

THE LAW OF
NONPROFIT ORGANIZATIONS
Professor Jill Manny
Fall 2024

MATERIALS

Purchase the casebook entitled "Cases and Materials on Nonprofit Organizations, Sixth Edition,"¹ by Fishman, Schwarz, and Mayer, either in hardcopy or digital form, 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 28 and September 4 — Introduction

1. In the Casebook, read:

pp. 3 – 14, 17 – 19, 30 – 44, 287 – 295. 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 here 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>.

Matthew Haag & Meredith Kolodner, *'The Untouchables': How Columbia and N.Y.U. Benefit From Huge Tax Breaks*, N.Y. TIMES (Sept. 26, 2023), <https://www.nytimes.com/2023/09/26/nyregion/columbia-university-property-tax-nyc.html>.

September 9 — 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 11 — 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 16 — 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).

September 18 and September 23 — Private Inurement, Private Benefit, and Excess Benefit Transactions

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 two items posted on NYU Brightspace:

Pia Catton, *National Arts Club Cleans House*, Wall Street Journal, September 7, 2011.

Robin Pogrebin, *A Bonus From BAM Now Looks Less Wise*, N.Y. Times, Mar. 5, 2021, at C.1.

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September 30 and October 2 — Educational Organizations and Religious Organizations

1. In the Casebook, read:

pp. 396 – 414; 415 – 432. Prepare a written outline of your answers to the Problems on p. 415 and Problems (a) and (c) 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 7 and 9 — Healthcare and Miscellaneous Organizations

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.
2. On NYU Brightspace, read:

Jill R. Horwitz, *Threatening Nonprofit Hospital Tax Exemption: A Better Path Forward*, 331 JAMA 469 (2024), available at <https://jamanetwork.com/journals/jama/article-abstract/2814254>.

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 14—Fall Break; No Class

October 16 — 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 21 and 23 — 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 28– 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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November 4 and 6—Corporate Governance, with Professor Jill Horwitz on November 6

1. On Brightspace, read:

Michael Klausner & Jonathan Small, *Failing to Govern? The Reality of Nonprofit Boards*, STAN. SOC. INNOVATION REV., Spring 2005, at 42.

Restatement of the Law, Charitable Nonprofit Organizations:

§2.01 Fiduciary Defined, Law and Commentary (a);

§2.02 Duty of Loyalty, Law and Commentary (a),(c),(e),(f);

§2.03 Duty of Care, Law and Commentary (a),(b),(c),(d).

2. In the Casebook, read:

pp. 123 – 129, 135 – 143, 167 – 170, 175 (Notes) – 188, 194 – 199
(through “Duty of Obedience” paragraph).

3. In the Statutory Supplement or online, review:

Form 990. Focus on Part VI, Governance, Management, and Disclosure.

4. Discussion Questions:

Who serves on nonprofit boards? Who serves on for-profit boards?

What should you consider before you join a board? How important is giving to board participation?

What are your responsibilities as a member of the board?

To whom or to what do your duties run?

Should a board have governing and nongoverning members?

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November 11– 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.

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

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

November 13—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 18— 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 Problems 1(a)-(g) 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 20—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 25—Exclusions from UBTI

1. In the Casebook, read:

pp. 637 – 643; pp. 652 – 658. Prepare a written outline of your answers to Problems 1(a) – (d) and 2 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 27—Private Foundations General Counsels Panel

We will not meet on November 27. Instead, a taped Private Foundations General Counsel Panel (September 30, 2024) will be posted to Brightspace on November 26, along with bios of the participants.

December 2—TBD