

**THE LAW OF
NONPROFIT ORGANIZATIONS**
Professor Jill Manny
Fall 2021

MATERIALS

Purchase the casebook entitled "Cases and Materials on Nonprofit Organizations, Sixth Edition,"¹ by Fishman, Schwarz, and Mayer, along with the 2021 Edition of the Statutes, Regulations, and Forms, at the N.Y.U. Bookstore. **If you prefer to access statutes, regulations, and forms online it is not necessary to purchase the Statutes, Regulations, and Forms volume.**

ASSIGNMENTS (for the first month of the semester)

September 1 and 8 — Introduction

1. In the Casebook, read:

pp. 3 – 14, 17 – 19, 30 – 44, 287 – 295. Prepare a written outline of your answer to the Introductory Problem on p. 44 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

3. On the Web, briefly visit the following sites:

www.metmuseum.org

www.komen.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.

³ Page references are to the Statutory Supplement, but these items can be accessed online or will be posted on the NYU LMS Brightspace (“NYU Brightspace”). It is not necessary to purchase the Statutory Supplement.

www.fordfound.org
www.nra.org
www.aclu.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 may 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 three articles posted on NYU Brightspace:

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

September 13 — Organization Under State Law

1. In the Casebook, read:

pp. 49 – 81. Prepare a written outline of your answers to Problem 2 on pp. 62 – 63 for your own reference during class discussion.

2. In the Statutory Supplement (or online / NYU Brightspace), 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. 883.
Sample ByLaws, p. 885 (skim).
Sample Charitable Trust, p. 891 (skim).

September 15 — Dissolution and Distribution of Assets

1. In the Casebook, read:

pp. 81 – 116. Prepare a written outline of your answers to Problems 1 and 5 on p. 100 and Problem 1 on pp. 104 – 105 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 20 and 22 — Tax-Exempt Status; Charitable Requirement; Disaster Relief

1. In the Casebook, read:

pp. 359 – 364; 367 – 395. Prepare a written outline of your answers to Problems (a) and (b) on pp. 364 – 365 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 NYU Brightspace 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 27 and September 29 — Private Inurement, Private Benefit, and Excess Benefit Transactions

1. In the Casebook, read:

pp. 449 – 480, 246 – 251 (through Note 1). Prepare a written outline of your answers to the problems on pp. 480 – 482 for your own reference during class discussion.

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

Code: §§ 4958, 4960.

Regulations: §§ 1.501(c)(3)-1(c)(2).

3. Read the four items posted on NYU Brightspace:

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.

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

Robin Pogrebin, *A Bonus From BAM Now Looks Less Wise*, N.Y. Times, Mar. 5, 2021, at C.1..

October 6—Educational Organizations and Religious Organizations

1. In the Casebook, read:

pp. 386 – 414; 415 – 432. Prepare a written outline of your answers to the Problems on p. 415 and the Problems on pp. 432 – 433 for your own reference during class discussion.

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

Code: § 4968.

Regulations: §§ 1.501(c)(3)-1(d)(3).

3. On NYU Brightspace read:

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

October 11—Health Care Organizations

1. In the Casebook, read:

pp. 317 – 339. Prepare a written outline of your answers to and to Problems (a) – (c) and (e) on pp. 339 – 340 for your own reference during class discussion.

October 13—Miscellaneous Organizations

1. In the Casebook, read:

pp. 347 – 353 and 433 - 440. Prepare a written outline of your answers to the Problems on pp. 354 and Problems (a) and (c) on pp. 440 – 441 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 18— Commercial Activities

1. In the Casebook, read:
pp. 575 – 597. Prepare a written outline of your answers to Problems (a), (b), and (f) – (i) on pp. 597 – 598 for 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 20 and 25 — Limitations on Lobbying

1. In the Casebook, read:
pp. 482 – 500. Prepare a written outline of your answers to all portions of the Problem on pp. 500 – 502 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 NYU Brightspace, read:
Jill S. Manny, *Nonprofit Legislative Speech: Aligning Policy, Law, and Reality*, 62 Case W. Res. L. Rev. 757 (2012). (OPTIONAL)

October 27 – Limitations on Political Campaign Activities

1. In the Casebook, read:
pp. 502 – 542, 543 – 546. Prepare a written outline of your answers to all portions of the Problem on pp. 542 – 543 for your own reference during class discussion.
2. In the Statutory Supplement (or online), read:
Code: §§ 501(c)(3), (4); 527; 4955.

November 1—Introduction to Private Foundations and their Alternatives

1. In the Casebook, read:

pp. 707 – 708, 711 (Foundations in Society) – 736 (through middle of the page), 742 – 745, 760 – 766. Prepare a written outline of your answers to problems 1(a), (b), and (f) on pp. 745 – 746.

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

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

November 3—Avoiding Private Foundation Status

1. In the Casebook, read:

pp. 747 – 758. Prepare a written outline of your answers to the Problem on pp. 758 – 759 **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 or re-read:

Code: §§ 509(a) – (e); 170(b)(1)(A)(i) - (vi); 4946.

November 8 and 10— Private Foundation Excise Taxes

1. In the Casebook, read:

pp. 775 – 777, 778 – 792, 794 – 797, 803 – 808, 809 – 811, 812 – 821, 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. 792 – 794, and problems (b) – (e), (g), and (i) on pp. 821 – 822 for your own reference during class discussion.

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

Code: §§ 4940; 4941; 4945; 4946.

November 15 and 17— Unrelated Business Income Tax

1. In the Casebook, read:

pp. 598 – 635. Prepare a written outline of your answers to the problems on pp. 586 – 587 (excluding problem 1(d)).

2. In the Statutory Supplement, read:

Code: §§ 511(a), (b); 513(a), (c), (f), (h), (i).
Regulations: § 1.513-4.

3. On Brightspace 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 22—Exclusions from UBTI

1. In the Casebook, read:

pp. 637 – 643; pp. 652 – 658. Prepare a written outline of your answers to the problems on p. 643 – 644 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).

November 24—Video

1. Private Foundations General Counsel Panel
2. Tape will be posted to Brightspace on November 11 along with bios of the participants.

November 29 and December 1—Corporate Governance

1. On Brightspace, 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.

2. In the Casebook, read:

pp. 123 – 129, 135 – 160, 167 – 170, 175 (Notes) – 188, 194 – 199 (through “Duty of Obedience” paragraph). Prepare a written outline of your answers to the Problem 1(a), (b), and (c) on pp. 160 – 161, the Problem on p. 187, and Problems (a)-(c), (g), and (h) on pp. 197 – 198 for your own reference during class discussion.

3. In the Statutory Supplement or online, review:

Form 990. Focus on Part VI, Governance, Management, and Disclosure.