

THE LAW OF
NONPROFIT ORGANIZATIONS
Professor Jill Manny
Fall 2017

REQUIRED MATERIALS

Purchase the casebook entitled "Cases and Materials on Nonprofit Organizations, Fifth Edition,"¹ by Fishman, Schwarz, and Mayer, along with the 2015 Edition of the Statutory Supplement, at the N.Y.U. Bookstore.

ASSIGNMENTS (for the first month of the semester)

August 30 and September 6 — Introduction

1. In the Casebook, read:

pp. 3 – 15, 25 – 39. Prepare a written outline of your answer to the Introductory Problem on p. 39 for your own reference during class discussion.

2. In the Statutory Supplement, read:

Code² § 501(a), (b), (c)(1) – (29). Focus on § 501(c)(3) – (7); Other sections may be skimmed.
§ 170(a), (b), (c)
§ 508(a), (b), (c)

Form 1023, Application for Exemption Under Section 501(c)(3) of the Internal Revenue Code, p. 1012 (skim to determine what the IRS is interested in discovering). Compare to “streamlined” Form 1023-EZ, p. 1040.

3. On the Web, briefly visit the following sites:

www.metmuseum.org
www.komen.org
www.fordfound.org
www.now.org
www.abanet.org
www.pga.org

¹ Be sure to purchase this title and not “Taxation of Nonprofit Organizations” by the same authors.

² “Code” refers to the Internal Revenue Code. “Regulations” refers to the Treasury Regulations. The relevant Code and Regulations provisions generally can be found in the Statutory Supplement.

Note the similarities and differences between the purposes and activities of the different organizations. If you were to group these organizations based on similarities, how might you group them? We will return to these web sites throughout the semester when we focus on (1) organizational purposes; (2) fundraising and corporate sponsorship activities; (3) compensation of officers and directors; (4) commercial activities; (5) lobbying and political activities.

4. Read the four articles posted on NYUClasses:

Robert B. Reich, Is Harvard a Charity?, L.A. Times, Oct. 2007, at A 13.

Michael Cohn, Tax Court Says Sperm Donor's Foundation Does Not Qualify as a Charity, WebCPA DEBITS&CREDITS, July 22, 2010.

Pierre Omidyar, How I Did It: EBay's Founder on Innovating the Business Model of Social Change, HARV. BUS. REV., Sept. 1, 2011, <https://hbr.org/2011/09/ebays-founder-on-innovating-the-business-model-of-social-change>.

Gene Steuerle, The Zuckerberg Charitable Pledge and Giving from One's Wealth, THE GOVERNMENT WE DESERVE, Jan. 11, 2016, <http://blog.governmentwedeserve.org/2016/01/11/the-zuckerberg-charitable-pledge-and-giving-from-ones-wealth/>.

September 11 — Organization Under State Law

1. In the Casebook, read:

pp. 43 – 65; 68 – 72. Prepare a written outline of your answers to the problems on p. 54 for your own reference during class discussion.

2. In the Statutory Supplement, read:

Model Nonprofit Corp. Act (3d ed.): §§ 2.01-2.06, 3.01-3.02.
N.Y. Not-for-Profit Corp. Law: §§ 201, 202, 204, 404-406, 508, 515.
Cal. Corp. Code: §§ 5111, 5130, 5410.
Restatement of the Law Third, Trusts: § 28.
Sample Articles of Organization, p. 906.
Sample ByLaws, p. 908 (skim).
Sample Charitable Trust, p. 914 (skim).

September 13 — Dissolution and Distribution of Assets

1. In the Casebook, read:

pp. 73 – 103. Prepare a written outline of your answers to Problems 1, 2, 3, and 5 on p. 89 and Problem 1 on p. 92 for your own reference during class discussion.
2. In the Statutory Supplement, read:

Restatement of the Law Third, Trusts, §§ 66 and 67.

September 18 and 20— Tax-Exempt Status; Charitable Requirement; Disaster Relief

1. In the Casebook, read:

pp. 271 – 299; 337 – 342; 344 – 370. Prepare a written outline of your answers to Problems (a) and (b) on p. 342 for your own reference during class discussion.
2. In the Statutory Supplement, read:

Code: § 501(c)(3) [again].
Regulations: §§ 1.501(c)(3)-1(a), (b), (c); 1.501(c)(3)-1(d)(1), (2).
3. On NYUClasses read:

Massimo Calabresi, IRS to Rubber-Stamp Tax-Exempt Status for Most Charities After Scandal, available at <http://time.com/2979612/irs-scandal-tax-exempt-tea-party-political-groups-john-koskinen/> (2014).

September 25 and 27— Private Inurement, Private Benefit, and Excess Benefit Transactions

1. In the Casebook, read:

pp. 416 – 442, 226 – 233 (through Note 1). Prepare a written outline of your answers to Problems 1(a)-(e) and 2 on pp. 443 – 444 for your own reference during class discussion.

2. In the Statutory Supplement, read:

Code: § 4958.

Regulations: §§ 1.501(c)(3)-1(c)(2).

3. Read the articles and report posted on NYUClasses:

Cornelia Dean, *Wealthy Stake \$25 Million in a War With the Sea*, N.Y. Times, July 8, 2007.

Pia Catton, *National Arts Club Cleans House*, Wall Street Journal, September 7, 2011.

Office of the Inspector General, Commonwealth of Massachusetts, *Review of Spending Practices by Former Westfield State University President Evan S. Dobelle*, July 31, 2014. Read the “Executive Summary,” “Background,” and “Conclusions and Recommendations.” The remainder is optional reading.

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October 2—Educational Organizations

1. In the Casebook, read:

pp. 371 – 386. Prepare a written outline of your answers to the Problems on pp. 386 – 387 for your own reference during class discussion.
2. In the Statutory Supplement, read:

Regulations: §§ 1.501(c)(3)-1(d)(3).
3. On NYUClasses read:

David J. Herzig and Samuel D. Brunson, Opinion: White Supremacist Groups Don't Deserve Tax Exemptions, N.Y. Times, August 29, 2017.

October 4— Religious Organizations and Health Care Organizations

1. In the Casebook, read:

pp. 387 – 402; 299 – 319. Prepare a written outline of your answers to Problems (a) and (c) on p. 403 and to Problems (a) – (c) and (e) on pp. 319 – 320 for your own reference during class discussion.
2. On NYUClasses read:

Priv. Ltr. Rul. 2012-32-034 (May 16, 2012).

October 9— Miscellaneous Organizations

1. In the Casebook, read:

pp. 326 – 332 and 403 - 410. Prepare a written outline of your answers to the Problems on pp. 332 – 333 and Problems (a) and (c) on pp. 410 – 411 for your own reference during class discussion.

2. In the Statutory Supplement, read:

Code: § 501(j).

Regulations: §§ 1.501(c)(3)-1(d)(4), (5).

October 11— Commercial Activities

1. In the Casebook, read:
pp. 527 – 547. Prepare a written outline of your answers to Problems (a), (b), and (f) – (i) on pp. 547 – 549 your own reference during class discussion.
2. In the Statutory Supplement, read:

Code: § 502.

Regulations: §§ 1.501(c)(3) - 1(c)(1) and -1(e).

October 16 and 18 — Limitations on Lobbying

1. In the Casebook, read:

pp. 445 – 461. Prepare a written outline of your answers to all portions of the Problem on pp. 461 – 462 for your own reference during class discussion.
2. In the Statutory Supplement, read:

Code: §§ 501(c)(3), (4); 501(h); 504; 4911; 4912; 4955; 6033(b)(8).

October 23 – Limitations on Political Campaign Activities

1. In the Casebook, read:

pp. 463 – 505. Prepare a written outline of your answers to all portions of the Problem on pp. 499 – 500 for your own reference during class discussion.
2. In the Statutory Supplement, read:

Code §§ 501(c)(3), (4); 527; 4955.

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October 30 and November 1—Introduction to Private Foundations and their Alternatives

1. In the Casebook, read:

pp. 649 – 650, 657 – 676, 679 – 697, 702 – 704. Prepare a written outline of your answers to problems 1(a), (b), and (f) on pp. 678 – 679 and the Problem on p. 690 **using all relevant tests** (§§ 170(b)(1)(A)(vi) and 509(a)(2)) for your own reference during class discussion.

2. In the Statutory Supplement, read:

Code: §§ 507(d)(2); 509(a) – (e); 170(b)(1)(A)(i) - (vi); 4942(j); 4946.

November 6— Private Foundation Excise Taxes

1. In the Casebook, read:

pp. 704 (bottom) – 707, 708 – 718, 720 – 725, 727 – 730, 731 – 743 ignoring all problem sets that are not specifically assigned. Prepare a written outline of your answers to the problems 1(a)-(g) and 2 on pp. 718 – 719, and problems (a) – (e), (g), and (i) on pp. 741 – 743 for your own reference during class discussion.

2. In the Statutory Supplement, read or re-read:

Code: §§ 4940; 4941; 4945; 4946.

November 8—Class Cancelled

Will be rescheduled.

November 13 and 15 — Unrelated Business Income Tax

1. In the Casebook, read:

pp. 549 – 586. Prepare a written outline of your answers to the problems on pp. 586 – 587 (excluding problem 1(d)).

2. In the Statutory Supplement, read:

Code: §§ 511(a), (b); 513(a), (c), (f), (h), (i).
Regulations: § 1.513-4.

3. On NYUClasses read:

Ruth La Ferla, *The Artist's Fall Collection*, N.Y. TIMES, Nov. 8, 2007.

4. On the Web, visit www.metmuseum.org/store (or go to a Metropolitan Museum of Art shop or the shop of another cultural institution). Think about sales of which items might generate unrelated business income.

November 20—Exclusions from UBTI

1. In the Casebook, read:

pp. 588 – 592. Prepare a written outline of your answers to the problems on p. 593 – 594 for your own reference during class discussion.

2. In the Statutory Supplement, read:

Code: § 512(a), (b)(1)-(5), (7) - (9), (13), (15).

November 22—Joint Ventures, Social Enterprise Organizations, and Hybrid Forms

1. In the Casebook, read:

pp. 620 – 640; 646 – 648. Prepare a written outline of your answers to the problem on p. 640 and the problem on p. 648.

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December 4 and 6—Nonprofit Operation and Governance

1. On NYUClasses, read:

Michael Klausner & Jonathan Small, *Failing to Govern? The Reality of Nonprofit Boards*, STAN. SOC. INNOVATION REV., Spring 2005, at 42.

IRS, Good Governance Practices.

Independent Sector, Principles for Good Governance and Ethical Practice—**Optional Reading**.

2. In the Casebook, read:

pp. 109 – 114, 120 – 152, 155 (Notes) – 172, 181 (only “Duty of Obedience” paragraph). Prepare a written outline of your answers to the problems on pp. 143 – 144 and Problems (a)-(c), (g), and (h) on pp. 179 – 181 for your own reference during class discussion.

3. In the Statutory Supplement, read:

Form 990. Focus on Part VI, Governance, Management, and Disclosure, p. 947.

Model Nonprofit Corporation Act (3d ed.): 8.01, 8.04-8.05, 8.20-8.21, 8.30 – 8.33, 8.41, 8.42, 8.50-8.58, 8.60. 8.70.

N.Y. Not-for-Profit Corp. Law 715, 715-a, 716, 717, 719, 720-a.