

**Nonprofit Organizations, Section 48521
UC Hastings College of the Law, Spring 2022**

Robert A. Wexler

Time: Thursdays 3:40 pm to 5:55 pm

Location: TBD

Learning Outcomes

After the successful completion of this course you will:

- understand nonprofit law at both the state and federal levels via a blend of theory, doctrine, and practice;
- appreciate how societal norms and values affect the development of nonprofit law; and
- have practical legal skills in the area of nonprofit law.

Textbooks (bring FSM and the Statutes to class)

- Fishman, Schwarz, and Mayer, Nonprofit Organizations, Sixth Edition (6th ed. 2021) (“FSM”)
- Fishman, Schwarz, and Mayer, Nonprofit Organizations, Selected Statutes for Nonprofit Organizations (2021) (“Statutes”)

Office Hours

I will not hold office hours at Hastings, but I am available to schedule times via phone or zoom; and I am happy to arrange to meet with students either before or after class.

Grading

Your grade will be based on your performance on the final exam. More details on the exam will be provided during the semester.

Attendance and Punctuality

Standard 304(d) of the American Bar Association mandates regular attendance. As per Hastings policy, attendance will be taken. To the extent possible, please discuss absences with me in advance. Missing over 20% of class time is grounds for administrative withdrawal. Please also make every effort to be punctual. Repeated tardiness or absences will negatively impact your grade.

Class Participation

I employ “cold calling,” but in a (hopefully) non-stress-inducing way. Consider it an opportunity to show how much you know.

Recording Classes

All classes will be audio-recorded and made available to all students. Please do not otherwise record class without my permission.

Accommodations

Students with disabilities should contact the Disability Resource Program at 415-565-8948 or DRP@uchastings.edu to request accommodations for all course-related needs.

Assignment List

The tentative assignment list is below. As needed, I will post updated versions of the assignment list as the semester continues. The assignments are not of equal length; we may spend more or less than one class on each.

Class I: January 13, 2022

Introduction -- The Nonprofit Sector: An Overview

FSM: pgs. 3-45; *problem pgs. 44-45*

Statutes:

- I.R.C. §§ 501(a)-(c); 170(a)(1),(c); 509(a)
- Calif. Corp. Code § 5410, first sentence only

Class II: January 20, 2022

Formation of a Nonprofit Organization

FSM: pgs. 49-63, *problem pgs. 62-63*

pgs. 72-81; *problem pg. 81*

Statutes: pgs. 906-923

- Calif. Corp. Code §§ 5111; 5130
- Skim sample organizational forms pgs. 883-895

Class III: January 27, 2022

Charitable Tax Exemptions:

- **Rationale for Tax Exemption & 501(c)(3) Basics**
- **Specific Charitable Exemption - Hospitals & Health Care**

FSM: pgs. 287-317

pgs. 317-339; *problems pgs. 339-340*

Statutes:

- I.R.C. § 501(c)(3)
- Regs. §§ 1.501(c)(3)-1(a), (b)(1)-(4), (c)(1)-(2)
- Look at Form 990, Sch. H pgs. 982-991

Class IV: February 3, 2022

Other Specific Areas of Exemption Under Section 501(c)(3)

- a. Public Interest Law Firms
FSM: pgs. 340-347; *problem pgs. 346-347*
- b. Community Development and Low-Income Housing
FSM: pgs. 347-354; *problem pg. 354*
- c. Protection of the Environment
FSM: pgs. 354-359; *problem pg. 359*
- d. Educational Organizations
FSM: pgs. 396-415, *problems pg. 415*
 - Reg. § 1.501(c)(3)-1(d)(3)

Class V: February 10, 2022

The Public Policy Limitation

Religious Organizations

FSM: pgs. 367-396; *problems pgs. 395-396*
pgs. 415 - 433; *problems pgs. 432-433*

Class VI: February 17, 2022

Nonprofit Operation and Governance, Fiduciary Duties

- a. Directors, Trustees And Members
FSM: pgs. 123-137
Statutes: Calif. Corp. Code §§ 5210
- b. Duty of Care
FSM: pgs. 137-162; *problems pgs. 160 - 162*
Statutes: Calif. Corp. Code §5231
- c. Duty of Loyalty
FSM: pgs. 167 -187; *problem pg. 187*
Statutes: Calif. Corp. Code §§ 5227; 5233(a)-(d), (g), (h); 5235; 5236;

Class VII: February 24, 2022

Charitable Trust, Cy Pres and Deviation

FSM: pgs. 81-100; *problems pg. 100*
pgs. 101-105; *problems pgs. 104-105*
pgs. 105-121

Class VIII: March 3, 2022

Inurement and Private Benefit; Intermediate Sanctions

FSM: pgs. 449-482; *problems pgs. 480-482*

Statutes:

- I.R.C. § 501(c)(3); look at §4958
- Reg. §§ 1.501(c)(3)-1(c)(2); Reg. §§ 1.501(c)(3)-1(f); 52.4958 as needed for problems
- Look at Form 990, Sch. J

Class IX: March 17, 2022

Lobbying and Political Campaign Activities

a. Lobbying

FSM: pgs. 482-502; *problems pgs. 500-502*

Statutes:

- I.R.C. §§501(c)(3); 504; 4912; 170(f)(6)
- Reg. §1.501(c)(3)-1(c)(3); Reg. §1.501(h) and §56.4911-1 through §56.4911-7
- Look at Form 990, Sch. C

b. Political Campaign Tax Limitations & Alternative Structures

FSM: pgs. 502-516; 537-542; 543-546; *problems pgs. 542-543*

Statutes: I.R.C. §§501(c)(4); skim pg. 527

c. Nontax Regulation & *Citizens United*

FSM: pgs. 546-550

Class X: March 24, 2022

Private Foundations, Public Charities, and other Foundation Alternatives

a. The Universe of Private Foundations

FSM: pgs. 707-724

b. Private Foundations, Public Charities, and Alternatives

FSM: pgs. 725-735; 742-747; *problems pgs. 746-747*

Statutes: I.R.C. §§ 509; 170(b)(1)(A); 507(d)(2); 4946

c. Types of Public Charities

FSM: pgs. 750-759; *problems pgs. 758-759*

Class XI: March 31, 2022

Commercial Activities and the Unrelated Business Income Tax

- a. Introduction
FSM: pgs. 575-578
- b. Impact of Commercial Activities on Exempt Status
FSM: pgs. 578-581
 - Reg. § 1.501(c)(3)-1(b)(1)(i), (iii), -1(c)(1), -1(e)
- c. UBIT Doctrines, History and Policy
FSM: pgs. 581-606 [ok to skim]
- d. Nature of an Unrelated Trade or Business
FSM: pgs. 606-637; *problems pgs. 635-637*
Statutes: I.R.C. §§ 511(a), (b); 512(a)(1); 513(a), (c), (f), (h), (i); skim § 513(d)
 - Regs. §§ 1.513-1 as necessary, -4 & -7
- e. Exclusions from Unrelated Business Taxable Income
FSM: pgs. 637-644; *problems pgs. 643-644*
Statutes:
 - I.R.C. §§ 512(b)(1)-(5), (7)-(9), (15)
 - Regs. §1.512(b) as necessary

Class XII: April 7, 2022

Charitable Contributions

- a. Basic Principles
FSM: pgs. 850-890; *problems pgs. 888-890*
Statutes: I.R.C. §§ 170(c), (f)(8); 6113; 6115
- b. Contributions of Property
FSM: pgs. 890-918; *problems pgs. 916-918*

Class XIII: April 14, 2022

Philanthropy in the Next Decade & Review

- a. Social Enterprises and Hybrid Entities
FSM: pgs. 703-705
- b. Online Philanthropy and Social Media
Materials TBD