

THE LAW OF
NONPROFIT ORGANIZATIONS
Professor Jill Manny
Fall 2019

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. If you prefer to access statutes, regulations, and forms online it is not necessary to purchase the Statutory Supplement. Click on this link to access the Student Update Memo. Click on this [link](#) to access the Student Update Memo.

ASSIGNMENTS (for the first month of the semester)

August 28 and September 4 — 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 (or online), 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

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 or online. Updates to the Statutory Supplement generally can be found in the Student Update Memo.

www.nra.org
www.abanet.org
www.pga.org

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.

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.governmentwedeseerve.org/2016/01/11/the-zuckerberg-charitable-pledge-and-giving-from-ones-wealth/>.

Danny Hakim, *New York Expands N.R.A. Inquiry to Group's Board Members*, N.Y. TIMES, Aug. 6, 2019, *available at* <https://www.nytimes.com/2019/08/06/us/nra-board-subpoena-letitia-james.html>.

September 9 — Organization Under State Law

1. In the Casebook, read:

pp. 43 – 67; 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 (or online), 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 11 — Dissolution and Distribution of Assets

1. In the Casebook, read:

pp. 73 – 103. Prepare a written outline of your answers to Problems 1 and 5 on p. 89 and Problem 1 on p. 92 for your own reference during class discussion.

2. In the Statutory Supplement (or online), read:

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

September 16 and 18— 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 (or online), 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 23 and September 25 — 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 (or online), read:

Code: § 4958.

Regulations: §§ 1.501(c)(3)-1(c)(2).

3. Read the four items 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. Dobbelle, July 31, 2014. Read the “Executive Summary,” “Background,” and “Conclusions and Recommendations.” The remainder is optional reading.

Peter Olsen-Phillips and Megan O’Neil, *When Salaries are Bigger than Grants*, Chron. Philanthropy, July 24, 2018.

September 30—Class Cancelled

Make-up date TBA.

October 2—Educational Organizations and Religious Organizations

1. In the Casebook, read:

pp. 371 – 386; 387 – 402. Prepare a written outline of your answers to the Problems on pp. 386 – 387 and Problems (a) and (c) on p. 403 for your own reference during class discussion.
2. In the Statutory Supplement (or online), read:

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

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

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

October 7—Health Care Organizations

1. In the Casebook, read:

pp. 296 – 319. Prepare a written outline of your answers to and to Problems (a) – (c) and (e) on pp. 319 – 320 for your own reference during class discussion.

October 9—Class Cancelled

Make-up date TBA.

October 14— 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 (or online), read:

Code: § 501(j).

Regulations: §§ 1.501(c)(3)-1(d)(1), (2).

October 16— 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 (or online), read:

Code: § 502.

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

October 21 and 23 — 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 (or online), read:

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

3. On NYUClasses, read:

Jill S. Manny, *Nonprofit Legislative Speech: Aligning Policy, Law, and Reality*, 62 Case W. Res. L. Rev. 757 (2012). (OPTIONAL)

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 (or online), read:

Code: §§ 501(c)(3), (4); 527; 4955.

October 30* and November 4 and 6—Introduction to Private Foundations and their Alternatives

1. In the Casebook, read:

pp. 649 – 650, 656 (bottom) – 676, 679 (bottom) – 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 (or online), read:

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

November 8 (make-up class) and 11— Private Foundation Excise Taxes

1. In the Casebook, read:

pp. 704 (bottom) – 707, 708 – 718, 720 – 725, 727 – 730, 731 – 741 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 (or online), read or re-read:

Code: §§ 4940; 4941; 4945; 4946.

3. Review two tapes to be posted on Tuesday, November 12. The tapes feature private foundation general counsel and an exempt organizations law firm partner discussing practical implications of the private foundation restrictions.

* We will begin discussion of Private Foundations in the latter portion of this class, after completing discussion of Political Campaign Activities, so prepare the reading through page 676 of the Casebook for this class.

November 13 and 18 — 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 (or online), 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 and 25—Exclusions from UBTI; Joint Ventures

1. In the Casebook, read:

pp. 588 – 592; pp. 620 – 640; 646 – 648. Prepare a written outline of your answers to the problems on p. 593 – 594 and the problem on p. 640 for your own reference during class discussion.
2. In the Statutory Supplement (or online), read:

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

December 2 and 4—Corporate 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 (or online), 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.