

# LAW OF NONPROFIT ORGANIZATIONS

Brooklyn Law School

Spring 2017 (updated Summer 2018)

Professor Dana Brakman Reiser

## Syllabus

**COURSE OVERVIEW:** This is a three-credit upper-class elective. It will meet on 21 Tuesdays and Thursdays throughout the semester, from 1:55-3:45 p.m. in Room 502. The specific dates we will meet are listed below. The course will analyze the role of private, nonprofit organizations in contemporary society and the legal issues they face. We will address theoretical issues raised by the nonprofit form, corporate issues arising in the nonprofit context, tax issues relating to nonprofit organizations, and other current issues. A significant portion of the course will involve discussion of tax-exemption and its consequences.

**MATERIALS:** The casebook is JAMES J. FISHMAN, STEPHEN SCHWARZ & LLOYD HITOSHI MAYER, *NONPROFIT ORGANIZATIONS: CASES AND MATERIALS* (5th ed. 2015) [hereinafter FISHMAN ET AL.]. Most assignments will include references to statutes and regulations and you will be responsible for them. You may purchase the Statutory Supplement to access these materials, or you may obtain them online or from the library.

**ASSIGNMENTS:** This syllabus is intended to cover our entire class. If necessary, however, I will make changes to it in response to our progress and provide you with a revised version. In many assignments, the pages will include statutory references noted in boldface in the text. You are always responsible for preparing these statutory materials, but when we will devote significant class time to discussing specific provisions, I have noted the sections on this syllabus. The pages assigned also often will include problems. We will spend significant time discussing some problems in class; others will be left for you to work through on your own. You always should review these problems, to test your knowledge and understanding. However, I have noted on the syllabus those problems that you should be prepared to discuss at length in class.

**RECORDING:** Students are not permitted to make recordings of this class. Upon request, I will arrange to record class if multiple students will be unable attend due to a common conflict.

**GRADING:** Grades for this class will be calculated based on two components: a policy paper of no more than 1500 words (35%) and a final exam (65%). Students will have a choice of writing the policy paper at two different times during the semester. The first paper topic will be announced in early February, and papers on this topic will be due two weeks later. Students who do not write the first paper must write the second. This topic will be distributed at the end of March; papers again will be due two weeks later.

**APPOINTMENTS:** If you would like to speak with me outside of class, please contact me at [dana.brakman@brooklaw.edu](mailto:dana.brakman@brooklaw.edu) or (718) 780-0396 to arrange an appointment.

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## **PART I: INTRODUCTION TO THE NONPROFIT SECTOR, NONPROFIT THEORY, AND RELEVANT LEGAL REGIMES**

### **Assignment 1 – Scope and Nature of the Nonprofit Sector; Intro to Nonprofit Theory**

January 17, 2017

FISHMAN ET AL., pp. 1-21, 25-32, 646-48.

Revised Model Nonprofit Corporation Act § 13.01.

### **Assignment 2 – Nonprofit Theory Continued; Intro to Organizational Issues**

January 19, 2017

FISHMAN ET AL., pp. 32-33; Supplemental Reading for Assignment 2 (available on webcourse or in hard copy at first class); FISHMAN ET AL., pp. 33-35, 43-54.

Prepare Introductory Problem on p. 39 and Problem 1 on pp. 54 (except for research on NY nonprofit law).

### **Assignment 3 – Introduction to Income Tax Exemption and Exemption Theory**

January 24, 2017

FISHMAN ET AL., pp. 35-39, 271-89, 291-93.

Internal Revenue Code [hereinafter IRC] § 501(c)(3).

### **Assignment 4 – Other Tax Benefits: Property Tax Exemption and Deductible Contributions**

January 26, 2017

FISHMAN ET AL., pp. 289-90, 411-16, 745-49, 755-67(stop at “International Giving”), 772-73(two ¶s on “Form and Timing”), 775-82, 793-94(stop at “Gifts of Capital Gain Property”).

IRC § 170(c)

## **PART II: REGULATION OF NONPROFIT ORGANIZATIONS AND THEIR ACTIVITIES**

### **Assignment 5 – The Public Policy Limitation; Charitable Purpose Requirements**

January 31, 2017

FISHMAN ET AL., pp. 55-57, 344-63, 369-70(Note 9), 63-70, 296-305, 314-19(Notes 3-6).

Treas. Reg. § 1.501(c)(3)-1(d)(2).

**Assignment 6 – Educational, Religious and Other Charitable Purposes**  
February 7, 2017

FISHMAN ET AL., pp. 371-403.  
Treas. Reg. §1.501(c)(3)-1(d)(3).

**Assignment 7 – Limits on Commercial Activity**  
February 14, 2017 **\*\*N.B. Class cancelled for Feb. 9 SNOW DAY**

FISHMAN ET AL., pp. 57-63, 527-36, 542-49, 620-40.  
Treas. Reg. §1.501(c)(3)-1(e).  
Review Introductory Problem on p. 39, considering commerciality issues.

**\*\*\*Policy Paper 1 Distributed – DUE DATE: February 28\*\*\***

**Assignment 8 – Unrelated Business Income Taxation (UBIT)**  
February 16, 2017

FISHMAN ET AL., pp. 549-60(skim), 553-62, 567-86, 588-92.  
Review Problem on p. 54 considering UBIT, and prepare Problem 1(e) on p. 594.

**Assignment 9 – Hybrid Forms and Social Enterprise**  
February 23, 2017  
Review FISHMAN ET AL., pp. 646-48.  
Supplemental Materials on Hybrid Forms and Social Enterprise  
Prepare Problem on p. 648.

**Assignment 10 – Dissolution (I)**  
March 2, 2017

FISHMAN ET AL., pp. 69-70(stop at Note 1), 73-89.  
Prepare Heye Problem.  
[**Note:** Please be sure to comprehensively prepare the Problem, to which significant class time will be devoted.]

**Assignment 11 – Dissolution (II)**

March 7, 2017

FISHMAN ET AL., pp. 89-107.

**PART III: REGULATION OF NONPROFIT ACTORS****Assignment 12 B Introduction to Fiduciary Duty; Duty of Care**

March 9, 2017

FISHMAN ET AL., pp. 109-44, 144-49 (skim only).

**\*\*\*SPRING BREAK: March 13-17\*\*\***

**Assignment 13 – Duty of Loyalty**

March 23, 2017

FISHMAN ET AL., pp. 149-71.

Prepare the United Way Problem.

**Assignment 14 – Advanced Issues in Fiduciary Duty**

March 28, 2017

FISHMAN ET AL., pp. 171-78, 184-99, 425-29, 178-84.

**Assignment 15 – Enforcement of Fiduciary Duty**

March 30, 2017 – Guest Speaker: Stephen Yosifon, BLS Alum and Associate at Perlman & Perlman

FISHMAN ET AL., pp. 199-218.

**\*\*\*Policy Paper 2 Distributed – DUE DATE: April 13\*\*\***

**Assignment 16 – Tax Regulation of Nonprofit Actors: Private Benefit, Inurement, § 4958**

April 4, 2017

FISHMAN ET AL., pp. 416-24, 429-31, 226-33(United Cancer Council and Note 1), 431-45.

IRC § 4958

Prepare Problems 1(a), (b) & (d) on pp. 443-45.

## **PART IV: ADVANCED ISSUES IN NONPROFIT REGULATION**

### **Assignment 17 – Political Restrictions: “Substantial” Lobbying, Campaign Activity**

April 6, 2017: Guest Speaker, Terence Dougherty, Chief Operating Officer & General Counsel, ACLU

FISHMAN ET AL., pp. 445-52, 463 (stop at Revenue Ruling), 474-76, 477-94.

Treas. Reg. § 1.501(c)(3) - 1(c)(3); IRC § 4955.

### **Assignment 18 – Political Restrictions: Lobbying under § 501(h); Affiliated Structures**

April 13, 2017

FISHMAN ET AL., pp. 452-62, 494-506.

IRC §§ 501(h), 4911; Treas. Reg. §§ 56.4911.

Prepare Problems 1(a), (b) and (e) on pp. 461-62. [N.B. The reading assignment is relatively light, but the problem is complicated. Please spend extra time on it; the Treas. Regs. will help.]

### **Assignment 19 - Regulation of Charitable Solicitation**

April 18, 2017

FISHMAN ET AL., pp. 219-26, 233 (begin at Note 2) -54, 259-67.

### **Assignment 20 – Private Foundations: Introduction and Classifications**

April 20, 2017

FISHMAN ET AL., pp. 649-50, 656-57(Note), 666-68, 679-90.

IRC §§ 509(a)(1)-(3); Treas. Reg. §§1.170A-9; 1.509(a)-3.

Prepare Problem on p. 690. [N.B. This Problem is complex and may carry over to our next class. Still, please thoroughly work through it on your own. Again, the Treas. Reg. will help.]

### **LAST CLASS**

### **Assignment 21 – Private Foundations: Excise Taxes and Alternatives**

April 25, 2017

FISHMAN ET AL., pp. 668-76, 661(start at “Community Foundations”)-66; Dana Brakman Reiser, *The Rise of Philanthropy LLCs*, 16 STANFORD SOCIAL INNOVATION REVIEW 26-33 (Summer 2018).