

Law 735 Nonprofit Organizations
Spring 2024

Professor Jonathan Brown

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Office Hours: By appointment

Course Hours: Thursdays, 11:15am-1:15pm

Classroom: TBD

Welcome! I am looking forward to working with each of you during this semester.

Course Description

This course examines major legal issues under federal and state law related to private nonprofit organizations. Among the issues addressed are nonprofits' scope, rationale and role in contemporary society; tax issues including the rationale and eligibility for exemption and restrictions on lobbying and political activity; regulation of fundraising; state and federal supervision; competition between nonprofit and for-profit entities; compensation; the legal responsibilities of directors and officers; legal issues between members; and the misuse of the nonprofit form. *This is a 2 credit course.*

Textbook

Required materials are:

- James J. Fishman and Stephen Schwarz, Cases and Materials on Nonprofit Organizations (Foundation Press, 6th ed. 2021)
- Nonprofit Organizations-Statutes, Regulations and Forms (Foundation Press, 2021),
- Fishman, Schwarz and Mayer, Summer 2023 Student Update Memorandum (available on the "Classes" page).

Page numbers referenced in the syllabus refer to the casebook. Please read and come prepared to discuss all "Problems" contained in the assigned casebook readings, except as otherwise noted. Statutes, regulations and forms referenced in the syllabus can be found in "Nonprofit Organizations-Statutes, Regulations and Forms." Other materials will be made available on the "Classes" page.

Grades

Your grade for the course will be determined as follows:

- **Exam** – 70%
- **Class participation** – 30%.

Class Participation

Class participation will take into account (1) class attendance, (2) preparation for class, (3) participation in class, and (4) ungraded assignments.

If you have an emergency and are unable to attend class, please let me know before class, and I will excuse your absence. Any unexcused absences beyond one permitted unexcused absence will negatively impact your class participation grade.

You are expected to act in a professional manner while participating in the class.

Procedure for Students with Disabilities Who Wish to Obtain Reasonable Accommodations for This Course

The University's commitment to equal educational opportunities for students with disabilities includes providing reasonable accommodations for the needs of students with disabilities. To request a reasonable accommodation for a qualified disability, a student with a disability must self-identify and register with the Office of Student Accessibility Services for his or her campus. No one, including faculty, is authorized to evaluate the need for or grant a request for an accommodation except the Office of Student Accessibility Services. Moreover, no one, including faculty, is authorized to contact the Office of Student Accessibility Services on behalf of a student. For further information, please see Resources for Students with Disabilities at <https://www.pace.edu/student-accessibility-services>.

Syllabus

<i>Class Date</i>	<i>Reading Assignment</i>
Jan 18	<p><u>Chapter 1. An Overview of the Nonprofit Sector</u></p> <p>Text: pp. 3-45</p> <p>N.Y. Not-for-Profit Corp. L. § 515</p>
Jan 25	<p><i>*Certificate of Incorporation Assignment due by Wednesday Jan 24 at 12 Noon</i></p> <p><u>Chapter 2. Formation and Dissolution</u></p> <p>A. Choice of the Legal Form of a Nonprofit Organization</p> <p>B. Basic Statutory Approaches to the Nonprofit Corporation</p> <p>Text: pp. 49-63</p> <p>N.Y. Not-for-Profit Corp. L. §§ 201, 204, 402, 404, 508</p> <p>Sample Certificate of Incorporation and Bylaws</p> <p>C. Purposes and Powers of Nonprofit Corporations</p> <p>Text: pp. 63-81</p>
Feb 1	<p>D. Dissolution and Distribution of Assets (Doctrine of Cy Pres, Distribution of Assets on Dissolution In General)</p> <p>Text: pp. 81-89, 101-110 (skip Section 2 on Doctrine of Deviation from pp. 89-100)</p> <p><u>Chapter 3. Operation and Governance</u></p> <p>A. Introduction</p> <p>B. Boards of Directors and Trustees</p> <p>Text: pp. 123-129</p> <p>C. Fiduciary Obligations</p> <p>135-138, 146-161 (read problems 1(a) and 1(c) on pp. 160-161)</p> <p>N.Y. Not-for-Profit Corp. L. § 717 (Duty of Care)</p>

<i>Class Date</i>	<i>Reading Assignment</i>
Feb 8	<p>Text: pp. 167-170, 177-201</p> <p>N.Y. Not-for-Profit Corp. L. §§ 715, 715-a, 716 (Duty of Loyalty)</p>
Feb 15	<p>D. Enforcement of Fiduciary Obligations</p> <p>Text: pp. 219-240</p> <p><u>Chapter 4. Regulation of Charitable Solicitation</u></p> <p>Text: pp. 241-253, problem 1 on p. 281</p> <p>Summer 2022 Student Update Memorandum pp. 8-9 (National Rifle Association) (<i>on Classes page</i>)</p> <p>NY Attorney General Press Release about Suit to Dissolve NRA (<i>on Classes page</i>)</p>
Feb 29	<p><u>Chapter 5. Charitable Tax Exemption: Affirmative Requirements</u></p> <p>A. Introduction</p> <p>Text: pp. 287-290</p> <p>B. The Rationale for Charitable Tax Exemption</p> <p>Text: pp. 290-295</p> <p>C. Organizational and Operational Tests</p> <p>D. Application for §501(c)(3) Exemption</p> <p>E. Meaning and Scope of Charity</p> <p>Text: pp. 307-317, 340-359</p> <p>Internal Revenue Code § 501(c)(3)</p> <p>Treasury Regulations § 1.501(c)(3)-1(a), (b)(1)-(2), (c)(1)-(2) (Organizational and Operational Tests)</p> <p>Treasury Regulations § 1.501(c)(3)-1(d)(1) & (2) (Meaning and Scope of Charity)</p>

<i>Class Date</i>	<i>Reading Assignment</i>
March 7	<p>G. Educational Organizations H. Religious Organizations</p> <p>Text: pp. 396-434</p> <p>Treasury Regulations § 1.501(c)(3)-1(d)(3) (Educational Purposes)</p>
March 14	<p><u>Chapter 6. Charitable Tax Exemption: Conditions and Procedural Issues</u></p> <p>A. Introduction B. Inurement, Private Benefit and Intermediate Sanctions</p> <p>Text: pp. 449-482</p> <p>Treasury Regulations § 1.501(c)(3)-1(c)(2) (Inurement of Private Gain)</p> <p>Treasury Regulations § 1.501(c)(3)-1(d)(iii) (Private Benefit)</p> <p>Internal Revenue Code § 4958 (Intermediate Sanctions on Excess Benefit Transactions) <i>(Not required reading, but note that Treasury Regulations § 53.4958 contains further interpretation of Excess Benefit Transactions rules)</i></p> <p>N.Y. Not-for-Profit Corp. L. § 202(a)(12) (Executive and Trustee Compensation)</p>
March 21	<p>C. Limitations on Lobbying and Political Campaign Activities</p> <p>Text: pp. 482-516, 537-543</p>
March 28	<p><u>Chapter 9. Charitable Contributions</u></p> <p>Text: pp. 825-830, 850-890</p>
April 4	<p><u>Chapter 7. Commercial Activities and Unrelated Business Income Tax</u></p> <p>Text: pp. 575-598, 606-608</p> <p>Treasury Regulation § 1.501(c)(3)-1(e)</p>

<i>Class Date</i>	<i>Reading Assignment</i>
April 11	<u>Chapter 8. Private Foundations</u> Text: pp. 707-708, 725-740, Problem 1 on pp. 745-746, pp. 809-811 (don't need to do problems on p. 811)
April 18	Social Enterprise Organizations and Other Hybrid Legal Entities (from Chapter 6) / Review Text: pp. 703-705 Robert A. Wexler & David A. Levitt, Using New Hybrid Legal Forms: Three Case Studies, Four Important Questions, and a Bunch of Analysis (on "Classes" site)