

NOT-FOR-PROFIT ORGANIZATIONS
Fall 2021 – Professor Lloyd Mayer

Tuesday, Thursday
11:00 a.m. – 12:15 p.m.
Biolchini 1310

Email: lmayer@nd.edu
Office: Eck 3155
Phone: 631-8057

Syllabus

Course Description

This course provides 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, 6th ed. (2021)
- Fishman et al., Nonprofit Organizations: Statutes, Regulations, and Forms (2021)
- Additional materials that I will post on the course website

You may have noticed that I am one of the co-authors for the required materials. Despite the high cost of the casebook and statutes book, my royalties from each book are relatively small – only 5% of the sales price. Nevertheless, to eliminate any conflict of interest I plan to donate the approximately \$400 I would receive if you all of you bought the required materials at full retail price to one of the specific charities we discuss during the term. To help me choose the charity, I will identify each candidate as we get to it in the course, and then at the end of the term I will ask you to advise me on which one should be the recipient. I will provide more details later in the term.

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: TuTh, 11:00 a.m. – 12:15 p.m., Biolchini 1310

I need to cancel two of our regularly scheduled class meetings because I will be out of town. The cancelled class meetings are the ones scheduled for Tuesday, September 28th and Thursday, November 18th. The two make-up classes will be held on **Friday, October 1st** and **Monday, November 15th**. The times and locations of the make-up classes will be set after the add/drop period ends to minimize conflicts. The make-up classes will be recorded, and I will share the recording with the full class.

The review session will be during our regularly scheduled class meeting on Tuesday, December 7th. The review session will be recorded, and I will share the recording with the full class.

Please note that class recordings are considered copyrighted property owned by me as the instructor, as are other class materials not owned by another party. Therefore please do not share the recordings or any such class materials with anyone outside of the NDLS community.

Class Participation

The class is divided into three panels. The panels have rotating responsibility for being “on call.” Especially given the relatively small size of our class, 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) **before the class** (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 F

- Panel 2: G to O
- Panel 3: P 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 list 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 final examination. The final exam will be “open book” in that any materials, including electronic ones, may be used during the exam other than hard copy materials from the library.

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. But be aware 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); 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); Colleen P. Murphy et al., [Note-Taking Mode and Academic Performance in Two Law School Courses](#), 68 J. Legal Educ. 207 (2019). 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 to limit distractions for both yourself and your classmates.

Contact Information & Office Hours

I am generally available to meet with students at any time that I am in the office (**Eck 3155**, in the third-floor suite nearest the elevator). In general, I expect to be in my office when classes are in session from at least 9:00 to 12:00 and 2:00 to at least 4:30 on weekdays, except for when I am teaching this class. The only dates on which I expect to be out-of-town this term when classes are in session and so not available are Wednesday, November 17th to Friday, November 19th.

If you would prefer to set a specific day and time to meet, please just email me.

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). You may schedule an appointment with her through 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.

NOT-FOR-PROFIT ORGANIZATIONS
Fall 2021 – Professor Lloyd Mayer

Tuesday, Thursday
11:00 a.m. – 12:15 p.m.
Biolchini 1310

Email: lmayer@nd.edu
Office: Room 3155
Phone: 631-8057

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. 100”). 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.

Restatement: Refers to Restatement of the Law, Charitable Nonprofit Organizations.

PART ONE: INTRODUCTION

Tuesday, August 24th: Overview

Fishman: 3-26, 30-45 (including the problem on pp. 44-45)

Selected §§: Cal. Corp. Code § 5410 (p. 27)
N.Y. Not-for-Profit Corp. L. § 515(a) (p. 79)

Website: Syllabus (under General Course Materials)

PART TWO: ORGANIZATION AND OPERATION

Thursday, August 26th: Formation

Fishman: 49-68, 72-74, 77-78 (stop after Note 1), 79-81 (including all problems on pp. 62-63 & 81)

Selected §§: Cal. Corp. Code §§ 5111, 5130, 7111 (pp. 9, 37)
Ill. Comp. Stat. ch. 805, § 105/103.05(a) (pp. 56-58)
N.Y. Not-for-Profit Corp. L. §§ 201, 204, 402 (pp. 68-69, 71, 72-73)
Restatement §§ 1.01, 1.02 (p. 96)
skim Sample Articles of Organization, Bylaws, Trust (pp. 883-895)

Website: Handout: Sample Organization Meeting Resolutions

Tuesday, August 31st: Cy Pres and Deviation

Fishman: 81-100 (including problems 3, 4 & 5 on p. 100)

Selected §§: Restatement §§ 3.02, 3.03, 4.03 (pp. 101, 102)

Thursday, September 2nd: Dissolution, Distribution of Assets, and Restructuring

Fishman: 101-121 (including problems 1(c), 1(d), 2 & 3 on pp. 104-105)

Selected §§: Ill. Comp. Stat. ch. 805, § 105/112.16 (pp. 61-62)

N.Y. Not-for-Profit Corp. L. § 513 (pp. 78-79)

Restatement § 3.04 (pp. 101-102)

Tuesday, September 7th: Governance and the Duty of Care

Fishman: 123-129, 135-138, 143-162 (including all problems on pp. 160-162)

Selected §§: Cal. Corp. Code §§ 5210, 5231 (pp. 10-11, 14-15)

N.Y. Not-for-Profit Corp. L. § 717 (p. 89)

Restatement §§ 2.01, 2.03, 2.05, 2.07, 2.08 (pp. 97, 98, 99)

Thursday, September 9th: The Duty of Loyalty and the Duty of Obedience

Fishman: 167-188 (stop at case), 194 (start at note 2)-201 (including problems (d), (e), (g) & (h) on pp. 197-198)

Selected §§: Cal. Corp. Code § 5227 (pp. 13-14)

Ill. Comp. Stat. ch. 805, §§ 105/108.60, 108.80 (pp. 58-59, 61)

N.Y. Not-for-Profit Corp. L. §§ 515(b), 715, 715-a, 716 (pp. 79-80, 84-87, 88)

Restatement § 2.02 (p. 97)

skim Sample Conflict of Interest Policy & Statement (pp. 896-900)

Tuesday, September 14th: Investment Responsibility and Enforcement

Fishman: 201-237 (including problem (all parts) on pp. 218-219; skip the problem on p. 212)

Selected §§: Restatement §§ 2.04, 2.06, 5.01 (pp. 98, 99, 102-103)

Uniform Prudent Mgmt. of Inst. Funds Act §§ 3 to 6 (pp. 126-130)

Thursday, September 16th: Regulation of Charitable Solicitation

Fishman: 241-281 (including problem 1 (both parts) on p. 281)

PART THREE: TAX EXEMPTION

Tuesday, September 21st: Rationale and Exemption Introduction

Fishman: 287-295 (stop at article), 301-302, 305-313, 553-557

Selected §§: I.R.C. § 501(c)(3) (p. 201)

Treas. Reg. § 1.501(c)(3)-1(a), (b), (c)(1) & (2) (pp. 448-449)

Website: *skim* IRS Form 1023 (under IRS Forms)

Thursday, September 23rd: Charitable Exemption

Fishman: 313-340 (including all problems on pp. 339-340)

Selected §§: Treas. Reg. § 1.501(c)(3)-1(d)(2) (p. 510)

Website: Handout: Saint Joseph Form 990 (excerpts; focus on highlighted items)

Tuesday, September 28th: NO CLASS

Thursday, September 30th: Public Policy Limitation

Fishman: 367-396 (including all problems on pp. 395-396)

Friday, October 1st: Educational Exemption

(MAKE-UP; TIME & LOCATION TBD)

Fishman: 396-415 (including all problems on p. 415)

Selected §§: Treas. Reg. § 1.501(c)(3)-1(d)(3) (p. 449)

I.R.C. § 4968 (pp. 341-342)

Website: Handout: Notre Dame Form 990 (excerpts; focus on highlighted items)

Tuesday, October 5th: Religious Exemption

Fishman: 415-433 (including all problems on p. 432-433)

Thursday, October 7th: Inurement, Private Benefit, and Intermediate Sanctions

Fishman: 449-467 (skip case & following notes), 468-482 (including problems 1(a), 1(b), 1(c), 1(f), & 3 on pp. 480-481)

Selected §§: Treas. Reg. § 1.501(c)(3)-1(d)(1) (pp. 447-448)

I.R.C. § 4958(a) to (c)(1)(B), (d) to (f)(6) (pp. 324-325, 326-328)

I.R.C. § 4960(a) to (c)(4) (pp. 329-330)

Tuesday, October 12th: Limitations on Lobbying

Fishman: 482-502 (including problems (a) & (e) on pp. 500-502)

Selected §§: Treas. Reg. § 1.501(c)(3)-1(c)(3)(i), (ii) & (iv), (v) (pp. 446-447)

Website: skim IRS Form 5768 (under IRS Forms)

Thursday, October 14th: Political Campaign Limitations

Fishman: 502-533, 537-543 (including all problems on pp. 542-543)

Selected §§: Treas. Reg. § 1.501(c)(3)-1(c)(3)(iii) (p. 446)

Tuesday, October 19th & Thursday, October 21st: MID-SEMESTER BREAK

PART FOUR: OTHER TAX ISSUES

Commercial Activities and the Unrelated Business Income Tax

Tuesday, October 26th: Commercial Activities

Fishman: 575-598 (including all problems on pp. 597-598), 703-705 (including problem on p. 705)

Selected §§: Treas. Reg. § 1.501(c)(3)-1(e) (p. 451)

Thursday, October 28th: The Nature of an Unrelated Trade or Business

Fishman: 598-599, 606-637 (including problems 1(a) thru (f) & 2(f) on pp. 635-637)

Selected §§: Treas. Reg. § 1.513-1 (pp. 557-564)

Tuesday, November 2nd: Exclusions; Computation; Debt-Financed Income

Fishman: 637-667 (thru note 1; including problem 1 (all parts) on pp. 643-644; skip the problems on pp. 658-659)

Selected §§: I.R.C. § 512(b)(1) to (5), (7) to (9) (pp. 233-235)

Private Foundations

Thursday, November 4th: Introduction

Fishman: 707-715, 720-732, 739-747 (including problems 1(a), (b) & (f) on pp. 745-747), 774-775

Selected §§: I.R.C. §§ 170(b)(1)(A), 509(a) to (e) (pp. 167-168, 225-227)

Website: Handout: Gates Found. Form 990-PF (excerpts; focus on highlighted items)

Tuesday, November 9th: Self-Dealing, & Taxable Expenditures

Fishman: 775 (Section D introduction only), 778-794 (including problems 1(a) thru (e) on pp. 793-794), 812-822 (including problems (a) thru (e) & (i) on pp. 821-822)

Selected §§: I.R.C. §§ 4941, 4945, 4946(a)(1), (b) to (d) (pp. 291-295, 313-319)

Charitable Contributions

Thursday, November 11th: Introduction & Policy Issues

Fishman: 825-850

Monday, November 15th: Basic Principles

(MAKE-UP; TIME & LOCATION TBD)

Fishman: 850-889 (including problems (a) thru (d) & (i) on pp. 888-889)

Selected §§: I.R.C. § 170(a)(1), (c), (f)(8) (pp. 166-167, 173-174, 184-185)

Tuesday, November 16th: Noncash Contributions and Planned Giving

Fishman: 890-920 (including problems 1(a) thru (g) on pp. 916-917)

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

Thursday, November 18th: NO CLASS

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

Tuesday, November 23rd: Social Welfare, Labor, and Trade Organizations

Fishman: 931-964 (including all problems on pp. 963-964)

Selected §§: I.R.C. § 501(c)(4) to (6) (pp. 201-202)

Treas. Reg. §§ 1.501(c)(4)-1, 1.501(c)(5)-1, 1.501(c)(6)-1 (pp. 456-458)

Website: skim IRS Form 1024 (under IRS Forms)

Thursday, November 25th: THANKSGIVING BREAK

Tuesday, November 30th: Other Types of Not-for-Profit Organizations

Fishman: 964-983 (including problems 1(a) & (b) on p. 980)

Selected §§: I.R.C. § 501(c)(7), (c)(8), (c)(10) & (i) (pp. 202, 208-209)

Treas. Reg. § 1.501(c)(7)-1 (pp. 458-459)

Thursday, December 2nd: Membership Associations

Fishman: 985-990, 1011-1036 (including all problems on p. 1032)

REVIEW SESSION

Tuesday, December 7th: Review Session

Website: Draft Instruction Sheet for Final Examination (under Handouts)
Past Exams & Exam Answers (under Handouts)