

LAW OF NONPROFIT ORGANIZATIONS – REVISED 3/11/20

Brooklyn Law School

Spring 2020

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 720M. 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.] and its 2019 Supplement, available electronically through our class site on BLSCConnect. Any time there is material added in the Supplement to pages we cover, you are responsible for reading it. Most assignments will also include references to statutes and regulations, which can be found in a Statutory Supplement or online. Akademos link: <http://brooklaw.textbookx.com/institutional/index.php?action=browse#books/2161096/>.

ASSIGNMENTS: This syllabus is intended to cover our entire class. 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%). The policy paper topic will be distributed in late February, and papers on this topic 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 or (718) 780-0396 to arrange an appointment.

ASSISTANCE: If you find you need academic or other assistance during the semester, please feel free to reach out to me. If you would prefer to access other BLS resources, consider Professor Shane Dizon (shane.dizon@brooklaw.edu) for academic support and Dean of Students Jennifer Lang (jennifer.lang@brooklaw.edu) for other matters.

LEARNING OUTCOMES: This course will develop skills in categorical and analogical reasoning and transaction planning. At its conclusion, students will be able to demonstrate:

- Basic understanding of the two major legal regimes that impact nonprofit organizations: state organizational law and federal tax law.
- Basic understanding of the legal forms adopted by nonprofit entities, and the consequences of choosing amongst them.
- Competence in the major legal doctrines impacting nonprofit governance, requirements for tax-exemption and charitable contributions deductions, and the application of fiduciary obligation to nonprofit leaders.
- Ability to identify ethical dilemmas raised by the practice of nonprofit law and to grapple with these issues and the broader impact of nonprofit organizations on society.

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 14, 2020

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 16, 2020

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 21, 2020

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 23, 2020

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)

*****NO CLASS JANUARY 28*****

PART II: REGULATION OF NONPROFIT ORGANIZATIONS AND THEIR ACTIVITIES

Assignment 5 – The Public Policy Limitation; Charitable Purpose Requirements

January 30, 2020

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 4, 2020

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

*****NO CLASS FEBRUARY 6*****

Assignment 7 – Limits on Commercial Activity

February 11, 2020

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.

Assignment 8 – Unrelated Business Income Taxation (UBIT)

February 13, 2020

FISHMAN ET AL., pp. 549-60(skim), 560-62, 567-86, 588-92.
Review Problem on p. 54 considering UBIT, and prepare Problem 1(e) on p. 594.

*****NO CLASS FEBRUARY 18 – CLASSES FOLLOW MONDAY SCHEDULE*****

Assignment 9 – Hybrid Forms and Social Enterprise

February 20, 2020

Review FISHMAN ET AL., pp. 646-48.

Supplemental Materials on Hybrid Forms and Social Enterprise

Prepare Problem on p. 648.

Assignment 10 – Dissolution (I)

February 25, 2020

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.]

*****Policy Paper Distributed – DUE DATE: March 10*****

Assignment 11 – Dissolution (II)

February 27, 2020

FISHMAN ET AL., pp. 89-107.

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

March 3, 2020

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

Assignment 13 – Duty of Loyalty

March 5, 2020

FISHMAN ET AL., pp. 149-71.

Prepare the United Way Problem.

Assignment 14 – Advanced Issues in Fiduciary Duty: Policy Papers DUE

March 10, 2020

FISHMAN ET AL., pp. 171-78, 184(start at “5. Investment Responsibility”)-99(stop at “D. Enforcement of Fiduciary Obligations”), 425-29, 178-84.

*****SPRING BREAK: March 16-20*****

*****NO CLASS MARCH 24*****

Assignment 15 – Enforcement of Fiduciary Duty

March 26, 2020: **ONLINE**

FISHMAN ET AL., pp. 199-218.

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

March 31, 2020: **ONLINE** with Guest Speaker, Terence Dougherty, ACLU GC and COO

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 2, 2020: **ONLINE**

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 7, 2020: **ONLINE**

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.]

*****NO CLASS APRIL 9 – BLS CLASSES SUSPENDED*****

Assignment 19 - Regulation of Charitable Solicitation

April 14, 2020: **ONLINE**, Tentative Guest Speaker, Karen Wu, Partner, Perlman & Perlman

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

Assignment 20 – Private Foundations: Introduction and Classifications
April 16, 2020: **ONLINE**

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 21, 2020: **ONLINE**

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).