

**NOT-FOR-PROFIT ORGANIZATIONS**  
**Fall 2019 – Professor Lloyd Mayer**

Monday, Wednesday  
11:10 a.m. – 12:25 p.m.  
Eck 2108

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Office: Eck 3155  
Phone: 631-8057

**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., Nonprofit Organizations: Statutes, Regulations, and Forms (2015)
- Fishman et al., Student Update Memorandum (2019) (available on course website)
- 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: Sakai**

General course documents, handouts, IRS forms, class slides, and other materials will be posted on the Sakai website for this course.

## **Class Meetings: MW, 11:10 a.m. – 12:25 p.m., Eck 2108**

I do not anticipate having to cancel any regularly scheduled class meetings. That said, please note that we will meet on Monday, December 9th, at our normal time and location, to make-up for the class meeting we will miss because of Thanksgiving break. That meeting will be the review session for the course and therefore 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 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 Ja
- Panel 2: Jb to P
- Panel 3: Q to 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 will be 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. 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, in-class 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 Christine Holst. 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); Arnold L. Glass & Mengxue Kang, [Dividing Attention in the Classroom Reduces Exam Performance](#), Educational Psychology, July 26, 2018; 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 for 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 & Office Hours

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, 574-631-8057, where I have voice mail.

I am available to meet with students in my office (**Eck 3155**, in the third-floor suite nearest the elevator) during the following office hours when classes are in session:

- Monday, 2:30 to 4:30 p.m.
- Tuesday, 2:30 to 4:30 p.m.
- Wednesdays, 2:30 to 4:30 p.m.

If you would like to meet outside of these specific days and times, please email me so we can find a day and time that works for both of us.

Please note, however, that I am not available to meet on December 10th thru 12th because I will be out-of-town.

### **Support for Student Mental Health at Notre Dame**

Law students are eligible to receive support from a variety of wellness resources offered by the University, including the Law School's dedicated Care and Wellness Consultant Stella Miller ([stella.miller@nd.edu](mailto:stella.miller@nd.edu)). You may schedule an appointment with her through [www.calendly.com/stellamiller](http://www.calendly.com/stellamiller), or you may contact any other Care and Wellness Consultant if you prefer. Care and Wellness Consultants provide support and resources to students who are experiencing stressful or difficult situations that may be interfering with academic progress. Through Care and Wellness Consultants, students can be referred to The University Counseling Center (for cost-free and confidential psychological and psychiatric services from licensed professionals), University Health Services (which provides primary care, psychiatric services, case management, and a pharmacy), and The McDonald Center for Student Well Being (for problems with sleep, stress, and substance use). Visit [care.nd.edu](http://care.nd.edu).

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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 26th: Overview**

*Fishman:* 3-9 (stop at “This is not a new phenomenon.”), 12-15, 25-39 (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 28th: 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:* 4-5 (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, September 2nd: Cy Pres and Deviation**

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

*Update:* 6-7 (Girard College; Berkshire Museum)

**Wednesday, September 4th: Dissolution, Distribution of Assets, and Restructuring**

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

*Update:* 7 (Hospital Conversions; Conversion of Higher Education Institutions)

*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 9th: 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 11th: 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. §§ 715, 715-a, 716 (pp. 84-86, 87)

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

*Update:* N.Y. Not-for-Profit Corp. L. §§ 515(b), 715, 715-a (pp. 53, 55-57)

**Monday, September 16th: Investment Responsibility and Enforcement**

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

*Update:* 8 (Obstacles to Enforcement)

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

**Wednesday, September 18th: Regulation of Charitable Solicitation**

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

*Update:* 8 (update for Introduction)

**PART THREE: TAX EXEMPTION**

**Monday, September 23rd: Rationale and Exemption Introduction**

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

*Update:* 9-10 (Form 1023-EZ), 18-19 (updates for Information Return)

*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 25th: Charitable Exemption**

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

*Update:* 10-11 (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 30th: Public Policy Limitation**

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

*Update:* 12 (Bob Jones University Update)

**Wednesday, October 2nd: Educational Exemption**

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

*Update:* 12-14 (Hate Groups; IRS and Congressional Scrutiny)

*Selected §§:* Treas. Reg. § 1.501(c)(3)-1(d)(3) (pp. 510-511)

*Update:* I.R.C. § 4968 (pp. 44-46)

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

**Monday, October 7th: Religious Exemption**

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

**Wednesday, October 9th: 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)

*Update:* 15-17 (update for Note: Executive and Trustee Compensation)

*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)

*Update:* I.R.C. § 4960(a) to (c)(4) (pp. 41-43)

**Monday, October 14th: 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 16th: Political Campaign Limitations**

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

*Update:* 17-18 (update for Constitutional Issues; The Noncharitable § 501(c)(4) Alternative)

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

**Monday, October 21st & Wednesday, October 23rd: MID-SEMESTER BREAK**

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

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

#### **Monday, October 28th: Commercial Activities**

*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 30th: 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 (updates for Imposition and Rates of Tax)

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

#### **Monday, November 4th: 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)

*Update:* 20-22 (updates for Other Computation Issues)

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

### ***Private Foundations***

#### **Wednesday, November 6th: Introduction**

*Fishman:* 649-653, 656-657 (Legal Status and Note), 661 (Section A.3 intro only), 664 (starting at Notes)-672, 678-679 (problems 1(a), (b) & (f)), 704 (Section C.6 only)

*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 11th: 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:* 25 (International Grantmaking)

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

### ***Charitable Contributions***

#### **Wednesday, November 13th: Introduction & Policy Issues**

*Fishman:* 745-766

*Update:* 25-26 (Rethinking the Charitable Deduction)



**Monday, November 18th: Basic Principles**

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

*Update:* 26-28 (Grants to Foreign Charities; updates for Return Benefits, Percentage Limitations, Substantiation)

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

**Wednesday, November 20th: Noncash Contributions and Planned Giving**

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

*Update:* 28-29 (updates for Noncash Contributions)

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

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

**Monday, November 25th: Social Welfare, Labor, and Trade Organizations**

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

*Update:* 30-31 (updates for Procedural Issues, Social Welfare, Trade Associations)

*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)

*Update:* I.R.C. § 501(c)(4) (p. 46)

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

Wednesday, November 27th: THANKSGIVING BREAK

**Monday, December 2nd: 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, December 4th: Membership Associations**

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

*Update:* 31-33 (Boy Scouts Reverse Course)

**REVIEW SESSION**

**Monday, December 9th: Review Session**

*Website:* Draft Instruction Sheet for Final Examination (under Handouts)

Past Exams & Exam Answers (under Handouts)