

THE LAW OF
NONPROFIT ORGANIZATIONS
Professor Jill Manny
Fall 2022

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.** Click on this [link](#) to access the Student Update Memo.²

ASSIGNMENTS (for the first four weeks of the semester)

August 31 and September 7 — Introduction

1. In the Casebook, read:

pp. 3 – 14, 17 – 19, 30 – 44, 287 – 290. 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:

Code³ § 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. 1020 (skim to determine what the IRS is interested in discovering); <https://www.irs.gov/pub/irs-pdf/f1023.pdf>. Compare to “streamlined” Form 1023-EZ, p. 1050; <https://www.irs.gov/pub/irs-pdf/f1023ez.pdf>.⁴

¹ Be sure to purchase this title and not “Taxation of Nonprofit Organizations” by the same authors.

² Read all sections of the Student Update Memo that correspond to the pages assigned for each class.

³ “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.

⁴ Page references are to the Statutory Supplement, but these items can be accessed online through posted links or will be posted on the NYU LMS Brightspace (“NYU Brightspace”). It is not necessary to purchase the Statutory Supplement in order to access these resources.

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

www.metmuseum.org

www.komen.org

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 12 — 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 14 — 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 19 and 21 — 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).

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September 21 and September 28 — Private Inurement, Private Benefit, and Excess Benefit Transactions

Class for September 26 will be rescheduled.

1. In the Casebook, read:

pp. 449 – 480, 246 – 251 (through Note 1). Prepare a written outline of your answers to problems 1(a) – (e) and 2 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 three items posted on NYU Brightspace:

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 3—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 10— Healthcare and Miscellaneous Organizations

Class for October 5 will be rescheduled.

Healthcare 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.

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 12— 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 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 17 and 19 — 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 24 – 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.

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October 31 –

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.

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. (*We won't get to these problems until Wednesday, but you should do the reading for Monday's class.*)

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

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

November 2—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 7 and 9— 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)-(f) 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 14 and 16— Unrelated Business Income Tax

1. In the Casebook, read:

pp. 598 – 635. Prepare a written outline of your answers to the problems on pp. 635 – 637 (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 21—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 23 and November 28—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.

November 30—TBA