemption**

*Fishman:* 296-320 (including all problems on pp. 319-320)

*Update:* 8-9 (State Property Tax Exemptions)

*Selected §§:* Treas. Reg. § 1.501(c)(3)-1(d)(2) (p. 510)

*Website:* Handout: Saint Joseph Form 990 (excerpts) (read highlighted sections)

**Monday, September 25th: Public Policy Limitation**

*Fishman:* 344-371 (including all problems on pp. 370-371)

*Update:* 9 (Bob Jones University Update)

**Wednesday, September 27th: Educational Exemption**

*Fishman:* 371-387 (including all problems on pp. 386-387)

*Update:* 10 (Hate Groups)

*Selected §§:* Treas. Reg. § 1.501(c)(3)-1(d)(3) (pp. 511-512)

*Website:* Handout: Notre Dame Form 990 (excerpts) (read highlighted sections)

**Friday September 29th (MAKE-UP): Religious Exemption**

*Fishman:* 387-403 (including all problems on p. 403)

**Monday, October 2nd: Inurement, Private Benefit, and Intermediate Sanctions**

*Fishman:* 416-431, 432-445 (including problems 1(a), 1(b), 1(c), 1(f), & 3 on pp. 443-445)

*Selected §§:* I.R.C. §§ 4958(a) to (c)(1)(B), (d) to (f)(6) (pp. 393-394, 395-397)

Treas. Reg. § 1.501(c)(3)-1(d)(1) (pp. 508-510)

Wednesday, October 4th: NO CLASS

**Monday, October 9th: Limitations on Lobbying**

*Fishman:* 445-462 (including problems (a) & (e) on pp. 461-462)

*Selected §§:* Treas. Reg. § 1.501(c)(3)-1(c)(3)(i), (ii) & (iv), (v) (p. 508)

*Website:* skim IRS Form 5768 (under IRS Forms)

**Wednesday, October 11th: Political Campaign Limitations, § 501(c)(4), and § 527**

*Fishman:* 463-491, 494-500 (including all problems on pp. 499-500)

*Update:* 11-12 (Constitutional Issues and The Noncharitable § 501(c)(4) Alternative)

*Selected §§:* Treas. Reg. § 1.501(c)(3)-1(c)(3)(iii) (p. 508)

Monday, October 16th & Wednesday, October 18th: MID-SEMESTER BREAK

## **PART FOUR: OTHER TAX ISSUES**

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

#### **Monday, October 23rd: Commercial Activities & Unrelated Business Income Tax**

*Fishman:* 527-549 (including all problems on pp. 547-549), 646-648 (including problem on p. 648)

*Selected §§:* Treas. Reg. § 1.501(c)(3)-1(e) (pp. 512-513)

#### **Wednesday, October 25th: The Nature of an Unrelated Trade or Business**

*Fishman:* 549, 560-587 (including problems 1(a) thru (f) & 2(f) on pp. 586-587)

*Update:* 13 (UBIT Compliance)

*Selected §§:* Treas. Reg. § 1.513-1 (pp. 607-614)

#### **Monday, October 30th: Exclusions; Computation; Debt-Financed Income**

*Fishman:* 588-612 (thru note 1; including problem 1 (all parts) on pp. 593-594; skip the problems on pp. 603-604)

*Selected §§:* I.R.C. § 512(b)(1) to (5), (7) to (9) (pp. 303-304)

### ***Private Foundations***

#### **Wednesday, November 1st: Introduction**

*Fishman:* 649-650, 656-657, 661, 664 (starting at Notes)-672, 678-679 (including problems 1(a), (b) & (f) on pp. 678-679), 704

*Selected §§:* I.R.C. §§ 170(b)(1)(A), 509(a) to (e) (pp. 239-240, 295-297)

*Website:* Handout: Gates Foundation Form 990-PF (excerpts) (read highlighted sections)

#### **Monday, November 6th: Information Reporting, Self-Dealing, & Taxable Expenditures**

*Fishman:* 704-05, 708-719 (including problems 1(a) thru (e) on pp. 718-719), 733-743 (including problems (a) thru (e) & (i) on pp. 741-743)

*Update:* 14 (International Grantmaking)

*Selected §§:* I.R.C. §§ 4941, 4945, 4946(a)(1), (b) to (d) (pp. 362-366, 383-388)

### ***Charitable Contributions***

#### **Wednesday, November 8th: Introduction & Policy Issues**

*Fishman:* 745-766

*Update:* 15-16 (Rethinking the Charitable Deduction)

#### **Monday, November 13th: Basic Principles**

*Fishman:* 766-800 (including problems (a) thru (d) & (i) on p. 800)

*Selected §§:* I.R.C. § 170(a)(1), (c), (f)(8) (pp. 239, 244-245, 254-255)



**Wednesday, November 15th: Noncash Contributions and Planned Giving**

*Fishman:* 801-825 (including problems 1(a) thru (g) on p. 822)

*Update:* 16-17 (Noncash Contributions)

*Website:* skim IRS Forms 8282, 8283 (under IRS Forms)

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

**Monday, November 20th: Social Welfare, Labor, and Trade Organizations**

*Fishman:* 835-865 (including all problems on pp. 864-865)

*Update:* 18 (Procedural Issues), 19 & 22 (I.R.C. § 501(c)(4))

*Selected §§:* I.R.C. § 501(c)(5) & (6) (p. 271)

Treas. Reg. §§ 1.501(c)(4)-1, 1.501(c)(5)-1, 1.501(c)(6)-1 (pp. 518-520)

*Website:* skim IRS Form 1024 (under IRS Forms)

Wednesday, November 22nd: THANKSGIVING BREAK

**Monday, November 27th: Other Types of Not-for-Profit Organizations**

*Fishman:* 865-883 (including problems 1(a) & (b) on p. 880)

*Selected §§:* I.R.C. § 501(c)(7), (c)(8), (c)(10) & (i) (pp. 271-272, 278-279)

Treas. Reg. § 1.501(c)(7)-1 (p. 520)

**Wednesday, November 29th: Membership Associations**

*Fishman:* 885-889, 911-935 (including all problems on pp. 931-932)

*Update:* 19 (Boy Scouts Reverse Course)

**REVIEW SESSION**

**Monday, December 4th: Review Session**

*Website:* Draft Instruction Sheet for Final Examination (under Handouts)  
Past Exams & Exam Answers (under Handouts)