

**Nonprofit Law and Policy: Law 363**  
**Spring Semester 2022**  
**Syllabus v. 7 (final)**

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Assistant, Carissa Ferguson ([lauraandcarissa@law.ucla.edu](mailto:lauraandcarissa@law.ucla.edu)).

Course Meetings: Mondays and Wednesdays, 1:45-3:10 PM, Room 2448.

Office Hours: TBD

**Course Overview.** Over the past several decades, the nonprofit sector has grown dramatically in wealth and prominence. So has controversy over whether the benefits provided by nonprofit organizations justify their special statutory, regulatory, and tax treatment. In this seminar we will look at the legal environment in which American nonprofits operate to ask several questions: Who owns these organizations and their assets? Are they best characterized as public or private or both? How should they be governed? When and why are they exempt from taxes? To whom are they accountable? Why have there been so many nonprofit scandals? In answering these questions, we will look broadly at the sector and more specifically at industries in which nonprofits play a large role such as health, education, and religion. The course will focus on domestic nonprofits.

**Readings.** The following textbooks, material, and technologies are required for this course:

- 1) Fishman, Schwarz, and Mayer Nonprofit Organizations: Cases and Materials, 6th Ed., 2021 (CB).
- 2) Fishman, Schwarz, and Mayer, Nonprofit Organizations: Selected Statutes, Regulations and Forms, 2021 (SRF). *Almost all of the doctrinal reading includes selections in the statute book.* The text lists these in bold at the beginning of each section of the textbook. They are critical for your understanding of nonprofit law, so please review them carefully.
- 3) Additional required is listed in the daily assignments and, unless a link is provided below, will be available on MyLaw.

Every student should be prepared to discuss all the assigned readings for each class meeting.

**Course Goals and Learning Objectives.** The course is designed for students to: 1) gain an understanding of the nonprofit sector and the law governing the sector, including tax and substantive nonprofit law; 2) learn how the law (common, statutory, and regulatory) related to the sector operates; 3) become conversant in contemporary issues in nonprofit law and policy.

By the end of the semester, students should be able to:

- Describe the core doctrines of nonprofit ownership law and related tax law covered by the course and how these laws influence and shape the sector;
- Analyze and apply key nonprofit law statutes, regulations, sub-regulatory guidance, and legal precedents to factual situations arising in the areas studied;
- Advise individuals and boards on options in structuring and carrying out charitable and other nonprofit activities;
- Understand contemporary nonprofit sector debates; and,

- Analyze the implications of nonprofit law from the client, regulator, and societal perspective.

**Evaluation and Class Participation.** Grades will be based on class participation (10%), 2 written assignments – first essay due **by Tuesday February 8 at 5:00 pm** and second essay due **by Tuesday March 15 at 5:00 pm** (35%), and a final, at home examination (55%). The final exam will cover both the doctrinal and policy material on this syllabus.

### Participation and Attendance

The success of this class, for both you and your classmates, depends on your preparation for and engagement in discussion. The assigned students will have special responsibilities to play an active role in class that day. Once the enrollment in the course is settled, I will assign pairs of students to be the discussion leaders for some sessions. Participation grades are based on the degree to which your contributions enhance discussion and reflect engagement with the material during both the sessions in which you are the leader and others.

Regular attendance is required for all classes at UCLA Law, whether offered remotely or in person. Pursuant to the law school's academic standards, students who do not regularly attend class may, at the professor's discretion, be prohibited from sitting for the final exam or turning in a final paper for the class, resulting in a grade of "F" or being dropped from the class. Students for whom this may be an issue will receive a written warning before this final action and may need to attend all remaining classes after the written warning is given.

### Accommodations

UCLA Law strives to provide accommodations in a way that supports students with disabilities while maintaining their anonymity and the fundamental nature of our law program. As such, students needing academic accommodations should not contact their professors directly, but contact Carmina Ocampo, Director of Student Life, ([ocampo@law.ucla.edu](mailto:ocampo@law.ucla.edu)) or the UCLA Center for Accessible Education (CAE) at [www.cae.ucla.edu](http://www.cae.ucla.edu). When possible, students should start this process within the first two weeks of the semester, as reasonable notice is needed to coordinate accommodations.

### Resources for Health and Wellness

Students needing assistance with medical or mental health issues, substance abuse, anxiety or depression, or other health-related matters should contact the Office for Student Affairs at [studentaffairs@law.ucla.edu](mailto:studentaffairs@law.ucla.edu), UCLA Counseling and Psychological Services (CAPS) at 310-825-0768, or the Ashe Student Health & Wellness Center at 310-825-4073.

Any student who faces challenges securing their food or housing and believes this may affect their performance in the course is urged to contact the Office for Student Affairs for support. Furthermore, please notify your professors if you are comfortable in doing so. This will enable us to provide any resources that we may have.

UCLA has many other resources to help students, so please do not hesitate to seek them out or ask about what is available.

**If, at any point during the course, you find yourself not able to fully access the space, content, or experience of this course for any reason unrelated to a documented disability**

**accommodation administered by CAE, I welcome you to contact me to discuss your specific needs.**

### Video Recordings

- a. Availability and Access.** I have requested that the audio-visual department video-record all class sessions. The recordings are available for viewing only by students enrolled in the class and only during the semester, not during the study period or during finals. The recordings are meant to help students who must miss a class/classes keep up to date with the material, build their knowledge as the class progresses, and remain active participants in the class. The recordings are not available for download. **To access a recording please contact my assistant and me via email to request a recording for the missed session.**
- b. Permission to use.** I will grant permission for students currently enrolled in the course to access the video-recordings solely for the purpose of the course. The recordings may not be used by persons other than a student enrolled in the course or for any purpose other than to participate in the course.
- c. Recording details.** Recording is remotely controlled. As a result, the recordings may include events in the classroom before the class begins, during class breaks, and after the class ends. Please do not discuss any confidential matters during those periods.
- d. Consent.** By enrollment in this course, each student consents to the recording and use described above.

### Recording by Students

Per University policy, UCLA Student Conduct Code 102.28 says that expectations of privacy apply, and it specifically prohibits recording without the consent of all recorded parties and prohibits taking photographs where there is a reasonable expectation of privacy. In remote teaching, advising, chatting, and other engagement in course activities remotely, there is a reasonable expectation that photographing, screen capture, or other copying methods or recordings will not occur without express permission from all participants. A violation subjects a student to the disciplinary process. Do not record your courses, do not take screen shots of your classes, professors, or classmates, and do not release, post, email, text, or otherwise share or sell course materials to others.

|   | <b>DAY</b> | <b>DATE</b> | <b>TOPIC/ASSIGNMENT</b>   |
|---|------------|-------------|---|
|   |            |             | <b>INTRODUCTION</b>   |
| 1 | Wed        | Jan 19      | CB, 3-17<br>SRF, pg. 27, §5410 first line only.<br>Mark Hrywna, The 2021 NPT 100, The Nonprofit Time. Scroll to chart at the bottom of the page. <a href="https://www.thenonproffitimes.com/report/the-2021-npt-100-donors-stood-tall-led-with-big-gifts/">https://www.thenonproffitimes.com/report/the-2021-npt-100-donors-stood-tall-led-with-big-gifts/</a><br>Nicholas D. Kristof, "The Sin in Doing Good Deeds," New York Times (December 24, 2008) <a href="https://www.nytimes.com/2008/12/25/opinion/25kristof.html">https://www.nytimes.com/2008/12/25/opinion/25kristof.html</a> .  |
| 2 | Mon        | Jan 24      | CB, 17-40.<br><br><i>Study Questions:</i><br>Consider problems on pgs. 44-45.<br>What distinguishes the nonprofit sector from other sectors of the economy/society?<br>Does either the public v. private or profit-seeking v. nonprofit distinction capture an appropriate conception of the sector?<br>What is the difference between nonprofit status and tax-exempt status?<br>What types of organizations should qualify for nonprofit status? for tax-exempt status and/or other tax advantages? From which level of government?<br>What roles do philanthropy and volunteerism play in the conception?<br>What are the most pressing challenges to nonprofits?<br>What are the relevant standards of propriety for the amount of compensation earned by nonprofit executives? |
|   |            |             | <b>STATE LAW OF NONPROFIT ORGANIZATIONS</b>   |
| 3 | Wed        | Jan 26      | <b>Choosing the Organizational Form</b><br>CB, 49-63<br>SRF, read pg. 96 § 1.02; skim pgs. 135-143 Rev Uniform Uninc. NP Ass'N Act; skim 891-895 Sample Form of Charitable Trust, pg. 68-69 § 201, make sure you get a sense of the differences of the approaches in CA, IL, and NY by looking at the statutes referenced on page 56, skim pgs. 883-890.<br><br><i>Study Questions:</i><br>Consider problems on pgs. 62-63.   |
| 4 | Mon        | Jan 31      | <b>Purposes</b><br>CB, 63-68; 72-81.<br>SNF, read all the sections listed in the CB reading.<br><br><i>Study Questions:</i><br>Consider problems on pg. 81.<br>Which types of organizations should be allowed to incorporate as a nonprofit organization, sanctioned by the state? Consider the following: <ol style="list-style-type: none"> <li>a. The Church of Scientology</li> <li>b. King of Kings Lutheran Church, Ann Arbor.</li> <li>c. The Nationalist Movement, a group that favors white Americans and skinheads</li> <li>d. The Boy Scouts of America</li> <li>e. The Detroit Symphony</li> <li>f. Harvard University</li> </ol>   |

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|        |            |                | <p>g. Right to Life, Inc., a nonprofit educational group offering information on pregnancy choices other than abortion.</p> <p>h. Operation Rescue, a loosely organized umbrella organization that stages protest at family planning and abortion clinics.</p> <p>i. Family Planning Alternatives, an organization that provides education on family planning and operates family planning clinics that provide, among other services, abortions.</p> <p>j. An organization seeking to develop communication channels between the living and the dead.</p>   |
| 5<br>6 | Wed<br>Mon | Feb 2<br>Feb 7 | <b>Change of Purposes: Cy Pres and Deviation</b>   |
|        |            | 6: No PP       | CB, 81-89, 89-100 and, by the time of the second class (Feb 7), watch “Art of the Steal” about the Barnes Foundation (not the thriller film by the same name, instructions on how to access the film forthcoming).<br>SNF, read all the sections listed in the CB reading.   |
|        |            |                | <i>Study Questions:</i><br>Consider problems on pg. 100 (for Feb 2).<br>Barnes exercise.   |
| 7      | Wed        | Feb 9          | <b>Perpetuity and the Dead Hand</b>  |
|        |            | 7: No PP       | MyLaw, Andrew Carnegie, “The Gospel of Wealth”<br>Vu Le, Nonprofit AF, <a href="https://nonprofitaf.com/2020/09/wealth-hoarding-tax-avoidance-and-how-nonprofits-are-complicit/#more-6801">https://nonprofitaf.com/2020/09/wealth-hoarding-tax-avoidance-and-how-nonprofits-are-complicit/#more-6801</a><br>MyLaw, Jeffrey Toobin, “Rich Bitch,” The New Yorker (September 28, 2008).<br>MyLaw, William Miller, “Yes, You Can Take it With You,” from <u>Losing It</u><br>MyLaw, <a href="https://www.insidehighered.com/news/2020/05/22/colleges-faced-whether-increase-endowment-spending-finances-grow-more-dire">https://www.insidehighered.com/news/2020/05/22/colleges-faced-whether-increase-endowment-spending-finances-grow-more-dire</a> |
|        |            |                | <b>***Essay due by Tuesday Feb 8 at 5:00 pm. Submit to the appropriate folder on mylaw and email to both my assistant and me. You should not consult sources outside of the materials assigned for class. I am interested in your thoughts on the following question.</b>  |
|        |            |                | <b>Answer the following question in <u>no more than 750 words</u>. “Should founders/donors be able to establish perpetual purposes (subject to Cy Pres/Deviation) or should charities have broader latitude to change purposes?” Be sure to identify and address the best arguments for and against your position.***</b>  |
|        |            |                | <i>Study Questions:</i><br>In addition to the question you answer in your essay, consider the following:<br>Why do people give money to charities? Are these good reasons?<br>What are the arguments for and against anonymous giving?<br>As the president of a university which is offered a large gift by someone known to have been convicted of price fixing, would you accept the gift?<br>Does the donor’s motivation matter?  |
| 8      | Mon        | Feb 14         | <b>Dissolution and Conversion</b>  |
|        |            |                | CB, 101-110, 110-116<br>SNF, read all the sections listed in the CB reading.   |

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|   |     |        | <p>Read CA Corp Code § 6610<br/> <a href="https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=CORP&amp;division=2.&amp;title=1.&amp;part=2.&amp;chapter=16.&amp;article=">https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=CORP&amp;division=2.&amp;title=1.&amp;part=2.&amp;chapter=16.&amp;article=</a><br/> Read CA AG Dissolution Guide<br/> <a href="https://oag.ca.gov/sites/all/files/agweb/pdfs/charities/publications/dissolving.pdf">https://oag.ca.gov/sites/all/files/agweb/pdfs/charities/publications/dissolving.pdf</a></p> |
|   |     |        | <p><i>Study Questions:</i><br/> Consider problems on pgs. 104-105.</p>  |
| 9   | Wed | Feb 16 | <p><b>Fiduciaries, the Fiduciary Concept, and Liability</b></p>   |
|   |     |        | <p>CB, 127-137, 162-167<br/> SNF, read all sections listed in CB reading <i>except</i> among the sources listed on pg. 162 only read the Restatement assignment.<br/> Michael Klausner and Jonathan Small, "Failing to Govern?" 3 Stanford Social Innovation Rev. 42 (2005).<br/> Willard L Boyd III, Lawyers Service on Nonprofit Boards (2008)<br/> <a href="https://nyemaster.com/documents/cms/docs/Boyd-Willard/BLT_NovDec08_boyd__4FB9672EC6F89.pdf">https://nyemaster.com/documents/cms/docs/Boyd-Willard/BLT_NovDec08_boyd__4FB9672EC6F89.pdf</a></p>                           |
|   |     |        | <p><i>Study Questions:</i><br/> What should you consider before you join a board?<br/> Should all board members be fiduciaries? Why or why not?<br/> What should the role of a lawyer on a board be?</p>  |
|   | Mon | Feb 21 | <p><b>Presidents' Day Holiday (no classes meet)</b></p>   |
| 10  | Wed | Feb 23 | <p><b>Duty of Care</b></p>  |
|   |     |        | <p>CB, 137-162<br/> SNF, Read all sections listed in CB reading <i>except</i> skip the NY statute sections assigned on pg. 137 of the CB.</p>   |
|   |     |        | <p><i>Study Questions:</i><br/> Consider problems on pgs. 160-162.</p>  |
| 11  | Mon | Feb 28 | <p><b>Duty of Loyalty</b></p>   |
|   |     |        | <p>CB, 167-170, 174-198.<br/> SNF, Read all sections listed in CB reading</p>   |
|   |     |        | <p><i>Study Questions:</i> Consider problems on pg. 187 and pgs 197-198.</p>  |
| 12  | Wed | Mar 2  | <p><b>Enforcement: Mary Beckman, Chief, Health Care and Fair Competition Bureau at Massachusetts Attorney General's Office.</b></p>   |
|   |     |        | <p>VIA Zoom; Read Restatement § 5.01 (Black letter and commentary, reporters' notes are optional).</p>  |
| <b>TAX LAW OF NONPROFIT ORGANIZATIONS</b> |     |        |   |
| 13  | Mon | Mar 7  | <p><b>Exemption and Justifications for Exemption, Organizational and Operational Tests</b></p>  |
|   |     |        | <p>CB, 287-310 (top of page), 313-317<br/> SNF, Read all sections listed in CB reading.</p>   |
|   |     |        | <p><i>Study Questions:</i> Consider problems on pg. 301.</p>  |

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| 14 | Wed | Mar 9  | <b>1023 Nuts and Bolts, Arthur Reiman, Managing Partner, The Law Firm for Nonprofits</b>  |
|    |     |        | CB, 310-313.<br>SNF, Read all sections listed in CB reading.  |
| 15 | Mon | Mar 14 | <b>Health Care and Higher Education</b>   |
|    |     |        | CB, 317-339, 396-415.<br><i>Study Questions:</i> Consider problems on pgs. 339-40, pg. 415.   |
| 16 | Wed | Mar 16 | <b>Public Policy Limitations</b>  |
|    |     |        | CB, 367-396<br>Bob Jones statement on race. <a href="https://www.bju.edu/about/what-we-believe/race-statement.php">https://www.bju.edu/about/what-we-believe/race-statement.php</a><br><i>Study Questions:</i> Consider problems on 395-396.  |
|    |     |        | <b>***Essay due by Tuesday March 15 at 5:00 pm. Submit to the appropriate folder on mylaw and email to both my assistant and me. You should not consult sources outside of the materials assigned for class. I am interested in your thinking on the following question.</b>  |
|    |     |        | <b>Answer the following question in <u>no more than 750 words</u>. “Should the IRS apply the contrary-to-fundamental-public-policy doctrine to activity outside of racial discrimination? Why or why not? Should the doctrine be applied only educational entities or to others? If to others, which types? Why or why not?” Be sure to identify and address the best arguments for and against your position.***</b> |
|    | Mon | Mar 21 | Spring Break  |
|    | Wed | Mar 23 | Spring Break  |
| 17 | Mon | Mar 28 | <b>Inurement of Private Gain</b>  |
|    |     |        | CB, 449-458, skim, 458-465,<br>SNF, read the regulations cited on CB pg. 449 only.  |
| 18 | Wed | Mar 30 | <b>Private Benefit and Intermediate Sanctions</b>   |
|    |     |        | CB, 465-466, 468-480.<br>SNF, 465; 468 only IRC § 4958(a), (b), (c)(1), (d), (f) AND Reg 1.501(c)(3)-1(f) (read a few of the examples) AND Reg 53.4958 (as needed for problems).<br><i>Study Questions:</i> Consider problems on pgs. 480-482 (NOT problem 3).  |
| 19 | Mon | Apr 4  | <b>The 990, Guest Speaker Chérie Williams, Tax Manager, Moss Adams.</b>   |
|    |     |        | Form 990, Medecins Sans Frontieres USA, Inc. (will be uploaded to mylaw)  |
| 20 | Wed | Apr 6  | <b>Inurement, Private Benefit, Intermediate Sanctions (and review of tax analysis)</b>  |
|    |     |        | Review Inurement/Private Benefit/IS. Come prepared to discuss the problems that we did not review in class. (this is also a good time to do some outlining).  |

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| 21 | Mon  | Apr 11 | <p><b>Commercial Activities and the Unrelated Business Income Tax, Guest Rob Wexler, Principal, Adler and Colvin</b></p> <p>CB, 578-81, 598-608, 616-629 (through revenue ruling 73-105 only), 637-640. SNF, Read all sections listed in CB reading.</p>  |
| 22 | Wed  | Apr 13 | <p><b>Charitable Contributions, Guest Speaker John Sonogo, Associate Dean for External Affairs UCLA Law</b></p> <p>CB 825-851.</p> <p><i>Study Questions</i></p> <p>Is there a minimum percentage of income that people should give? How much? What do you know/suspect about the percentage of giving by income group? What might be done to increase giving by the wealthier? Should we? Do tax deductions and credits make donations less laudable? Less valuable for the donor? Less valuable for the donee? Would America be better off if citizens could not take tax deductions for charitable giving and the level of taxable income in the country were increased? Which kinds of institutions would be most likely to suffer?</p>   |
| 23 | Mon  | Apr 18 | <p><b>Quick review of commerciality and UBIT; Charitable Contributions: What's a Gift?</b></p> <p>CB, 858-860, 860-880.</p> <p><i>Study Questions</i></p> <p>Consider problems on pgs 888-889.</p>  |
| 24 | Wed  | Apr 20 | <p><b>Limitations on Lobbying and Political Campaign Activities. Guest Prof Ellen Aprill, Loyola School of Law</b></p> <p>CB, 482-91 through section a only; 499-502 (not problems b, c, d); 502-516; 533-543.</p> <p>Other: sermon in the mylaw folder.</p> <p>SNF, read the statutes and regulations cited on page 485 of the CB, only IRC §501(h) and §504 (no other statutes, no regulations) cited on page 490 of the CB, the statute sections; only § 501(c)(3) and §1.501(c)(3)-1(c)(1)(iii) cited on page 502 of the CB, §501(c)(4),(5),&amp;(6) cited on pg. 537.</p> <p><i>Assignment:</i> Assume you represent the IRS: What are your two best arguments that the sermon represents an impermissible campaign intervention? Assume you represent All Saints Church: what are your two best arguments in defense of the church?</p> |
| 25 | Mon  | Apr 25 | <p><b>Private Foundations (a very brief introduction).</b></p> <p>CB, 707-715, 725-730, 750-56</p> <p>SNF, read statutes listed on pg. 450 (i.e., not the regulations).</p>   |
| 26 | Tues | Apr 26 | <p><b>Nonprofit Regulation in the Supreme Court: American for Prosperity Foundation v. Bonta; Course Conclusion</b></p> <p>Read decision <a href="https://www.supremecourt.gov/opinions/20pdf/19-251_p86b.pdf">https://www.supremecourt.gov/opinions/20pdf/19-251_p86b.pdf</a>;</p> <p>Please focus on nonprofit regulatory issues rather than on First Amendment issues. Think about how the case treats nonprofits as private and as public entities. Did the court get it right? why or why not?</p>   |



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|  | Fri | Apr 29 | Review Session |
|  |     |        | Final Exam     |

Review Session: Friday, April 29; 10:30 AM - 11:45 AM, Room TBA