

SYLLABUS
Nonprofit Organizations
Law 541

Fall 2021

Our main text will be Fishman, Schwarz & Mayer, Nonprofit Organizations, 6th ed., supplemented by various other readings/materials that will be available on Sakai. The casebook authors have also compiled a supplement containing statutes, regulations, and forms. The casebook contains cross-references to the relevant portions of the statutes, regulations, etc., and I will expect you to consult those references as we go along, without separately repeating each of them in the syllabus below. It may be most efficient to use the referenced statutory supplement for this purpose, but if you would prefer to find these materials on your own, you are welcome to do so.

Class will meet Mondays and Wednesdays from 4:00 to 5:25. The grade in the course will be determined largely by your performance on the final exam, but modest upward adjustments for outstanding class participation may be made.

My goal is that by the end of the course you will:

1. Understand the context of, rationales for, and alternatives to the U.S. charitable sector;
2. Understand and be able to apply the essential substantive and procedural tax law doctrine, concepts and practices related to the most common types of tax-exempt organizations, particularly, those which are exempt under section 501(c)(3) of the Internal Revenue Code of 1986, as amended;
3. Understand the most common corporate law and governance issues relevant to nonprofit corporations;
4. Be familiar with typical charter documents and the federal tax-exempt application, and understand the critical issues and decisions related to each of these; and
5. Develop a realistic understanding of the kind of work young lawyers in the EO sector do, as well as an overview of different career paths in the sector

Course outline, and class meeting/reading schedule:

Section 1 Overview of the Nonprofit Sector (August 23-25)

Read: Casebook, pp. 3-45

Guest Speaker: Morgan Abbott, Duke Office of Counsel (August 25)

Section 2 Nonprofit Corporate Law

A. Choice of Entity, Formation and Purpose (August 30)

Read: Casebook, pp. 49-68, 72-81

Sakai, Robert A. Wexler, "Effective Social Enterprise – A Menu of Legal Structures," Articles of Incorporation (Form)

- B. Restructuring and Dissolution (September 1)
Read: Casebook, pp. 81-116

Section 3 Governance and Operational Issues

- A. Board Responsibilities and Fiduciary Duties (September 8)
Read: Casebook, pp. 123-129, 135-162, 167-188, 197-201
Sakai, Bylaws (Form)
- B. Enforcement of Fiduciary Duties (September 13)
Read: Casebook, pp. 201-237
- C. Issues in Governance and Operations (September 15)
Read: Sakai, BoardSource, “The Source¹²”
Alex Counts, “Spotting & Fixing Dysfunctional Boards”
Christine Bertrand, “Boards in Small Nonprofits”
Sawhill & Williamson, “Measuring What Matters”

Class Activity/Simulation: The Durham STEM Academy

Section 4 Charitable Tax Exemption: Affirmative Requirements

- A. Rationale, Organizational and Operational Tests, Procedural Matters (September 20)
Read: Casebook, pp. 287-313, 553-557
- B. Mutual Aid (September 22)
In lieu of class read materials and watch video circulated via email
- C. Meaning and Scope of Charity (September 27)
Read: Casebook, pp. 313-340, 354-359
- D. Educational and Religious Organizations (September 29)
Read: Casebook, pp. 396-433
- E. Public Policy Limitation (October 11)
Read: Casebook, pp. 367-396

Section 5 Charitable Tax Exemption: Conditions and Limitations

- A. Inurement, Private Benefit and Intermediate Sanctions (October 13)
Read: Casebook, pp. 449-480
- B. Limitations on Lobbying and Political Activities (October 18 and 20)
Read: Casebook, pp. 482-491, 502-550

Section 6 Commercial Activity, UBIT and Social Entrepreneurship

- A. Commercial Activity and Nonprofits (October 25)
Read: Casebook, pp. 347-354, 575-598
- B. Unrelated Business Income Tax (October 27)
Read: Casebook, pp. 598-608, 626-629, 637-646
Sakai, Rev Rul 73-127 and 73-128
- C. Alternative Strategies: Social Entrepreneurship (November 1)
Read: Sakai, Dees, "The Meaning of Social Entrepreneurship"
Wexler, "Effective Social Enterprise" (review)

Guest Speaker: Dani Glazer, Legal Counsel, The Emerson Collective

Section 7 Private Foundations

- A. Private Foundations (November 3)
Read: Casebook, pp. 725-745
- B. Current Issues in Philanthropy (November 8)
Read: Sakai, NYT "How Long Should It Take to Give Away Millions"
Dorsey, Kim, Daniels, Sakaue & Savage, "Overcoming the
Racial Bias in Philanthropic Funding"

Guest Speaker: Maurice Greene, Executive Director, Z. Smith Reynolds
Foundation (invited)

Section 8 Charitable Giving

- A. Charitable Contributions (November 10)
Read: Casebook, pp. 825-830, 836-888
- B. Regulation of Charitable Solicitation (November 15)
Read: Casebook: 241-284

Section 9 Special Problems of Private Associations and Mutual Benefit Organizations

- A. Private Associations (November 17 and 22)
Read: Casebook, pp. 985-990, 1011-1036

Reflection Paper: In lieu of class on November 22, please write a 2-3
page, single-spaced response paper to Problem #2 on page 1032 of the

casebook. You do not need to do any reading or research beyond the materials assigned in the casebook. In addition to providing your analysis of the law, please discuss, at least briefly, how you assess the applicable law. If you think it should be changed, please discuss how you think it should be evolved and why. All papers are due by 5pm on November 23 and may be submitted by email directly to me at foster@law.duke.edu.

B. Mutual Benefit Organizations (November 29)

Read: Casebook, 931-939, 942-943, 964-965, 981-983

Section 10 Review and Wrap-Up (December 1)