

LAW OF NON-PROFIT ORGANIZATIONS
American University Washington College of Law
LAW 852-001
Fall 2019

Professor Benjamin Leff
E. bleff@wcl.american.edu
T. (202) 274-4359
Office: Y240

I. Materials

Required Text: Betsy Schmidt, *NONPROFIT LAW: THE LIFE CYCLE OF A CHARITABLE ORGANIZATION* 2nd (Aspen 2011, ISBN-10: 0735598460). We are using the second edition of this book. There is also a supplement posted on MyWCL, and reading assignments may include reading from the supplement.

II. Course Description

The goal of this course is to develop your understanding of the laws governing charitable non-profit organizations and to prepare you to work in a variety of capacities with and for them. Topics include: (i) state law issues such as governance, fiduciary duty, and charitable solicitation law; and (ii) federal issues such as forming a federally recognized tax-exempt charity, federal regulation of compensation and other insider transactions, commercial operations, political activity and more.

This course is complementary to LAW-795Z-001, *Leading and Counseling Nonprofit Organizations*, taught by Professor Carrie Siegrist, which meets at this time on Wednesday evenings. This course involves discussion of legal principles that govern tax-exempt organizations, and Professor Siegrist's class involves practical exercises designed to immerse students in the kinds of tasks lawyers do for nonprofit organizations. If your schedule permits, I strongly recommend that you take *both* courses.

III. Attendance and Participation

Class meets on Mondays from 7:00 and 8:50 PM in room Y115. Class attendance and participation are mandatory. All students are required to come to class prepared to engage with the material. If a student's grade on the final exam is on the borderline between two grades, excellent attendance and preparation may result in an upward adjustment. If a student misses more than 3 classes over the course of the semester, they will be barred from taking the exam (and therefore will fail the class), absent unusual extenuating circumstances.

IV. Final Exam and Grading

The exam will be a two-hour take-home to be taken during the exam period. The final grade will be determined based on performance on the final exam, subject to a participation adjustment described above.

V. Office Hours

I hold office hours on Thursdays from 2:00 to 4:00 PM. But, please also feel free to email me to arrange for a different time to meet, including evening hours if necessary.

VI. Assignments

WEEK 1 – Introduction to Nonprofit Organizations and NPO Law
Casebook: Chapter 1 (pp. 3-12; 16-34)(**Pdf available on MyWCL**)

WEEK 2 – Starting a Nonprofit and Governance I (Articles, Bylaws, Policies)
Casebook: Chapter 2 and 3 (pp. 35-50; 62-63; 67-73; 76-91; 92-94)

September 2, 2019 LABOR DAY == NO CLASS

WEEK 3 – Nonprofit Organizations Governance II (Fiduciary Duties)
Casebook: Chapter 3 (pp. 96-104 (duty of care); 115-120 (duty of loyalty); 134-143 (enforcement); skip the Problem on p. 143)
Handout: Trump Foundation Explainer
Handout: Trump Foundation Ruling Denying Dismissal pp. 10-16

WEEK 4 – Federal Tax Exemption
Casebook: Chapter 4 (pp. 145-146; 160-176; 177-178; 193-197; 202-223)

WEEK 5 – Private Foundations
Casebook: Chapter 7 (pp. 323-335; 340-341; 346-361)

WEEK 6 – Charitable Contributions/Solicitation
Casebook: Chapter 5 (253-267)
Casebook: Chapter 6 (pp. 293-308)
Handout: IRC [sec.]170(f)(8)(substantiation); Treas. Reg. [sec.] 1.170A-1(g)(services), (h)(1)-(3)(mixed contributions)
Possible Handout: SALT Workaround Reading

WEEK 7 – Inurement, Private Benefit, Intermediate Sanctions
Casebook: Chapter 9 (pp. 447-487)
Handout: Excerpts from *Carracci v. Comm’r* (5th Cir. 2006)

WEEK 8 – Accountability/IRS Oversight
Casebook: Chapter 12 (pp. 617-652)(stop before Form 990 Exercise)

WEEK 9 – Raising Funds from Commercial Enterprises/UBIT
Casebook: Chapter 8 (pp. 385-390; 408-434)(stop before “rental and ...”)

WEEK 10 – Complex Commercial Transactions
Casebook: Chapter 10 (pp. 495-500; 505-512; 516-540)
Handout: Rev. Rul. 98-15

WEEK 11 – Politics I: 501(c)(3) Lobbying and Political Campaigns
Casebook: Chapter 11 (pp. 543-590)

WEEK 12 – Politics II: 501(c)(4), 527, and Affiliates
Handout: CRS Report
Handout: Wellspring Article
Handout: Wellspring Committee 990
Handout: Americans for Job Security 990
Handout: Slides (Political Activities of Tax-Exempt Entities)
Handout: Trump Foundation Ruling 10.18.19
Handout: Trump Foundation Stipulation, pp. 1-4, 10-14

WEEK 13 – Dissolution, Merger, Etc.
Casebook: Chapter 13 (pp. 661-672; 675-704)

WEEK 14 – Social Enterprise/Benefit Corporations
Handout: (all one document on MyWCL): (i) Article by Jamie Raskin;
(ii) Article by Marc Gunther;
(iii) Legislative History of DC Benefit Corp Statute;
(iv) Text of DC Benefit Corp Statute;
(v) OPTIONAL Delaware Benefit Corp Statute;
(vi) OPTIONAL Chart of state corporate form statutes;
(vii) PLEASE SKIM B-Lab Acct Assessment

VII. RECOMMENDED RESOURCES

- A. IRS Tax Information for Charities & Other Non-Profits Website (<https://www.irs.gov/charities-non-profits>)
- B. IRS EO Issue Podcasts (<https://www.stayexempt.irs.gov/home/resource-library/issue-podcasts>)
- C. GuideStar Website (<http://www2.guidestar.org/>) (You can register for free to gain access to nonprofit information, including Forms 990 for most charities)
- D. Darryll Jones, Steven Willis, David Brennen, Beverly Moran, STATUTORY SUPPLEMENT TO THE TAX LAW OF CHARITIES AND OTHER EXEMPT ORGANIZATIONS (West) Any edition will do.
- E. Tax Code Online (<https://www.law.cornell.edu/uscode/text/26/subtitle-A/chapter-1/subchapter-F>)