

Syllabus

NONPROFIT ORGANIZATIONS

Law-734

University of Maine School of Law

Spring 2022

Instructor Information

Instructor: **Professor Peter Pitegoff**
Email: pitegoff@maine.edu
Phone/Text: 207-780-4362 (office); 207-615-6334 (mobile)
Office Hours: By appointment

Course Information

Meetings: Mondays and Wednesdays, 10:40 am to 12:10 pm
Location: Room 506
Credit Hours: Three (3) credit hours

Course Description

This course explores nonprofit corporations and related organizational forms of nonprofit enterprise. We examine state corporate law and federal tax law affecting the nonprofit sector, with attention to formation and dissolution, operation and governance, tax exemption, political and commercial activity, and regulatory constraints. We also compare nonprofit corporations with government, for-profit, and limited equity entities and identify public policy arguments for tax exemption and other differential treatment of nonprofit organizations.

Each of you should become a regular participant in class discussions and volunteer to offer questions or comments. In addition to participation in classroom discussions, you will be required to produce two short writing projects during the semester. Grading is based upon class participation and results of the writing projects.

Course Management System

We will make use of the Brightspace platform to share information about the class, including the syllabus, assigned readings in the textbook, supplemental assigned readings, and announcements. Be sure to continue checking Brightspace regularly for announcements throughout the semester.

Textbook/Course Materials

The required textbook for this course is: James J. Fishman, Stephen Schwarz, and Lloyd Hitoshi Mayer, *Nonprofit Organizations: Cases and Materials*, **Sixth Edition**, Foundation Press,

2021 [listed below as “*Fishman*”]. If you plan to use the earlier Fifth Edition (2015), you are still responsible for any new (Sixth Edition) material for discussion in class. The syllabus is structured around the Sixth Edition, but I have cross-referenced comparable (although not identical) reading assignments in the Fifth Edition, with page numbers noted with the designation “5th” in brackets.

Additional reading materials will be available on line or posted periodically on Brightspace. Reference to the Maine Nonprofit Corporation Act [“*MNCA*”] is required and available in pdf form at: <https://legislature.maine.gov/statutes/13-B/title13-B.pdf> .

You also will need to access selected provisions of the Internal Revenue Code [“*IRC*”] from time to time, including but not limited to:

Section 501 at: <https://www.law.cornell.edu/uscode/text/26/501>

Section 509 at: <https://www.law.cornell.edu/uscode/text/26/509>

Note: For access to other sections of the IRC, simply insert the IRC section number in place of the number following the last “/” in the links above.

Assigned readings in the Fishman textbook, selected statutory provisions, and additional materials to be linked or posted in Brightspace are outlined below, and *will be adjusted and supplemented with other readings* from time to time throughout the semester. I will provide you with prior notice in class and through Brightspace of reductions, additions, or other changes to these assignments.

Assignments/Papers/Projects and Grading/Evaluation

You will be evaluated in this class upon the basis of two writing assignments and your class participation and attendance. In calculation of your final grade, each of the following three items will be accorded equal weight:

- (1) Letter to a client on organization of a nonprofit corporation [Writing Assignment #1].
- (2) Policy essay analyzing a selected issue in regulation of nonprofit organizations, with recommendation for reform or institutional strategy. [Writing Assignment #2].
- (3) Professionalism and class participation, including semester-end presentation.

Class participation will involve discussions in a seminar format, based upon assigned readings and current events, as well as selected problem sets or simulated transactions. Each of you also will conduct a presentation near the end of the semester based upon research and analysis for your policy essay [Writing Assignment #2].

Course Outline

1. Jan. 19 – Introduction; overview

Fishman 3-19, 26-31
[5th: 3-15 (top half)], 21-27]

2. Jan. 24 – Regulatory regime

Fishman 32-45 (including Intro Problem @44-45)
[5th: 27-39; including Intro Problem @39]
MNCA sec's 102, 1406
IRC sec 501

3. Jan. 26 – Formation; statutory approaches

Fishman 49-66, 78-81
[5th: 43-57, 69-73]
Brightspace: NP-Articles of Incorporation (Maine form)
MNCA sec's 201, 202, 401-407

4. Jan. 31 – Dissolution, deviation

Fishman 81-108
[5th: 73-96]
MNCA sec's 801-803, 805, 1101, 1112

5. Feb. 2 – Governance

Fishman 123-129
[5th: 109-114]
Brightspace: NP-Directors Guidebook-1 (hereinafter "Guidebook-1") 3-13
NP Governance (hereinafter, "Governance") 3-8, 17-24, 121-138
NP- Sample Bylaws
MNCA sec's 601-606, 701-704-A, 707, 710

6. Feb. 7 – Fiduciary duties; directors' duty of care

Fishman 135-138, 152 (starting w/note 3)-167
[5th: 120-122 (entire page), 135(starting w/note 3)-149]
Brightspace: Guidebook-1 25-35, 257-269
Governance 8-13
MNCA sec's 714, 1301, 1302

7. Feb. 9 – Duty of loyalty; operations

Fishman 167-175, 184 (stating w/note 2)-201
[5th: 149-156, 171(bottom)-184(top)]
Brightspace: Guidebook-1 39-49, 71-81
MNCA sec's 709, 712, 713-A

**...Writing Assignment #1 (client letter) introduced [Brightspace]
[due Friday Feb. 25]**

8. Feb. 14 – Taxation of charitable organizations

Fishman 287-310, 313-317
[5th: 271-289, 291-293, 296-299]
IRC sec's 170(b)(1)(A); 501(a), (b), & (c)

9. Feb. 16 – Maine's nonprofit sector:

Jennifer Hutchins, Maine Association of Nonprofits

[Feb. 21 – no class session – Presidents' Day]

10. Feb. 23 – Application for federal tax exemption; public charity or private foundation

Fishman 310-313, 716-720, 725-730, 750-774
[5th: 293-295, 657-660, 666-671, 682-702]
IRS sec's 501(c)(3) and 501(c)(4), 509(a)
IRS Form 1023: <https://www.irs.gov/pub/irs-pdf/f1023.pdf>

...Writing assignment #1 due Feb 25

11. Feb. 28 – Range of tax exempt purposes, discussion of writing assignment #1

Fishman 340-347, 354-367, 396-417, 422-441
[5th: 320-326, 333-344, 371-388, 394-411]

12. Mar. 2 – Nonprofit general counsel:

Rita Heimes, International Association of Privacy Professionals

13. Mar. 7 – Commercial activity

Fishman 66-71, 110-116, 575-585, 598-606, 626-637 (top)
[5th: 57-63, 98-107, 527-536, 549-560, 577-587]
IRC sec's 511, 512

...**Writing assignment #2 (policy essay) introduced [BB]; due Apr. 29**
(**topic due Mar. 22; outline due Apr. 5; presentations on Apr. 18 & 20**)

14. Mar. 9 – Community development finance

Fishman 216-218 (note 4), 347-354
[5th: [197-198(note 4), 326-333]
Brightspace: CD Finance-Pitegoff
IRC sec's 42, 45D

[Spring break – Mar. 14-18]

15. Mar. 21 – Hybrid forms, joint ventures, social entrepreneurship; state oversight intro

Fishman 219-230, 672-681, 702-705
[5th: 199-209, 616-640, 645(bottom)-648]
Brightspace: NP-Directors Guidebook-2 131-141
NP-Lowe-Benefit Corps & Nonprofits
MNCA sec.'s 902-904, 907

...**Writing assignment #2 -- topic due Mar. 22**

16. Mar. 23 – State oversight:

Linda Conti, Maine Attorney General's Office

17. Mar. 28 – Private Foundations, endowments, philanthropy

Fishman 219-230, 707-715, 720-724, 730-732, 825-827, 918-927
[5th: 184, 192-193, 649-657, 661-666, 671-672, 745-747, 755-760,
823-831]
Brightspace: Philanthrocapitalism-Rieff
<http://www.newyorker.com/news/john-cassidy/mark-zuckerberg-and-the-rise-of-philanthrocapitalism>

18. Mar. 30 – Political activity, public policy limitation, nondiscrimination

Fishman 387-396, 482-504, 533-550
[5th: 363-371, 445-464, 491-505]
IRC 501(c)(4), 527

19. Apr. 4 – Non-charitable exempt organizations; annual reporting

Fishman 553-557, 931-943, 949, 964-965, 981-983
[5th: 508-511, 835-846, 851, 865-866, 881-883]
Brightspace: Dale & Manny, Social Welfare Organizations
IRS Form 990: <https://www.irs.gov/pub/irs-pdf/f990.pdf>

...Writing assignment #2 -- outline due Apr. 5

20. Apr. 6 – Representing nonprofits:
Rob Levin, Law Office of Robert Levin
21. Apr. 11 – Ethics, state regulation of solicitation, scandals
Fishman 241-246, 267-284, 449-466
[5th: 219-225, 247-267, 416-431]
MNCA sec's 718, 721, 1105-1106
22. Apr. 13 – No class session – prep for presentations
23. Apr. 18 – Student presentations on policy essay research
24. Apr. 20 – Student presentations on policy essay research
25. Apr. 25 – State and local tax issues
Fishman 77-78 (note 1), 441-448
[5th: 68 (note 1), 289-290, 411-416]
26. Apr 26 – Conclusion

... Writing assignment #2 due Friday Apr. 29

Course Goals & Learning Objectives

Goals: Upon successful completion of this course, you will have a general understanding of nonprofit organizations and their legal and regulatory environment. You will become aware of various nonprofit organizational entities and the multiple roles that nonprofit organizations play in the domestic political economy, including public policy rationales for tax exemption and related policy debates. You will appreciate complex hybrid forms and mechanisms involving nonprofit entities in commerce, politics, and philanthropy

Objectives: More specifically, you will gain facility with state corporate law and federal tax law affecting the nonprofit sector, including formation and dissolution, operation and governance, tax exemption, political and commercial activity, and regulatory constraints. You will be able to analyze and apply statutory provisions governing nonprofit organizations, with emphasis on the Maine Nonprofit Corporation Act and selected sections of the Federal Internal Revenue Code. You will achieve a subtle sensitivity to the ethical responsibilities of participants in nonprofit organizations, to imperatives of regulatory compliance and risk management, and to a lawyer's responsibilities in representing nonprofit clients.

Assessments: You will be assessed on these learning objectives through your performance in class, in your written assignments, and in other communications outside of class.

Course Policies & Requirements

Academic Integrity: The University of Maine System and University of Maine School of Law have a Student Conduct Code and Academic Misconduct policy contained in the Student Handbook. I take academic integrity very seriously. You should do so as well.

Each student should know the standards of conduct and expectations of academic integrity. Violations of academic integrity include any actions that attempt to promote or enhance the academic standing of any student by dishonest means. Cheating on an examination, plagiarism, making statements known to be false or misleading, falsifying the results of one's research, improperly using library materials or computer files, or altering or forging academic records are examples of violations of this policy. Acts that violate academic integrity disrupt the educational process and are not acceptable.

Evidence of a violation of the academic integrity policy will normally result in disciplinary action, including referral to the UMS Student Conduct Code process. A copy of the complete Academic Integrity Policy is available on the [University of Maine System website](#) or the [MyLaw Portal](#).

Participation and Attendance: Class preparation, participation, and attendance are extremely important. Both the Maine Law Student Handbook academic requirements and American Bar Association standards for law schools require regular attendance in class. The American Bar Association standards also require that students spend a significant amount of time in out-of-class academic activities per credit that is awarded. Maine Law has adopted a policy, consistent with the ABA policy, that students are required to complete approximately 30 hours 20 minutes of out-of-class work per credit per semester. Therefore, in this three-credit course, you should spend approximately six hours per week in work time outside of class, assuming about eight hours for the first written assignment and fourteen hours for the second written assignment and presentation.

The schedule, policies, procedures, and assignments in this course are subject to change in the event of extenuating circumstances, by mutual agreement, and/or to ensure better student learning. In the event that the Law School cancels classes, such as for severe weather, students are expected to continue with readings as originally scheduled.

COVID-19-Related Attendance Policy: If you have any concern about your own health or that of your immediate family, please do not come into the Law School. A health-concern based absence will not count against your grade during the COVID-19 pandemic.

Attendance: Inclement Weather Policy: For information on campus closings, please call the storm line at 207-780-4800 or sign up for USM text alerts. If the University of Southern Maine closes the campus or cancels classes, this always applies to the Law School. In rare circumstances, the Law School closes before USM. In this situation, an email about closings will be sent to students through the email listserv.

If the Law Building is (1) closed for the day, (2) open late and our class is scheduled to start before the law school opening, or (3) closed early and our class is scheduled to end after the building closes, then classes may be held remotely. If this is the case, students will be notified and sent a ZOOM link. If you are unable to attend class due to the inclement weather, you should notify me.

If class is canceled, I will let you know about scheduling a make-up.

Class Recording Policy: As a general rule, the recording of all classes is prohibited without permission. If you will be absent from class and wish to record a missed class session, you must first contact me for permission. If permission is granted, you must arrange for a classmate to facilitate the recording. (Suggested mobile apps for self-directed audio recording can be found in the MyLaw Portal.) All class recordings are for personal use only and may not be uploaded to the internet or otherwise shared, transmitted, or published without the prior consent of the professor. If permission is denied, then you must find an alternative method for making up the missed material.

If you are requesting the recording of classes pursuant to the Americans with Disabilities Act or in the case of exceptional circumstances, such as severe illness or hospitalization, you should contact the Dean of Students.

If you are requesting the recording of classes for reasons related to COVID-19 isolation, quarantine, or family care, please contact me before the class to request the recording. Recordings will be provided by me for absences in these cases. If you anticipate missing multiple sessions of a class for health, family care, quarantine, or other reasons, please contact the Dean of Students.

Laptops/Technology: During class, you may use your laptops for class-related purposes *only and* may not use it for email, chatting, internet searching, nor any non-class discussion uses. Such activity is disrespectful, unprofessional, and distracting to your classmates. All other electronic devices including cell phones should be turned off during class if possible.

Classroom Engagement: During class, in addition to occasional cold calls on students, I will present questions regularly to the entire class and encourage you to raise your hand to volunteer an answer. I encourage you to ask questions as well during class, which can be helpful to the learning process for all. I may defer answers to questions, however, until after class or to the next class in the interests of time or for other reasons.

Maine Law Policies and Resources

Disability Accommodations: Maine Law is committed to providing students with disabilities equal access to all programs and services. If you think you have a disability and would like to request accommodations, please contact the Disability Services Center (DSC). Timely notification is essential. The Disability Services Center can be reached by calling 207-780-4706 or by email dsc-usm@maine.edu. If you have already received an accommodation letter from the Disability Services Center and would like to discuss your accommodations for this course, please contact Dean of Students Scheherazade Mason, who serves as the liaison to the DSC. If you would like to discuss your accommodations with me, you can email me directly.

Wellness Resources: Maintaining your physical and mental health is essential to learning the law and succeeding in law school. Law school is a setting where mental health or substance use struggles can be exacerbated. If you ever find yourself struggling, do not hesitate to ask for help. Maine Law is committed to promoting wellness for all students. I encourage all of you to review the [Health & Wellness Resources](#) listed on the MyLaw Portal. The resources include confidential counseling through USM Counseling Services (207-780-4050) and the Maine Assistance Program for Lawyers and Law Students (207-266-5951). You can also contact the Maine Law [Office of Student Affairs](#). Please let me know if you have any questions.

If you are facing illness, injury, the birth of a child, death in the family, or other extraordinary circumstances that may impact your participation in this course, you should contact me in advance of missing classes or any assignment deadlines. Stressful situations like these may lead to diminished academic performance or may reduce your ability to participate in daily classroom activities. Law School services are available to assist students with handling these stressful events. In an emergency situation and in cases of unforeseen circumstances, you should contact the Dean of Students Scheherazade Mason as soon as possible. *For examination conflicts or emergency situations during the examination period, please see the Registrar, Rachel Tracy.*

Statement on Religious Observance for Maine Law Students: Maine Law respects the religious beliefs of all members of the community, affirms their rights to observe significant religious holy days, and will make reasonable accommodations, upon request, for such observances. If your religious observance is in conflict with the academic experience, you should inform me of the class or other functions that will be affected. It is your responsibility to make the necessary arrangements and follow our agreed upon accommodation.

Title IX Statement: The University of Maine School of Law is committed to making our campuses safer places for students. Because of this commitment, and our federal obligations, faculty and other employees are considered mandated reporters when it comes to experiences of interpersonal violence (sexual assault, sexual harassment, dating or domestic violence, and stalking). Disclosures of interpersonal violence must be passed along to members of the University of Maine System's Title IX team who can help provide support and academic remedies for students who have been impacted. More information can be found online at <https://mainelaw.maine.edu/student-life/title-ix/>. You may contact USM's Deputy Title IX Coordinator, Sarah E. Holmes at usm.TitleIX@maine.edu or 207-780-5767 or the UMS Title IX Coordinator, Liz Lavoie at titleix@maine.edu or 207-581-5866. You can also reach out to Maine Law's Office of Student Affairs for support and referrals.

If students want to speak with someone confidentially, the following resources are available on and off campus: University Counseling Services (207-780-4050); 24 Hour Sexual Assault Hotline (1-800-871-7741); 24 Hour Domestic Violence Hotline (1-866-834-4357).