

NONPROFIT ORGANIZATIONS
Baylor Law School
Darren B. Moore
Spring Quarter 2021

SYLLABUS

I. WHY ARE WE HERE?

I believe in the value and importance of the nonprofit sector and the people in that space to heal, educate, advocate, make real and lasting change, expand beauty, and bring hope and joy – essentially to make the world a better place. And I believe that if those things are going to happen and those organizations are going to be sustainable there have to be advisers who understand the landscape, the hazards, and the risks and can competently serve as a guide through the business, tax, and legal issues. That’s why I do what I do as a practicing attorney, and that’s what I hope to introduce to you through this course.

II. GENERAL INFORMATION:

Class Meetings: Zoom

Phone:

Work: (817) 877-1088

Mobile: (817) 247-4704

Email: dmoore@bwwlaw.com (You can also contact me through Canvas)

Office hours:

Because I am an adjunct, I do not maintain regular office hours at the law school. My office is in Fort Worth but recognizing that may not be convenient for some of you, I encourage you to reach out to set an appointment if you’d like to talk outside of class. If you have questions about course material, I encourage you to post those questions to Canvas. I will answer them if one of your classmates doesn’t do so first. Most likely, if you have questions about the material, someone else does too.

III. COURSE MATERIALS:

Required: Elizabeth Schmidt, *Nonprofit Law: The Life Cycle of a Charitable Organization*, 2d. Ed. (2016) (“Schmidt”)

Canvas:

- Other reading materials will be provided to you during the course via Canvas.
- Please post any questions over course materials to Canvas.
- I will communicate with you through Canvas in the event of any changes to the syllabus unless we discuss it in class.
- Please make sure you check your email associated with Canvas routinely.

Statutory Materials: You will need access to (but do not need to purchase) the Internal Revenue Code and the Texas Business Organizations Code (“TBOC” herein). Both are available on Westlaw and Lexis.

IV. OTHER HELPFUL RESOURCES:

- Hill & Mancino, *Taxation of Exempt Organizations* (Warren, Gorham & Lamont, 2002, with current supplement). Treatise available on Westlaw.
- <https://www.irs.gov/charities-and-nonprofits> (specifically Publication 526, 557, and 598, as well as Forms 1023 and 990).
- www.GuideStar.org (filed Form 990s for many nonprofit organizations).
- Nonprofit Law Prof Blog: www.lawprofessors.typepad.com/nonprofit/
- TexasC-Bar: www.texasbar.org (see Legal Resources)
- Nonprofit Law Matters - Adler & Colvin: <https://www.adlercolvin.com/blog/>
- Restatement of the Law – Charitable Nonprofit Organizations (ALI Draft). Available on Westlaw.

V. COURSE OVERVIEW AND GOALS:

We will examine the underpinnings of the nonprofit sector and the laws and policies that apply to the creation, and governance of nonprofit organizations with a substantial focus on obtaining and maintaining tax exemption for charitable organizations. Using a combination of readings, statutory and case analysis, problem-solving, and drafting, we will explore the unique regulatory environment applicable to nonprofit organizations and gain an understanding of the interaction of various legal fields on the law of nonprofit organizations.

Specific goals of the course include the following:

- Gain familiarity with different structures of nonprofit organizations.
- Understand planning involved in choosing an appropriate structure.
- Learn the basics of organization and operation under the Texas Business Organizations Code.
- Understand state and federal standards of care applicable to nonprofits and their directors.
- Learn the basic requirements for obtaining and maintaining tax-exempt status under Section 501(c)(3).
- Be introduced to the rules related to private foundations and public charities.
- Gain a basic familiarity with fundraising and charitable giving topics.
- Gain a general overview of non-charitable tax-exempt organizations (if time allows).

My overarching goal for this course is to have you develop solid skills that will help you as lawyers, and more particularly help you serve on boards of nonprofits or as advisers to nonprofits. Guiding you into these roles is important to me, and as a result, I have high expectations for your performance in class and on our assignments. I know you can do the work, and I will coach you through the process to help prepare you as professionals who will soon be using your lawyering skills to help others.

By the end of the course you should be able to show me in writing and orally how lawyers approach counseling nonprofit organizations and solving legal problems in this area demonstrating an understanding of the applicable laws and how those laws are applied to new facts.

VI. COURSE REQUIREMENTS

Class Preparation:

When you arrive for each seminar meeting, you are expected to have been keeping up with the designated readings and outside assignments. Participation in a discussion is expected. We will spend approximately 2 hours in class each week. You should be spending several hours outside of the classroom for study, preparation of assignments, and preparation for discussion each week.

Attendance:

The Baylor Law School attendance policy applies to this course. Because this course meets only once per week, each absence has more significance. Please be respectful of me and your peers by being in the classroom at the assigned time and staying until the class ends. If there is an emergency or some reason you absolutely cannot be at the meeting or need to arrive late or leave early (sickness, sickness of a family member, team competition, or other similar situations), please notify me as soon as you are aware of this to make alternate arrangements to get the material discussed in the class session. Notification by email or text is acceptable.

Class Participation/Professionalism:

Because we will only meet once per week, it is critical that you attend and participate. Participation includes asking questions, answering questions, asking questions via Canvas, etc. Feel free to ask any question related to the law of nonprofits, whether it is something to do with the assignments, part of the readings, or simply something that has caught your attention.

Please come to class prepared. Being prepared does not mean you are an expert on the material. It does mean you have read and considered the assigned materials, noted any questions you have, and completed assigned work. My analysis of your class participation for grading purposes is based on the quality and substance of your participation, not the quantity. This does not mean I expect everything you say to be a correct statement of the law or a particularly insightful comment. We all make mistakes, and I expect all of us (including me) will at some point in the quarter. Incorrect responses and/or failure to immediately understand a concept won't be treated as irrefutable evidence of a lack of preparation. Good lawyers make errors and/or take time to understand certain concepts. However, good lawyers do not fail to prepare unless an extenuating circumstance prevents preparation in which event, they notify their client or the court and seek more time. Likewise, should you find you have been unable to prepare for class, I would prefer you let me know rather than trying to wing it.

Along with being prepared, good attorneys pay attention and respond to what others are saying in class and work both independently and with others to learn areas of the law and solve problems. Please make every effort to do so. You should seek to participate in class discussions by both speaking *and* listening to what others have to say. Interrupting other class participants (students or

me) shows a lack of professionalism. Learning to listen will be one of your most important skills as an attorney.

As we will be proceeding online, please refrain from surfing the internet, reading Reddit, emailing friends, etc. during class time. Little distractions can cause you to miss important information – a lesson worth learning now. Consider it good practice to refrain from using your computer or other devices in those ways for these two hours each week. If you are expecting an emergency call, please set your phone so that it will vibrate, and you are free to step out.

VII. EVALUATION

You will have multiple graded opportunities during the quarter from which to receive feedback. My goal in designing the course is to provide varied opportunities so that your entire grade does not come from your final exam, and you can demonstrate your competency through written assignments, oral presentations, an examination, and class participation. Specifics of the grading system are as follows:

1. Certificate of Formation/Bylaws (10%)

- You will create a Texas nonprofit corporation by drafting an initial Certificate of Formation (with all provisions that would be required for an organization to qualify as exempt under Section 501(c)(3) of the Internal Revenue Code) and Bylaws for the organization. We will discuss further details regarding these documents and resources that you may utilize during the class sessions.
- The purpose of the assignment is to introduce you to the decisions to be made in creating the most commonly used form of nonprofit entity in Texas and to provide you an opportunity to practice your drafting skills.

2. IRS Form 1023, Application for Recognition of Exemption Under Section 501(c)(3) (10%)

- You will prepare a Form 1023 for the organization you created under Step 1. The Form 1023 should be completed as if you would be filing it with the IRS. You do not need to attach your Certificate of Formation or Bylaws. You do not need to worry about filling in an Employer Identification Number. If there is a schedule that is applicable to your organization, identify this schedule and fill it out to the best of your ability. The instructions to Form 1023 are for your benefit. There is no requirement that you read and/or utilize these instructions, but you may find that they are helpful.
- The purpose of the assignment is to introduce you to the form required for obtaining recognition of exempt status as an organization described in Section 501(c)(3), a process required in almost every instance (we will discuss the exceptions). Working through the questions on the Form 1023 will also help you to understand key issues of interest to the IRS in regulating the charitable sector.

3. Nonprofits in the News (10%)

- You will identify a legal issue facing a nonprofit in the news or affecting nonprofit law generally and prepare a short (not to *exceed* 3 pages, single-spaced) description of the

matter, analyzing the issue in light of what we have earned in class. You will lead a discussion (avg. 5-10 minutes) in one of our class sessions on the issues arising from the news story. Each student will lead a discussion, and we will sign up on the first day. The issue may be anything that relates to legal rules that apply to nonprofits. You may find it helpful to review the Nonprofit Law Prof Blog (www.lawprofessors.typepad.com/nonprofit), the Chronical of Philanthropy, or a local or national newspaper.

- The purpose of the assignment is for you to be aware of the breadth of the nonprofit sector and how prevalent it is in society while also getting you to think (and write) about at least one live legal issue in the nonprofit world.

4. Participation (10%)

- Prepare for, attend, and be actively involved (as described above) in each class session as well as any discussion threads. Be engaged!

5. Comprehensive final exam (60%)

- The final exam will be a two-hour exam consisting of a combination of true/false, multiple choice, short answer, and essay questions.
- The purpose of the exam is to assess your knowledge of the course content and your ability to apply rules you have learned to unique fact patterns.

VIII. ADMINISTRATIVE MATTERS:

Baylor University Title IX Office – Title IX Coordinator

Baylor University does not discriminate on the basis of sex or gender in any of its education or employment programs and activities, and it does not tolerate discrimination or harassment on the basis of sex or gender. If you or someone you know would like help related to an experience involving sexual or gender-based harassment, sexual assault, sexual exploitation, stalking, intimate partner violence, or retaliation for reporting one of these type of prohibited conduct, please contact the Title IX Office at (254)710-8454 or report online at www.baylor.edu/titleix.

The Title IX office understands the sensitive nature of these situations and can provide information about available on- and off-campus resources, such as counseling and psychological services, medical treatment, academic support, university housing, and other forms of assistance that may be available. Staff members at the office can also explain your rights and procedural options if you contact the Title IX Office. You will not be required to share your experience. **If you or someone you know feels unsafe or may be in imminent danger, please call the Baylor Police Department (254-710-2222) or Waco Police Department (9-1-1) immediately.** For more information on the Title IX Office, the *Sexual and Gender-Based Harassment and Interpersonal Violence policy*, reporting, and resources available, please visit the website provided above. For more information on how to report or to learn more about our policy and process, please visit www.baylor.edu/titleix or call the Title IX Office at (254) 710-8454.

Academic Integrity

The Law School Honor Code applies to your work in this course. (See www.baylor.edu/content/services/document.php/135907.pdf)

IX. TURNING IN WRITTEN ASSIGNMENTS

All written assignments must be submitted to me on Canvas by 11:59 p.m. of the date they are due. Any technical difficulties in submitting an assignment on Canvas will be your responsibility so please make sure they are uploaded. If you have insurmountable technical difficulties, you may email them to me at dmoore@bwwlaw.com by the same deadline.

Written assignments that are turned in late will have points deducted as follows: (i) assignments turned in one day late will be penalized by a grade reduction of 5% of the total points available for that assignment; (ii) assignments turned in more than one day late will be penalized by a grade reduction of 10% of the total points available for that assignment plus an additional 3% for each day thereafter that the assignment is late. If you need extra time in completing an assignment due to a reason that would constitute an approved absence, please notify me.

X. COURSE OUTLINE & READING ASSIGNMENTS:

Note: To maximize our time together and ensure that we spend adequate time on a subject, I may need to adjust the assignments below. I will make every effort to give you at least one week's notice of any variations.

CLASS	DATE	TOPIC AND REQUIRED READING
1.	February 10	<p>Topic: Introduction to the Nonprofit Sector; State Level Organizational Issues</p> <p>Reading:</p> <p><i>Schmidt:</i> Chapter 1: pp. 3-8, 25-34; Chapter 2: pp. 35-40; 45-49, 58-64; 675</p> <p><i>TBOC:</i> 2.002, 2.003, 2.008, 2.010, 2.101, 2.102, 2.112, 3.001, 3.003, 3.005, 3.009, 3.103, 5.201, 6.002, 6.201, 6.202, 7.001, 8.003, 22.053, 22.054, 22.102, 22.151, 22.203, 22.204, 22.205, 22.206, 22.208, 22.231</p> <p>3.051, 3.052, 11.101, 11.105, 22.301, 22.302, 22.304, 22.305</p>

2.	February 17	<p>Topic: The Board of Directors and the Governance Role; Role of the AG</p> <p>Reading: <i>Schmidt:</i> Chapter 3: pp. 67-69; 87-96; 99-112; 119-120 (Questions 1-7); 121-136; 143-144; Chapter 13: 633-636</p> <p><i>TBOC:</i> 3.101, 3.102, 3.105, 20.002, 22.201, 22.202, 22.164, 22.221, 21.223-22.228, 22.230, 22.235</p> <p><i>Tex. Prop. Code:</i> 123.001-123.006</p> <p><i>Restatement of the Law – Charitable Nonprofit Organizations – Fiduciary Duties</i></p>
3.	February 24	<p>Topic: Tax-Exempt Purposes of §501(c)(3) Organizations; Obtaining Tax-Exempt Status</p> <p>Reading: <i>Schmidt:</i> Chapter 4: pp. 145-146; 160-178; 197-224; 233-239 (including X)</p> <p><i>Certificate of Formation and Bylaws Due by 11:59 p.m. on Canvas</i></p>
4.	March 3	<p>Topic: Inurement, Private Benefit, and Excess Benefit Transactions'</p> <p>Reading: <i>Schmidt:</i> Chapter 9: pp. 447-494</p>
	March 10	SPRING BREAK: NO CLASS
5.	March 17	<p>Topic: Private Foundations vs. Public Charities</p> <p>Reading: <i>Schmidt:</i> Chapter 7: pp. 323-324; 328-336; 340-342; 346-347; 359-364; 371-376</p>
6.	March 24	<p>Topic: Lobbying and Political Activity</p> <p>Reading: <i>Schmidt:</i> Chapter 11: pp. 544-545; 548-559; 560-566; 573-574 (stop after #3); 575 (IRC & Reg.); 577-595</p>

7.	March 31	<p>Topic: Charitable Contributions</p> <p>Reading: <i>Schmidt</i>: Chapter 5: pp. 263-281</p> <p><i>Form 1023 Due by 11:59 p.m. on Canvas</i></p>
8.	April 7	<p>Topic: Raising Funds from Commercial Activities; Unrelated Business Income; Cause-Related Marketing</p> <p>Reading: <i>Schmidt</i>: Chapter 8: pp. 385-392; 402-432; 434-443; Chapter 6: 302-305</p>
9.	April 14	<p>Topic: Tax-Exempt but Not 501(c)(3)</p> <p>Reading: IRS Publication 557, pp. 47-50</p>

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