

NOT-FOR-PROFIT ORGANIZATIONS
Fall 2023 – Professor Lloyd Mayer

Tuesday, Thursday
2:00 – 3:15 p.m.
Eck 3140

Email: lmayer@nd.edu
Office: Eck 3155
Phone: 631-8057

Syllabus

Course Description

This course provides an overview of the laws that apply to not-for-profit organizations (“NPOs”) in the United States. More specifically, the class will cover: the organization and operation of NPOs under state law; the requirements for obtaining exemption from otherwise applicable taxes, especially for charitable organizations under federal income tax law; the federal tax rules governing NPO commercial activities, private foundations, and charitable contributions; and the laws governing non-charitable NPOs. By the end of this course you will be able to advise NPO leaders about their legal responsibilities and ensure compliance of NPOs with the state and federal laws that specifically apply to them.

Pre/Co-Requisite: There are no pre-requisites or co-requisites for this course. While some of the topics we will cover touch on general business association and federal income tax issues, I will provide overviews of those issues in advance of the relevant assignments so that you have sufficient information to be able to understand these topics even if you have not taken Business Associations or Federal Income Taxation.

Required Course Materials

- Fishman et al., Nonprofit Organizations: Cases and Materials, 6th ed. (2021)
- Fishman et al., Nonprofit Organizations: Statutes, Regulations and Forms (2021)
- Fishman et al., Student Update Memorandum to Nonprofit Organizations (2023) (available on course website under Files/General Docs)
- Additional materials that I will post on the course website

Please note that you will not have access to electronic versions of the casebook, of the statutes book, or of other materials during the exam.

You may have noticed that I am one of the co-authors for the required materials. Despite the high cost of the casebook and the statutes book, my royalties from each book are relatively small – only 5% of the sales price. Nevertheless, to eliminate any conflict of interest I plan to donate the approximately \$210 I would receive if all of you bought the required materials at full retail price to one of the specific charities we discuss during the term. To help me choose the charity, I will

identify each candidate as we get to it in the course, and then at the end of the term I will ask you to advise me on which one should be the recipient. I will provide more details later in the term.

Course Website: Canvas

General course documents, handouts, IRS forms, class slides, and other materials will be posted on the Canvas website for this course. I will post the class slides before each class meeting so they are available by the time we meet.

Class Meetings: Tuesday & Thursday, 2:00 – 3:15 p.m., Eck 3140

I need to cancel one of our regularly scheduled class meetings because I will be out of town. The cancelled class meeting is the one scheduled for Thursday, October 26th. The make-up class will be held on **Friday, November 10th at 2:00 – 3:15 p.m. in our regular classroom.**

The review session will be during our regularly scheduled class meeting on Tuesday, December 5th.

The make-up class and the review session will be recorded, and I will make the recordings available to all students.

Class Participation

Given the small size of the class, I plan to rely primarily on volunteers to discuss the assigned materials. That said, if either no one volunteers for a particular matter or if I notice that not everyone is participating periodically, I reserve the right to call on students. I will not call on students during the review session, however. Quality class participation may provide a grade benefit, as detailed in the **Final Examination & Grading** section below.

If you are unable to prepare for or attend a particular class, please notify me by email (lmayer@nd.edu) **before the class.** Otherwise, lack of preparation (or absence) may lower your grade (see **Final Examination & Grading** below for more details).

Class Assignments

The class assignments list for the entire term is available on the course website. Please note the instructions at the start of the assignments relating to materials you are asked to skim and to the problems we will cover in class. In addition to the materials listed, I may provide occasional additional materials that I will distribute through the course website.

Final Examination & Grading

Grading will primarily be based on a three-hour, in-person, student-scheduled final examination. The final exam will be open book in that any hard copy written materials may be used during the exam other than hard copy materials from the library. The final exam will be administered via computer. You will therefore need to have a laptop to take the exam unless you have made other arrangements with Student Services. Note that during the final exam you will **not** have access to materials stored on your computer or normally available through the Internet, including electronic versions of the casebook, of the statute book, or of other materials.

Consistent quality class participation may increase your grade by one notch (e.g., changing a B final exam grade to a B+). Failure to be in class or prepared without having notified me in advance of class may decrease your grade by one notch (see **Class Participation** above). Multiple failures to be in class or prepared without having notified me in advance of class may decrease your grade further, including possibly reducing it to a failing grade. Out-of-class discussions will not affect your grade.

Laptop Policy

I allow the use of laptops during class both because grading in this course is based primarily on a final examination that can cover any of the many topics addressed in the course and because I provide some course materials electronically. Be aware, however, that there is a growing body of research indicating that taking notes longhand may lead to improved learning as compared to taking notes on a laptop. See, e.g., Steven Eisenstat, [A Game Changer: Assessing the Impact of the Princeton/UCLA Laptop Study on the Debate of Whether to Ban Law Student Use of Laptops During Class](#), 92 U. Det. Mercy L. Rev. 83 (2015); Pam A. Mueller & Daniel M. Oppenheimer, [The Pen Is Mightier Than the Keyboard: Advantages of Longhand Over Laptop Note Taking](#), 25 Psychological Science 1159 (2014); Colleen P. Murphy et al., [Note-Taking Mode and Academic Performance in Two Law School Courses](#), 68 J. Legal Educ. 207 (2019). You may therefore want to consider taking notes longhand instead of typing them on your laptop.

You should also be aware that there is a growing body of research indicating that using laptops or other electronics to multitask while in class, such as for checking email, reduces comprehension for **both** the multitasker and those who can see their screen. See, e.g., Fari Sana et al., [Laptop Multitasking Hinders Classroom Learning for Both Users and Nearby Peers](#), 62 Computers & Education 62 (2013). So while I believe it is not a good use of class time for me to attempt to stop such multitasking, please consider avoiding such multitasking to limit distractions for both yourself and your classmates.

Contact Information & Out-of-Class Meetings

The best way to reach me is via email, at lmayer@nd.edu. I may forward particularly interesting questions or comments to the entire class, after deleting the sender's identifying information. I can also be reached at my office number, 574-631-8057, where I have voice mail.

I expect to be generally available to meet with students in my office (**Eck 3155**, in the third-floor suite nearest the elevator) during the following times each week when classes are in session:

- Tuesday, 9:00 a.m. to noon
- Wednesday, 2:00 to 4:30 p.m.
- Thursday, 9:00 a.m. to noon

The only date on which I expect to be out-of-town and so not available is Thursday, October 26th.

While making an appointment is not required, if you would prefer to set a specific day and time to meet, including outside of the above windows, please email me.

Support for Student Mental Health at Notre Dame

Law students are eligible to receive support from a variety of wellness resources offered by the University, including the Law School's dedicated Care and Wellness Consultant Stella Miller (stella.miller@nd.edu). You may schedule an appointment with her through www.calendly.com/stellamiller, or you may contact any other Care and Wellness Consultant if you prefer. Care and Wellness Consultants provide support and resources to students who are experiencing stressful or difficult situations that may be interfering with academic progress. Through Care and Wellness Consultants, students can be referred to The University Counseling Center (for cost-free and confidential psychological and psychiatric services from licensed professionals), University Health Services (which provides primary care, psychiatric services, case management, and a pharmacy), and The McDonald Center for Student Well Being (for problems with sleep, stress, and substance use). Visit studentaffairs.nd.edu/get-support/.

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Assignments

Skimming: When you are asked to skim a statute or regulation, please read the headings to understand the statute or regulation's scope but rely on the casebook for the details. When you are asked to skim any other type of document, please review the document as an aid for understanding the casebook reading but you are not responsible for the details of the document.

Problems: Many casebook assignments include problems. The specific problems we will cover in class are identified in each assignment (e.g., “including problems 3, 4 & 5 on p. 100”). You may skip the other problems; when we are skipping an entire set of problems, I have noted this fact. For the problems in Part Two (Organization and Operation), if the casebook says to apply the law of “your jurisdiction” please apply the assigned Illinois statutory sections or, in the absence of any assigned or applicable Illinois sections, the assigned New York statutory sections.

Restatement: Refers to Restatement of the Law, Charitable Nonprofit Organizations.

PART ONE: INTRODUCTION

Tuesday, August 22nd: Overview

Fishman: 3-45 (including the problem on pp. 44-45) & Update 2-3
Selected §§: Cal. Corp. Code § 5410 (p. 27)
N.Y. Not-for-Profit Corp. L. § 515(a) (p. 79)
Website: Syllabus (under General Course Materials)

PART TWO: ORGANIZATION AND OPERATION

Thursday, August 24th: Formation

Fishman: 49-68, 72-74, 77-78 (stop after Note 1), 79-81 (including all problems on pp. 62-63 & 81) & Update 4-6
Selected §§: Cal. Corp. Code §§ 5111, 5130, 7111 (pp. 9, 37)
Ill. Comp. Stat. ch. 805, § 105/103.05(a) (pp. 56-58)
N.Y. Not-for-Profit Corp. L. §§ 201, 204, 402 (pp. 68-69, 71, 72-73)
Restatement §§ 1.01, 1.02 (p. 96)
skim Sample Articles of Organization, Bylaws, Trust (pp. 883-895)
Website: Handout: Sample Organization Meeting Resolutions

Tuesday, August 29th: Cy Pres and Deviation

Fishman: 81-100 (including problems 3, 4 & 5 on p. 100)

Selected §§: Restatement §§ 3.02, 3.03, 4.03 (pp. 101, 102)

Thursday, August 31st: Dissolution, Distribution of Assets, and Restructuring

Fishman: 101-121 (including problems 1(c), 1(d), 2 & 3 on pp. 104-105) & Update 6

Selected §§: Ill. Comp. Stat. ch. 805, § 105/112.16 (pp. 61-62)

N.Y. Not-for-Profit Corp. L. § 513 (pp. 78-79)

Restatement § 3.04 (pp. 101-102)

Tuesday, September 5th: Governance and the Duty of Care

Fishman: 123-129, 135-138, 143-162 (including all problems on pp. 160-162)

Selected §§: Cal. Corp. Code §§ 5210, 5231 (pp. 10-11, 14-15)

N.Y. Not-for-Profit Corp. L. § 717 (p. 89)

Restatement §§ 2.01, 2.03, 2.05, 2.07, 2.08 (pp. 97, 98, 99)

Thursday, September 7th: The Duty of Loyalty and the Duty of Obedience

Fishman: 167-188 (stop at case), 194 (start at note 2)-201 (including problems (d), (e), (g) & (h) on pp. 197-198) & Update 7

Selected §§: Cal. Corp. Code § 5227 (pp. 13-14)

Ill. Comp. Stat. ch. 805, §§ 105/108.60, 108.80 (pp. 58-59, 61)

N.Y. Not-for-Profit Corp. L. §§ 515(b), 715, 715-a, 716 (pp. 79-80, 84-87, 88)

Restatement § 2.02 (p. 97)

skim Sample Conflict of Interest Policy & Statement (pp. 896-900)

Tuesday, September 12th: Investment Responsibility and Enforcement

Fishman: 201-237 (including problem (all parts) on pp. 218-219; skip the problem on p. 212) & Update 7-10

Selected §§: Restatement §§ 2.04, 2.06, 5.01 (pp. 98, 99, 102-103)

Uniform Prudent Mgmt. of Inst. Funds Act §§ 3 to 6 (pp. 126-130)

Thursday, September 14th: Regulation of Charitable Solicitation

Fishman: 241-281 (including problem 1 (both parts) on p. 281) & Update 10-11

PART THREE: TAX EXEMPTION AFFIRMATIVE REQUIREMENTS

Tuesday, September 19th: Rationale and Exemption Introduction

Fishman: 287-295 (stop at article), 301-302, 305-313, 553-557 & Update 12, 17

Selected §§: I.R.C. § 501(c)(3) (p. 201)

Treas. Reg. § 1.501(c)(3)-1(a), (b), (c)(1) & (2) (pp. 448-449)

Website: *skim* IRS Form 1023 (under IRS Forms)

Thursday, September 21st: Charitable Exemption

Fishman: 313-340 (including all problems on pp. 339-340)

Selected §§: Treas. Reg. § 1.501(c)(3)-1(d)(2) (p. 510)

Website: Handout: Saint Joseph Form 990 (excerpts; focus on highlighted items)

Tuesday, September 26th: Educational Exemption

Fishman: 396-415 (including all problems on p. 415) & Update 14

Selected §§: Treas. Reg. § 1.501(c)(3)-1(d)(3) (p. 449)

I.R.C. § 4968 (pp. 341-342)

Website: Handout: Notre Dame Form 990 (excerpts; focus on highlighted items)

Thursday, September 28th: Religious Exemption

Fishman: 415-433 (including all problems on p. 432-433) & Update 15

Tuesday, October 3rd: Public Policy Limitation

Fishman: 367-396 (including all problems on pp. 395-396) & Update 12-14

PART FOUR: TAX EXEMPTION CONDITIONS

Thursday, October 5th: Inurement, Private Benefit, and Intermediate Sanctions

Fishman: 449-467 (skip case & following notes), 468-482 (including problems 1(a), 1(b), 1(c), 1(f), & 3 on pp. 480-481) & Update 15-16

Selected §§: Treas. Reg. § 1.501(c)(3)-1(d)(1) (pp. 447-448)

I.R.C. § 4958(a) to (c)(1)(B), (d) to (f)(6) (pp. 324-325, 326-328)

I.R.C. § 4960(a) to (c)(4) (pp. 329-330)

Tuesday, October 10th: Limitations on Lobbying

Fishman: 482-502 (including problems (a) & (e) on pp. 500-502)

Selected §§: Treas. Reg. § 1.501(c)(3)-1(c)(3)(i), (ii) & (iv), (v) (pp. 446-447)

Website: skim IRS Form 5768 (under IRS Forms)

Thursday, October 12th: Political Campaign Limitations

Fishman: 502-543 (including all problems on pp. 542-543)

Selected §§: Treas. Reg. § 1.501(c)(3)-1(c)(3)(iii) (p. 446)

Tuesday, October 17th & Thursday, October 19th: MID-SEMESTER BREAK

PART FIVE: OTHER TAX ISSUES

Commercial Activities and the Unrelated Business Income Tax

Tuesday, October 24th: Commercial Activities

Fishman: 575-598 (including all problems on pp. 597-598), 703-705 (including problem on p. 705)

Selected §§: Treas. Reg. § 1.501(c)(3)-1(e) (p. 451)

Thursday, October 26th: NO CLASS

Tuesday, October 31st: The Nature of an Unrelated Trade or Business

Fishman: 598-637 (including problems 1(a) thru (f) & 2(f) on pp. 635-637, but skip notes 3-6 on pp. 633-634) & Update 17

Selected §§: Treas. Reg. § 1.513-1 (pp. 557-564)

Thursday, November 2nd: Exclusions; Computation; Debt-Financed Income

Fishman: 637-667 (thru note 1; including problem 1 (all parts) on pp. 643-644; skip the problems on pp. 658-659)

Selected §§: I.R.C. § 512(b)(1) to (5), (7) to (9) (pp. 233-235)

Private Foundations

Tuesday, November 7th: Introduction

Fishman: 707-715, 720-732, 739-747 (including problems 1(a), (b) & (f) on pp. 745-747), 774-775 & Update 19-20, 21-22

Selected §§: I.R.C. §§ 170(b)(1)(A), 509(a) to (e) (pp. 167-168, 225-227)

Website: Handout: Gates Found. Form 990-PF (excerpts; focus on highlighted items)

Thursday, November 9th: Self-Dealing, & Taxable Expenditures

Fishman: 775 (Section D introduction only), 778-793 (including problems 1(a) thru (e) on pp. 792-793), 812-822 (including problems (a) thru (e) & (i) on pp. 821-822)

Selected §§: I.R.C. §§ 4941, 4945, 4946(a)(1), (b) to (d) (pp. 291-295, 313-319)

Charitable Contributions

Friday, November 10th (MAKE-UP): Introduction & Policy Issues

Fishman: 825-850 & Update 23-24

Tuesday, November 14th: Basic Principles

Fishman: 850-889 (including problems (a) thru (d) & (i) on pp. 888-889) & Update 24

Selected §§: I.R.C. § 170(a)(1), (c), (f)(8) (pp. 166-167, 173-174, 184-185)

Thursday, November 16th: Noncash Contributions and Planned Giving

Fishman: 890-920 (including problems 1(a) thru (g) on pp. 916-917) & Update 24-26

Website: skim IRS Forms 8282, 8283 (under IRS Forms)

PART SIX: OTHER TYPES OF NOT-FOR-PROFIT ORGANIZATIONS

Tuesday, November 21st: Social Welfare, Labor, and Trade Organizations

Fishman: 931-964 (including all problems on pp. 963-964) & Update 27

Selected §§: I.R.C. § 501(c)(4) to (6) (pp. 201-202)

Treas. Reg. §§ 1.501(c)(4)-1, 1.501(c)(5)-1, 1.501(c)(6)-1 (pp. 456-458)

Website: skim IRS Form 1024 (under IRS Forms)

Thursday, November 23rd: THANKSGIVING BREAK

Tuesday, November 28th: Other Types of Not-for-Profit Organizations

Fishman: 964-983 (including problems 1(a) & (b) on p. 980) & Update 27

Selected §§: I.R.C. §§ 501(c)(7), (c)(8), (c)(10) & (i), 512(a)(3)(A) & (B) (pp. 202, 208-209, 230-231)

Treas. Reg. § 1.501(c)(7)-1 (pp. 458-459)

Thursday, November 30th: Membership Associations

Fishman: 985-990, 1011-1036 (including all problems on p. 1032) & Update 28

REVIEW SESSION

Tuesday, December 5th: Review Session

Website: Draft Instruction Sheet for Final Examination (under Handouts)

Past Exams & Exam Answers (under Handouts)