

Law 6314-10
Monday 3:50-5:40
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NONPROFIT ORGANIZATIONS: LAW AND TAXATION

This course examines nonprofit organizations from the perspective of both state and federal law. The nonprofit universe includes not only charities, but many other types of organizations, such as labor groups, trade associations, veterans groups, advocacy organizations, and certain kinds of social clubs. We will look at the advantages that nonprofit status affords as well as the special responsibilities that nonprofits are expected to assume in exchange for these advantages.

We will examine various types of state law regulation of nonprofits, in particular, limitations on the purposes for which nonprofits can be established under state law, regulation of charitable solicitations, fiduciary standards for directors and officers of nonprofits, and constitutional and other limitations on the practices of private associations.

On the federal side, we will examine the tax status of different types of nonprofits, what purposes entitle nonprofit groups to treatment as charities, what role the different types of nonprofits are permitted to play in politics and legislative matters, what types of commercial activities they can engage in, and what contributions qualify as tax-favored deductions. We will also study the ability of associations to exclude people from membership or expel members, and the ways in which the discrimination laws and first amendment rights are altered in the context of certain nonprofit associations.

The course will meet two hours a week and classes will be conducted primarily as discussions. Your grade will be based upon the exam except that you may receive a step-up for voluntary and thoughtful class participation. You will also receive a step down for numerous absences from class.

My office hours are Tuesdays and Wednesdays from 4:00 P.M. to 5:00 P.M. If my office hours are inconvenient for you, please get in touch with me so we can arrange a convenient time for you to come by. (Office, e-mail, and phone are above.) I am in my office almost constantly, and I welcome visits from students.

ABBREVIATIONS

- CB Elizabeth Schmidt, Nonprofit Law: The Life Cycle of a Charitable Organization (2011)
- Model Revised Model Nonprofit Corporation Act (3rd ed.), available at Google, search “model nonprofit corporation act” and “3rd ed”
- Cal California Corporations Code, available at <http://www.paralegal-plus.com/ca-codes.htm> or <http://caselaw.lp.findlaw.com/cacodes/corp.html> and then click on the sections you are seeking
- NY New York Not-for-Profit Corporate Law, available at <http://caselaw.lp.findlaw.com/nycodes/c76.html> and click on the article with the same number as the code section you are seeking
- IRC Internal Revenue Code, available on Lexis, Westlaw, and <http://www.irs.gov/taxpros/article/0,,id=98137,00.html> and enter section number in box

ASSIGNMENTS

CLASS No. 1: INTRODUCTION TO THE NONPROFIT SECTOR

INTRODUCTION TO THE LAW OF CHARITABLE ORGANIZATIONS

i. What Is the Nonprofit Sector?

CB 3-12

ii. Historical and Descriptive Overview

CB 12-23 (read the Figures carefully)

Handouts (available in room across from Records, as of August 23)

iii. Rationales for the Nonprofit Sector

CB 23-37

iv. Challenging Assumptions about the Sector

CB 37-40

STATE LAW TREATMENT OF NONPROFITS

CLASS No. 2: STARTING THE ORGANIZATION AT THE STATE LEVEL

i. Introduction

CB 41-42

ii. Considerations of Form When Setting up a Nonprofit Organization

CB 42-49

iii. Legitimate Purposes of Nonprofit Corporations

CB 50-62

Model 3.01, 6.40-.41 (CB 61)

NY 201, 204, 501, 508, 515 (CB 59-60)

Cal 5111, 5410, 5420 (CB 60-61)

7110- 7111, 9110-9111 (handout or online)

iv. Articles of Incorporation

CB 62-71

v. Bylaws

CB 71-79 (top), 83-84

THE BOARD OF DIRECTORS AND THEIR GOVERNANCE ROLE

i. Introduction

CB 87-88

ii. General Concepts of Governance

CB 88-100

NY 701-703, 706-707, 710-711 (CB 89-91)

CAL 5210, 5220-5222, 5224, 5227 (CB 91-92)

Model 8.01-8.12, 8.20-24 (CB 93-97)

CLASS No. 3: BOARD OF DIRECTORS AND THEIR GOVERNANCE ROLE (con't)

iii. Fiduciary Duties of the Board of Directors

CB 100-125

Model 8.30, 8.32, 8.60, 8.70 (CB 101-103)

UPMIFA section 3 (CB 117-119)

iv. A Blueprint for Good Governance...Saga of the Smithsonian Institution

CB 125-135

v. Enforcement of Directors' Duties

CB 135-146,

Model 8.32, 8.51-.52, 8.57 (CB 138-139)

CAL 5142 (CB 140)

vi. Donor Intent

CB 283-292

CLASS No. 4: CHARITABLE SOLICITATIONS

i. Introduction

CB 293-294

ii. State Law Requirements

CB 294-303

Model Solicitation Act sections 1-7 (CB 295-99)

iii. Charitable Solicitation in the Digital Age

CB 303-307

iv. Constitutional Issues

CB 307-320 (look carefully at the cases described in the introduction)

ENDING THE NONPROFIT ORGANIZATION: CY PRES AND DEVIATION

i. Introduction

CB 645-646

ii. Cy Pres and Deviation

CB 646-661

FEDERAL TAX TREATMENT OF CHARITIES AND OTHER NONPROFITS

CLASS No. 5: TAX-EXEMPT PURPOSES OF 501(c)(3) ORGANIZATIONS

i. Introduction

CB 147-148

ii. Rationales for Charitable Tax Exemption

CB 148-162

iii. An Introduction to the Statute and Its Regulations

CB 163-165

IRC 501(c)(3) (CB 363)

Treas. Reg. 1.501(c)(3)-1(d)(1)(i)-(ii) (online or handout)

Treas. Reg. 1.501(c)(3)-1(d)(2) (CB 163-164)

iv. “Charitable” and the Public Policy Limitation

CB 165-185

v. Section 501(c)(3) Purposes: Health Care

CB 185-206

CLASS No. 6: TAX-EXEMPT PURPOSES (con’t)

vi. Section 501(c)(3) Purposes: Disaster Relief

CB 206-211

vii. Section 501(c)(3) Purposes: The Concept of “Charitable”

CB 211-212

viii. Section 501(c)(3) Purposes: Educational Organizations

CB 213-231 (when reading *Nationalist Movement*, keep in mind that *Big Mama Rag* came first, then *National Alliance*, then Rev. Proc. 86-43, then *Nationalist Movement*. What is the legal status of the regulation today?)

Treas. Reg. 1.501(c)(3)-1(d)(3)

ix. Section 501(c)(3) Purposes: Religious Organizations

CB 231-245

x. State and Local Charitable Tax Exemptions

CB 246-249

CLASS No. 7: CHARITABLE CONTRIBUTIONS

i. Introduction

CB 255-256

ii. Rationale for the Charitable Deduction

CB 256-263

iii. Proper Recipients of A Charitable Gift

IRC 170(a)(1), (c) (CB 263-264)

iv. What Is A Charitable Gift?

CB 264-281

v. Brief Overview of Other Charitable Contribution Issues

CB 281-283

INUREMENT, PRIVATE BENEFIT, AND EXCESS BENEFIT TRANSACTIONS

i. Introduction

CB 441-442

ii. Inurement

CB 442-449

Treas. Reg. 1.501(c)(3)-1(c)(2), 1.501(a)-1(c) (CB 443)

iii. Private Benefit

CB 457-461

Treas. Reg. 1.501(c)(3)-1(d)(1)(ii)-(iii)

iv. Intermediate Sanctions, Excess Benefit Transactions

CB 461

CB 464-72 (bottom)

CLASS No. 8: RELATIONSHIP BETWEEN INUREMENT AND INTERMEDIATE SANCTIONS

CB 480-483 (up to Example 3), 485-487 (skip question no. 1)

ADVOCACY ACTIVITIES: LOBBYING

i. Introduction

CB 541-543

ii. Lobbying

CB 543-546

iii. Constitutionality of the Lobbying Restrictions

CB 546-557

iv. The No Substantial Part Test

Slee v. Commissioner, 42 F.2d 184 (1930) (handout or online)

CB 557-563

IRC 501(c)(3), 504, 4912 (CB 557-559)

Treas. reg. §§ 1.501(c)(3)-1(c)(3) (CB 558), -1(d)(2) (CB 163-164)

v. The 501(h) Expenditure Test

CB 563-569

IRC §§ 501(h), 4911(a)-(e)(3) (CB 564-569)

Treas. reg. § 1.501(h)-3(b) (CB 569)

Treas. reg. § 56.4911-2 (handout or online)

vi. 501(c)(4) Organizations

IRC 501(c)(4)

Treas. reg. § 1.501(c)(4)-1 (handout or online)

CLASS No. 9: ADVOCACY ACTIVITIES: POLITICAL ACTIVITY

i. What Is Political Activity/Political Intervention?

CB 574-592 (except CB 575-577 top)

IRC 501(c)(3) (CB 363)

Treas. Reg. § 1.501(c)(3)-1(c)(1)(iii) (CB 574-575) (read entire -1(c) regulation)

Rev. Rul. 78-248 (handout or online)

Rev. Rul. 80-282 (handout or online)

ii. Sanctions

IRC § 4955(a)-(e) (CB 575-576)

PACI (handout or online)

iii. The 501(c)(4) Alternative

CB 592-595

iv. Section 527 Organizations

v. Other Regulation of Political Activities: FECA

CLASS No. 10: COMMERCIAL ACTIVITIES AND UNRELATED BUSINESS INCOME TAX (UBIT)

i. Introduction

CB 377-78

ii. Nonprofit Commercial Activities: Policy Considerations and Statistics

CB 578-385

iii. Section 501(c)(3) Considerations about Commercial Activity

CB 386-404

IRC 501(c)(3) (CB 386)

Treas. Reg. § 1.501(c)(3)-1(c)(1), -1(e) (CB 386)

iv. Unrelated Business Income

CB 405-427

IRC §§ 511(a) (CB 406-407)

IRC § 512(a)(1), 512(b)(1)-(5), (7)-(9) (CB 407-408)

IRC § 513(a), (c), (h)

vi. Exceptions and Modifications

CB 427-436

CLASS No. 11: PRIVATE FOUNDATIONS AND THEIR ALTERNATIVES

i. Introduction

CB 321-322

ii. History behind the Creation of the Private Foundation Rules

CB 322-26

iii. Overview of Federal Tax Treatment of Private Foundations

CB 326-341

iv. Distinction between Public Charity and Private Foundation

CB 341-355

IRC 170(b)(1)(A) (CB 343-344)

IRC 509(a)(1)-(2) (handout or online)

v. Private Foundation Alternatives

(1) Supporting Organizations

CB 355-365

IRC 509(a)(3)

(2) Donor-Advised Funds and Sponsoring Organizations

CB 365-375 (omit ## 4-5)

CLASS No. 12: COMPLEX COMMERCIAL TRANSACTIONS

i. Introduction

CB 489-496

ii. Subsidiaries of 501(c)(3) Organizations

CB 496-515

iii. Joint Ventures

CB 515-537

iv. The Evolution of the Social Enterprise or the Hybrid Organization

CB 537-540

**CLASS No. 13: PRIVATE MEMBERSHIP ASSOCIATIONS:
INCLUSION AND EXCLUSION OF MEMBERS**

Materials to be provided:

Roberts v US Jaycees, 468 U.S. 609 (1984)

Boy Scouts of America v. Dale, 530 U.S. 640 (2000)

CALIFORNIA CORPORATIONS CODE

§ 9110. This part shall be known and may be cited as the Nonprofit Religious Corporation Law.

§ 9111. Subject to any other provision of law of this state applying to the particular class of corporation or line of activity, a corporation may be formed under this part primarily or exclusively for any religious purposes.

§ 9610. (a) The provisions of Chapter 4 (commencing with Section 5410) of Part 2 [no distributions permitted] apply to religious corporations except for subdivision (b) of Section 5420 [who can sue to recover distributions].

(b) Suit may be brought in the name of the corporation by a creditor, a director, or the authorized number of members. In any such action in addition to the remedy provided in subdivision (a) of Section 5420, the court may award punitive damages for the benefit of the corporation against any director, officer, member or other person who with intent to defraud the corporation caused, received or aided and abetted in the making of any distribution.

NEW YORK NPCL

§ 623. Members' derivative action brought in the right of the corporation to procure a judgment in its favor

(a) An action may be brought in the right of a domestic or foreign corporation to procure a judgment in its favor by five percent or more of any class of members or by such percentage of the holders of capital certificates or of the owners of a beneficial interest in the capital certificates of such corporation. (b) In any such action, it shall be made to appear that each plaintiff is such a member, holder or owner at the time of bringing the action. (c) In any such action, the complaint shall set forth with particularity the efforts of the plaintiff or plaintiffs to secure the initiation of such action by the board of the reason for not making such effort. (d) Such action shall not be discontinued, compromised or settled without the approval of the court having jurisdiction of the action. If the court shall determine that the interests of the members or of any class or classes thereof will be substantially affected by such discontinuance, compromise or settlement, the court, in its discretion, may direct that notice, by publication or otherwise, shall be given to the members or class or classes thereof whose interests it determines will be so affected; if notice is so directed to be given, the court may determine which one or more of the parties to the action shall bear the expense of giving the same, in such amount as the court shall determine and find to be reasonable in the circumstances, and the amount of such expense shall be awarded as special costs of the action and recoverable in the same manner as statutory taxable costs. (e) If the action on behalf of the corporation was successful, in whole or in part, or if anything was received by the plaintiff or plaintiffs or a claimant or claimants as the result of a judgment, compromise or settlement of an action or claim, the court may award the plaintiff or plaintiffs, claimant or claimants, reasonable expenses, including reasonable attorney's fees, and shall direct him or them to account to the corporation for the remainder of the proceeds so received by him or them. This paragraph shall not apply to any judgment rendered for the benefit of injured members or non-record owners only and limited to a recovery of the loss or damage sustained by them.