

Rutgers University School of Law – Newark
Charitable Nonprofit Organizations
Fall, 2013
Professor A. Nicole Campbell

COURSE SYLLABUS

Class Hours

Thursday from 6:00 p.m. – 8:00 p.m. in Room 403

Purpose and Outcomes

This course focuses on the tax treatment of U.S. public charities and private foundations, tax-exempt under Section 501(c)(3) of the U.S. Internal Revenue Code. The course will also include a survey of other tax-exempt organizations as they compare to charities.

The course provides an analysis of the requirements for federal tax exemption, including the prohibition on private inurement and benefit, excess benefit transactions, lobbying, and political campaign activities, and also includes an analysis around the unrelated business income tax, the private foundation excise taxes, and the current tax issues affecting certain public charities, such as donor advised funds and supporting organizations. The course will also examine a number of legal challenges facing charities around formation, obtaining tax-exempt status, governance, and maintenance of tax-exempt status.

Through case description and analysis, this course aims to give students a solid introduction to grant making practicalities and operations within public charities and private foundations.

Contact Information

- **Phone:** (212) 548-0324
- **E-mail:** nicole.campbell@opensocietyfoundations.org
- **Office Hours:** You may set an appointment by e-mailing or calling me.

BlackBoard

I will periodically post information about the course, including supplementary reading materials, logistics, and schedule or course changes, via BlackBoard. All course updates will be posted on BlackBoard.

Course Materials

The course casebook is Fishman & Schwarz, Nonprofit Organizations, fourth edition, Foundation Press, 2010 (“F&S”).

For the sections of the Internal Revenue Code (the “Code”) and Treasury Regulations (“Regs”) that we will reference during our reading of the course casebook, you will also need a copy of the

2010 edition of Fishman & Schwartz, Nonprofit Organizations Statutes, Regulations and Forms (the “Supplement”) **or** a copy of the Code and Regs themselves.

The Code and Regs are an important and integral part of the course materials and you must have copies of the various sections of the Code and the Regs to aid our class discussions (either by purchasing the Supplement or the Code and the Regs themselves).

I will periodically assign websites of charities and other nonprofit organizations and supplementary reading on current issues affecting charitable organizations. These materials will be posted regularly on BlackBoard.

Co-Counsel, Grading System, Exam

Because this course aims to provide you with real-world approach to being in-house counsel to a charitable organization, I want you to understand how counsel to these organizations work – in a cooperative, team setting. Therefore, I am organizing the class into co-counsel teams; you should form into groups of two. Please let me know by or before our second class on Thursday, September 5, 2013, who your co-counsel will be.

You and your co-counsel will be responsible for leading one half of a class discussion. If you have a preference for leading the discussion for any of the assignment topics, please let me know by our second class. Otherwise, I will assign a class discussion to you and your co-counsel by our third class, to lead discussions beginning from the fourth class onward. This discussion will count for 30 percent of your grade.

Meaningful class participation is very important in this course and accounts for 10 percent of your grade.

Your final exam, which accounts for 60 percent of your grade, will be in two parts – a verbal component and a written component. The verbal component will be based on a real world fact pattern addressing operational, tax, and structuring issues of a charitable organization. The written component will build on this verbal component and will be in the form of a Memorandum to your client. I will provide additional details on both components of the final exam later in the semester.

Anyone who prepares for class, attends regularly, participates fully, and studies the material should be able to perform well in this course.

Assignments

The reading assignments below are intended to cover our entire course. The assignments may vary based on how the course progresses, and I will let you know via BlackBoard what adjustments, if any, should be made to our assignment schedule. As I mentioned under “Course Materials” above, I will likely also add additional reading materials for various assignments. This course is designed to give you real insight into being in-house counsel to a charitable organization and will thus include the most current materials that emerge on a particular topic in an assignment.

Material that I note you should *skim* means that you only need to look at and be generally familiar with that material, but do not have to read it closely.

Class No. 1: Introduction to the Course and the Nonprofit Sector

- Personal introductions
- Introduction and goals of the course
- Landscape of and issues within the nonprofit sector
- Sources of funding of the charitable sector
- **Read:**
 - F&S: pp. 2-14; 30-36
 - Code: Sections 170(a)(1); 170(b); 170(c); 501(a); 501(c)(1)-(27) (*Skim 501(c)(11)-(27)*); 508(a)-(c)

Class No. 2: Organization under State Law and Dissolution and Distribution of Assets

- Choice of legal form
- Dissolution requirements
- Doctrine of cy pres
- Doctrine of deviation
- **Read:**
 - F&S: pp. 48-58; 63-65; 67-69; 85-91; 96-102; 105-111
 - N.Y. Not-for-Profit Corporation Law: Sections 201, 202, and 204; *Skim 401 and 402*

Class No. 3: Qualification for Tax Exemption – Charitable Requirement

- Federal tax treatment of charities
- Charitable purposes
- Affirmative requirements for charitable tax exemption
- Rationale for charitable tax exemptions
- **Read:**
 - F&S: pp. 41-44; 72-81 (*Skim*); 297-299; 315-323; 369-389
 - Code: Section 501(c)(3)
 - Regs: Sections 1.501(c)(3)-1(a), (b), and (c); 1.501(c)(3)-1(d)(1), (2), including the examples.

Class No. 4: Qualification for Tax Exemption – Inurement, Private Benefit, and Intermediate Sanctions

- Rationale for tax exemption
- Inurement of private gain
- Private benefit
- Intermediate Sanctions on excess benefit transactions
- **Read:**
 - F&S: pp. 302-311; 445-452; 454-456; 458-460; 461-471
 - Code: Section 4958
 - Regs: Sections 1.501(c)(3)-1(c)(2); 53.4958-1 through 8; 1.501(c)(3)-1(f) (*Skim the examples*)

Class No. 5: Commercial Activities and Unrelated Business income

- Commerciality doctrine
- Commensurate-in-scope doctrine
- Nature of an unrelated trade or business
- Exclusions from unrelated business taxable income
- Unrelated debt-financed income
- Joint ventures
- **Read:**
 - F&S: 567-568; 570-577; 584-585; 586-589; 591-595; 603-605; 627-631; 635-640; 651-653; 667-673
 - Code: Sections 502; 511(a); 512(a); *Skim 512(b)*; 513(a), (h), (i); 514(a)
 - Regs: Sections 1.501(c)(3)-1(c)(1) and (e); 1.512(a)-1(a) and (b); 1.513-1(a)-(c); 1.513-4(a)-(c)

Class No. 6: Types of Public Charities

- Public support test
- Hospitals and health care organizations
- Public interest law firms
- Community development and low-income housing
- Disaster relief
- Educational organizations
- **Read:**
 - F&S: pp. 323-326; 339-342; 344-346; 362-364; 398-411; 742-749
 - Code: Sections 509(a)(1), (2)
 - Regs: Sections 170(b)(1)(A); 1.501(c)(3)-1(d)(3)
 - Website: <http://www.irs.gov/pub/irs-pdf/f1023.pdf>

Class No. 7: Types of Public Charities

- Religious organizations
- Other charitable purposes
- Donor advised funds
- Supporting organizations
- Community foundations
- **Read:**

- F&S: pp.; 415-416; 431-432; 715-719; 726-727; 730-736; 751-757
- Code: Section 509(a)(3)

Class No. 8: Private Foundations – Overview

- Structure of private foundations
- Private operating foundations
- Excise taxes
- **Read:**
 - F&S: pp. 703-715; 721-722; 727-730; 763-765; 769-773; 794-795
 - Code: Sections 509(a); 4942(j)(3); *Skim 4940 through 4944*; 4946

Class No. 9: Private Foundations – Taxable Expenditures

- Expenditure responsibility
- Equivalency determination
- Grants to individuals
- **Read:**
 - F&S: pp. 795-803
 - Code: Section 4945

Class No. 10: Lobbying and Political Campaign Activities

- Public charities
- Private foundations
- Constitutional issues
- No substantial part test
- 501(h) expenditure test election
- Political campaign limitations
- **Read:**
 - F&S: pp. 474-478; 488-489; 497-502; 505-506; 508-520; 526-531
 - Code: Sections 170(f)(6); 501(c)(3); 501(h); 4911(a); 4912; 4955

Class No. 11: Noncharitable/Other organizations

- Social enterprise organizations
- 501(c)(4) alternative
- Section 527 political organizations
- Trade associations and other business leagues
- Social clubs and fraternal organizations
- L3C's
- **Read:**
 - F&S: pp. 28-30; 532-539; 900-903; 904-907; 916-917; 931-932; 949
 - Code: Sections 501(c)(4); 501(c)(6) through (c)(8); 501(c)(10); 527
 - Website: <http://nonprofitlaw.proskauer.com/2009/11/10/the-possibilities-of-the-l3c/>

Class No. 12: Nonprofit Operation and Governance

- Responsibilities of the Board
- Insurance/Indemnification
- Duty of care
- Duty of loyalty
- Duty of obedience
- Conflict of interest policies
- Role of the Attorney General
- **Read:**
 - F&S: pp. 123-128; 134-137; 147-150; 161; 163-166; 187; 199-200; 226-228
 - N.Y. Not-for-Profit Corporation Law: Sections 715 and 717

Class No. 13: Grant Making and In-House Counsel

- Grant proposal reviews
- General support grant considerations
- Project support grant considerations
- **Read:**
 - Website: http://www.ssireview.org/articles/entry/smart_money/

Class No. 14: Operational Considerations of In-House Counsel

- Charitable solicitation issues
- Charitable contribution issues for donors
- Employment issues
- Consultancy and vendor agreements
- Providing legal advice on foundation operations
- Staff training on legal concepts
- **Read:**
 - F&S: pp. 231-232; 243-249; 284-288