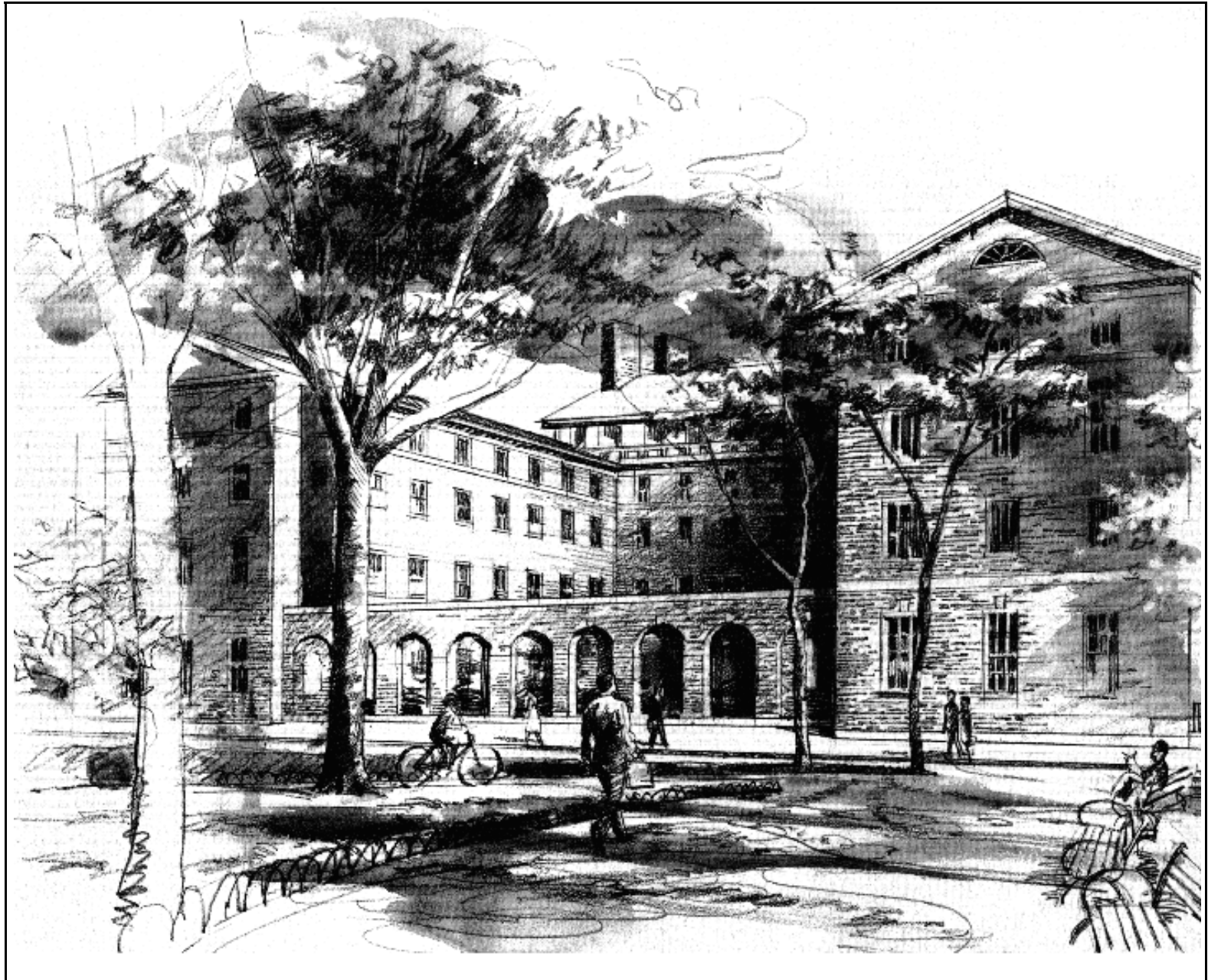


New York University
School of Law

National Center on
Philanthropy and the Law

TEACHING THE LAW
OF NONPROFIT ORGANIZATIONS:
A COMPARISON OF MATERIALS



NEW YORK UNIVERSITY SCHOOL OF LAW
National Center on Philanthropy and the Law

TEACHING THE LAW
OF NONPROFIT ORGANIZATIONS:
A COMPARISON OF MATERIALS

Kenneth Beehler
Kristen LaTempa
Jocelyn Lin

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ANALYSIS OF TEXTBOOK USAGE

LAW SCHOOL COURSES

FISHMAN & SCHWARZ
TEXTBOOKS

NONPROFIT ORGANIZATIONS

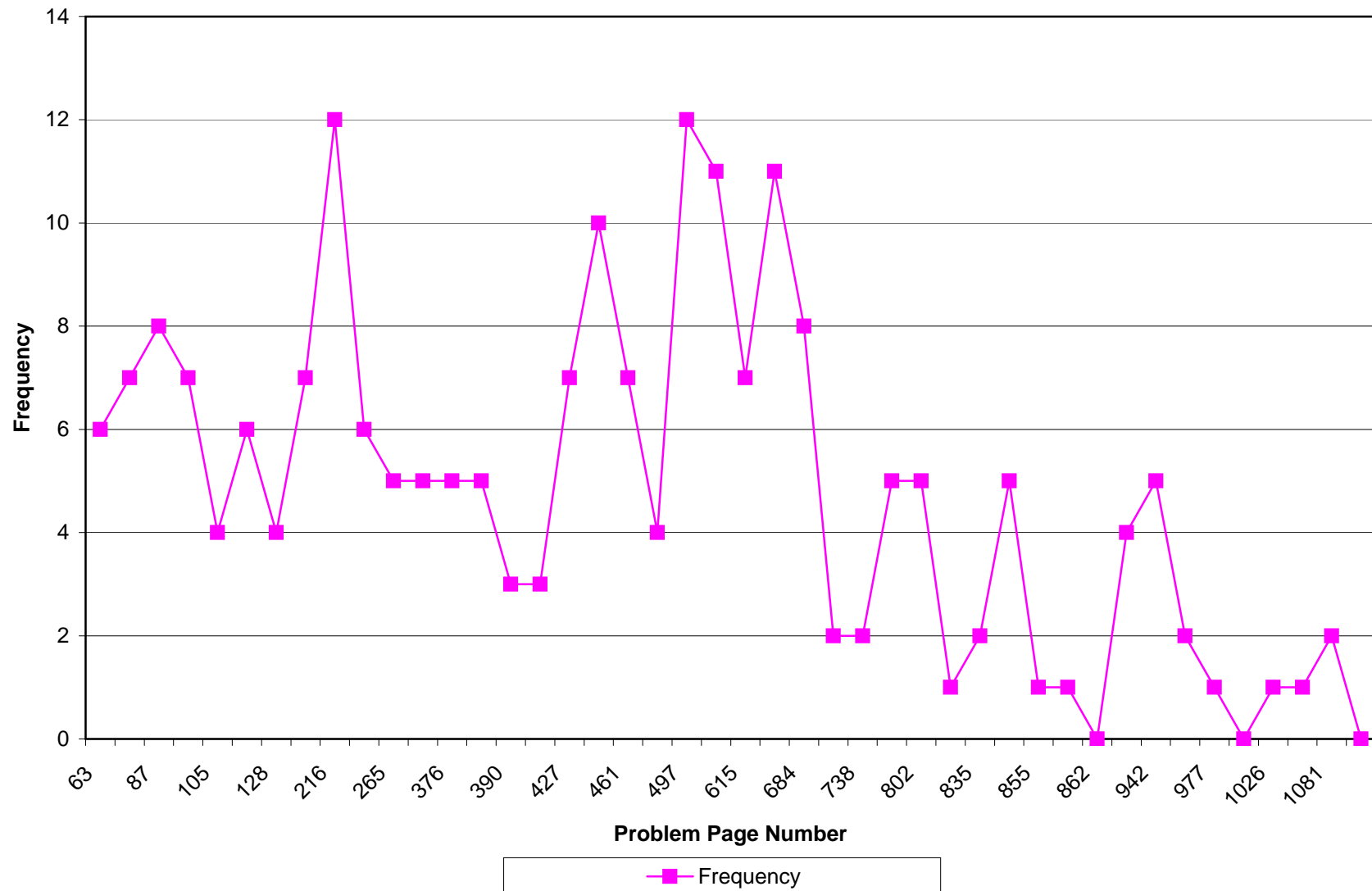
Part	Introduction					Organization & Operation of Nonprofit Organizations - The State Perspective													Taxation of Charitable Organizations						
Chapter	1					2						3			4				5						
	Overview of the Nonprofit Sector					Formation and Dissolution						Operation and Governance			Regulation of Charitable Solicitation				Tax Exemption: Charitable Organizations						
	Introduction	Dimensions of the Nonprofit Sector	Historical Introduction	Rationales for the Nonprofit Sector	The Legal Framework	Choice of the Legal Form	Basic Statutory Approaches	Purposes and Powers	Dissolution and Distribution of Assets	Conversion From a Nonprofit to a For-Profit	Other Nonprofit Restructuring	Introduction	Boards of Directors and Trustees	Fiduciary Obligations	Enforcement of Fiduciary Obligations	Introduction	Constitutional Restrictions on Regulation	Proposals for Reform: Federal Regulation of Charitable Solicitation	Introduction	The Rationale for Charitable Tax Exemptions	Affirmative Requirements for Charitable Tax Exemption	Inurement, Private Benefit and Intermediate Sanctions	Limitations on Lobbying and Political Campaign Activities	Procedural Issues	
Pages	2-16	17-33	34-42	43-60	60-64	66-71	69-76	78-100	101-127	130-135	136-139	140	141-148	149-241	242-264	269-284	285-314	316-318	320-326	327-348	349-475	476-499	500-567	571-592	
Boyd, Koontz, Sidel	x	x	x	x		x	x	x				x	x	x					x		x				
Chisolm	x	x	x		x	x	x	x	x	x	x	x	x	x		x			x	x	x	x	x	x	
Fishman	x	x	x	x	x	x	x	x	x	x	x		x	x	x	x	x	x	x	x	x	x	x	x	
Fleishman	x	x	x	x	x							x	x	x	x	x	x	x	x	x	x	x	x		
Fremont-Smith & Spitzer	x	x	x	x					x					x		x			x		x	x	x		
Galston	x	x	x	x			x	x	x			x	x	x	x	x	x	x	x	x	x	x	x	x	
Gary	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x		
Goldschmid & Swords	x	x	x	x	x		x					x	x	x	x	x	x						x		
Halperin	x	x	x	x	x	x	x	x	x							x	x	x		x	x		x	x	
Jenkins	x	x		x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x		
Manny	x	x		x		x	x	x	x			x	x	x	x	x			x	x	x	x	x		
Mayer	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x		x	x	x	x	x	x	
Mirkay	x	x		x	x	x	x	x	x	x	x	x	x	x	x	x			x	x	x	x	x	x	
Piper	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x		x	x	x	x	x		
Reiser	x	x		x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x		
Schwarz	x	x		x	x	x	x	x	x			x	x	x	x				x	x	x		x	x	
Sugin	x			x		x	x	x	x			x	x	x	x	x			x	x	x	x	x		
Wexler		x			x	x	x	x	x	x	x			x							x	x	x		

Part	Taxation of Charitable Organizations																		
Chapter	6									7						8			
	Commercial Activities and Unrelated Business Income									Private Foundations						Charitable Contributions			
	Introduction	Impact of Commercial Activities on Exempt Status	The Unrelated Business Income Tax: History and Policy	The Nature of an Unrelated Trade or Business	Exclusions From Unrelated Business Taxable Income	Computation of Unrelated Business Taxable Income	Unrelated Debt-Financed Income	Complex Structures and Other Special Problems	Proposals for Reform	The Universe of Private Foundations	The Federal Tax Treatment of Private Foundations: An Overview	Avoiding Private Foundation Status: The Details	Private Foundation Excise Taxes	Termination of Private Foundation Status	Introduction	Charitable Contributions: Basic Principles	Noncash Contributions	Planned Giving Techniques	
Pages	593-595	596-614	616-627	628-665	668-684	685-693	694-707	709-743	744-750	751-780	781-789	791-831	832-869	871-873	874-893	894-941	944-967	970-976	
Boyd, Koontz, Sidel			x	x						x	x					x	x	x	
Chisolm	x	x	x	x	x	x	x		x	x	x	x			x	x		x	
Fishman	x	x	x	x											x	x			
Fleishman										x	x				x				
Fremont-Smith & Spitzer			x	x	x	x	x	x		x		x	x	x	x	x	x	x	
Galston	x	x	x	x					x	x		x	x			x			
Gary	x	x	x	x	x					x	x								
Goldschmid & Swords	x	x	x		x			x		x	x	x			x	x		x	
Halperin	x	x	x	x	x	x	x	x		x	x	x	x	x	x	x	x	x	
Jenkins	x	x		x	x			x	x	x	x	x	x		x	x			
Manny	x	x	x	x	x					x	x	x	x	x					
Mayer	x	x	x	x	x			x							x	x			
Mirkay	x	x		x				x		x	x					x	x		
Piper	x	x	x	x	x	x	x			x	x	x	x		x	x			
Reiser	x	x	x	x	x			x	x	x	x	x			x	x			
Schwarz	x	x	x	x	x	x	x	x		x	x	x	x		x	x	x		
Sugin		x	x	x	x	x	x			x	x		x		x	x			
Wexler				x	x								x						

[illegible]

[illegible]

Problems Assigned	Problems Page #	Boyd, Koontz, Sidel*	Chisolm	Fishman	Fleishman*	Fremont-Smith & Spitzer**	Galston*	Gary*	Goldschmid & Swords	Halperin	Jenkins*	Manny	Mayer	Mirkay*	Piper	Reiser	Schwarz	Sugin*	Wexler
Chapter 7 - Private Foundations																			
Private Foundation Excise Taxes	790						x				x	x					x	x	
"Gross Receipts" and Membership Organizations: § 509(a)(2)	802		x								x	x				x		x	
Reform Proposals	825																x		
Tax on Net Investment Income: § 4940	835										x							x	
The Tax Cost of Self-Dealing	847						x				x	x					x		x
Policy Issues: Adjusting the Payout Rate	855																	x	
Operation of § 4943	860																x		
Jeopardy Investments: § 4944	862																		
Expenditure Responsibility	870									x		x					x		x
Chapter 8 - Charitable Contributions																			
Substantiation and Compliance Rules	942		x	x						x				x			x		
Valuation and Appraisal Requirements	968									x							x		
Charitable Lead Trusts	977									x									
Chapter 9 - Tax Exemption: Mutual Benefit and Other Noncharitable Organizations																			
Lobbying and other Political Activities	1009																		
Nonmember Activities	1026																x		
Chapter 10 - Special Problems of Private Membership Associations																			
Expulsion of Members	1049						x												
Freedom of Association	1081						x										x		
Chapter 11 - Antitrust and Nonprofits																			
Education	1127																		
*Pages for reading were assigned, but the problems on those pages were not explicitly assigned.																			
**No problems assigned from Fishman & Schwarz.																			

Fishman & Schwarz Text Problem Use

NONPROFIT TAXATION

[illegible]

OTHER TEXTBOOKS

NONPROFIT ORGANIZATIONS

Part	Introduction					Organization and Operation of Nonprofit Organizations - The State Perspective											Taxation of Charitable Organizations							
	Overview of the Nonprofit Sector					Formation and Dissolution						Operation and Governance			Regulation of Charitable Solicitation		Tax Exemption: Charitable Organizations							
	Introduction	Dimensions of the Nonprofit Sector	Historical Introduction	Rationales for the Nonprofit Sector	The Legal Framework	Choice of the Legal Form	Basic Statutory Approaches	Purposes and Powers	Dissolution and Distribution of Assets	Conversion From a Nonprofit to a For-Profit	Other Nonprofit Restructuring	Introduction	Boards of Directors and Trustees	Fiduciary Obligations	Enforcement of Fiduciary Obligations	Introduction	Constitutional Restrictions on Regulation	Proposals for Reform: Federal Regulation of Charitable Solicitation	Introduction	The Rationale for Charitable Tax Exemptions	Affirmative Requirements for Charitable Tax Exemption	Inurement, Private Benefit and Intermediate Sanctions	Limitations on Lobbying and Political Campaign Activities	Procedural Issues
Brennen	x		x	x	x														x	x		x	x	
Brody	x	x	x	x	x							x	x	x	x	x	x	x	x	x	x		x	
Desiderio	x					x	x					x	x	x	x				x	x	x	x		
Horwitz	x	x	x	x	x							x	x	x	x	x	x	x						
Phelan	x	x				x	x					x							x	x	x	x	x	

Part	Taxation of Charitable Organizations (cont.)															
	Commercial Activities and Unrelated Business Income									Private Foundations					Charitable Contributions	
	Introduction	Impact of Commercial Activities on Exempt Status	The Unrelated Business Income Tax: History and Policy	The Nature of an Unrelated Trade or Business	Exclusions From Unrelated Business Taxable Income	Computation of Unrelated Business Taxable Income	Unrelated Debt-Financed Income	Complex Structures and Other Special Problems	Proposals for Reform	The Universe of Private Foundations	The Federal Tax Treatment of Private Foundations: An Overview	Avoiding Private Foundation Status: The Details	Private Foundation Excise Taxes	Termination of Private Foundation Status	Introduction	Charitable Contributions: Basic Principles
Brennen			x	x						x	x				x	x
Brody	x	x	x	x	x	x	x	x		x	x				x	x
Desiderio			x	x	x	x				x	x					
Horwitz	x	x	x	x	x											
Phelan	x	x	x	x	x	x				x	x				x	x

Part	Mutual Benefit and Private Membership Organizations												Other Legal Issues Affecting Nonprofit Organizations			
	Tax Exemption: Mutual Benefit and Other Noncharitable Organizations							Special Problems of Private Membership Associations					Antitrust and Nonprofits			
	The Rationale for Tax Exemption	Social Welfare Organizations	Labor, Agricultural and Horticultural Organizations	Trade Associations and Other Business Leagues	Social Clubs and Fraternal Organizations	Other Mutual Benefit Organizations	Introduction	Judicial Intervention Into Private Association Affairs	Membership as a Property Right	Expulsion of Members	Admission of Members	Private Associations and the Constitution	Introduction	Health Care	Education	Damages for Antitrust Liability
Brennen	x	x			x									x	x	
Brody	x	x	x	x	x	x										
Desiderio														x	x	
Horwitz																
Phelan	x	x		x	x	x	x	x						x	x	

NON LAW SCHOOL COURSES

[illegible]

[illegible]

[illegible]

COURSE SYLLABI

LAW SCHOOL COURSES

NONPROFIT ORGANIZATIONS

Professor: William Boyd, Richard Koontz, Mark Sidel
School: University of Iowa School of Law
Course: Nonprofit and Philanthropic Organizations

Materials

Fishman & Schwarz, *Nonprofit Organizations: Cases and Materials*, Third Edition, Foundation Press 2006
Supplement to Fishman & Schwarz, *Nonprofit Organizations: Cases and Materials*, 2007

Course Overview

This course focuses on the creation of nonprofit organizations. There is no midterm or final exam in the course; instead, students are graded entirely upon a written assignment in which they must create a not-for-profit organization. The project also requires the students to write a memorandum to the not-for-profit organizers from their counsel, which discusses a number of issues discussed in the course.

Order and Use of Text

The Fishman and Schwarz casebook and supplementary materials are used almost exclusively in this course. This course follows the order of the casebook, with the following exceptions: Chapter 4 (Regulation of Charitable Solicitation) is omitted entirely, Chapter 8 (Charitable Contributions) is taught before Chapter 6 (Commercial Activities and Unrelated Business). Part 4 of the Casebook, Mutual Benefit and Private Membership Organizations, is not assigned at all in this course.

91:646 Nonprofit and Philanthropic Organizations

Fall 2007

Mondays, 2:30 P.M. – 4:30 P.M.

125 BLB

Course Requirements

Attendance

Class attendance is required. A student may miss no more than two classes during the fall semester. If you need to miss class because of serious illness or religious observance, please advise Professor Koontz in advance, if possible. The final grade for students who miss more than two classes will be lowered one full grade.

Writing Assignments

There is one writing assignment required for Nonprofit course. There is no midterm or final exam.

Requirement of the course: create a not-for-profit organization. This consists of five documents. The first four are the legal documents necessary to form the corporation and get the tax-exempt status of the NFP:

Articles of Incorporation
IRS Form 1023
Statement of Purpose/Mission
By-Laws

The fifth document of the class's project describes a variety of the legal issues which a not-for-profit faces:

Memorandum to the Not-for-Profit organizers from their counsel concerning all of the following issues:

1. constituencies
2. directors/officers
3. strategic planning
4. satisfaction of legal requirements, both regulatory and tax
5. potential liabilities
6. funding
7. accountability and ethics
8. special problems arising from particular mission

The subject of the project should be approved by the course instructors. A ten to fifteen page memorandum is required for those of you who signed up for two hours of credit in this seminar. This page length requirement applies only to the memorandum. The articles

of incorporation, mission statement, form 1023 and bylaws are not included in the page length required for the memorandum length. For those of you who signed up for 3 hours (for 1 writing credit), you need to write a memorandum of 20 to 25 pages in length. If you are signed up for 2 writing credits (a total of 4 credits), your memorandum length must be at least 40 pages. Do not write for more than a total of four credits without consulting the professors (paper length if beyond four credits will be 20 additional pages per credit). Final grades will be determined on the basis of the paper. There is no final exam. All writing assignments are to be typed (double-spaced) with one-inch margins all around, font size of no more than 12 point with page numbers.

The writing assignment is due at the end of class on the final day of class. Absent the approval of Professor Koontz, late assignments will not be accepted and the student will receive a 0 for that assignment.

For students seeking writing credits for the course, there must be a draft of the paper turned in by October 8, 2007, and an appointment made to meet with professor Koontz to review the draft.

Service Learning Alternative

The service learning alternative format is available for up to three (3) students, on a first-come, first-served basis. Students who wish to request this assignment must do so by September 10, 2007, and the request must be in writing delivered to Professor Koontz.

Under this alternative, students must sign up for a total of a minimum of four credits (two academic credits for the class and two for the writing, which includes two writing credits). Depending on the amount of writing done by the end of the term, an additional academic and writing credit is possible.

Students in this alternative format will complete the five legal documents described above for a fictional or actual group of the students' choosing, subject to approval by the course instructors. The memorandum to not-for-profit organizers will consist of no more than 15-20 pages.

Students under this alternative will earn the additional academic credit, and associated writing credit, in a service-learning project at the Iowa Nonprofit Resource Center. Students will work with Center staff in processing requests for information to the Center's help desk from Iowa not-for-profit organizations staff. Under the direction of Center staff, such processing will include doing intakes of calls the Center receives, researching the legal issues involved, drafting responses, and, as appropriate, rewriting the responses in a form suitable for ultimate inclusion on the Center's web page as Frequently Asked Questions.

Academic Integrity

Academic dishonesty will not be tolerated. Cheating on an assignment will result in a 25% loss in your final grade. In this class, the following behaviors constitute cheating: working together with a classmate on an assignment that has been specifically designated as an individual assignment and lifting passages from other sources (including other students) and placing them in your papers without referencing the original source.

Academic Accommodations

Please contact Professor Koontz as soon as possible if you have a disability or condition that may require some modification of seating, testing or any other class requirement so that appropriate arrangements can be made. If you have any emergency medical information about which the instructors should know, or if you need special arrangements in the event the classroom must be evacuated, please let Professor Koontz know. Additional assistance is available from the Office of Student Disability Services (3100 Burge Hall); 319-335-1462; <http://www.uiowa.edu/~sds>.

Contact with Professors

Willard L. Boyd
460 BLB
willard-boyd@uiowa.edu
(319) 335-9004
Office Hours: By appointment

Mark Sidel
442 BLB
mark-sidel@uiowa.edu
(319) 384-4640
Office Hours: Tuesday - Friday, 2:00 - 3:00

Richard F. Koontz
Iowa Nonprofit Resource Center
130 Grand Avenue Court
richard-koontz@uiowa.edu
319) 335-9765
Office Hours: By appointment

Assigned Text

The required material for the course is James J. Fishman & Stephen Schwarz, *Nonprofit Organizations, Cases & Materials*, 3rd Ed. A recommended book is *Nonprofit Organizations, Cases & Materials, 2006 Supplement*.

Schedule of Classes and Reading Assignments

1. Tuesday, August 28, 2007

Mark Sidel

Course Overview and the Role of Nonprofit Organizations in Community Life

Readings: Fishman, pp. 1 – 34

Role of Charitable Nonprofit Organizations, Section I (**Principles and Practices**) and “Report on the Survey of Iowa Nonprofit Organizations” - <http://inrc.continuetolearn.uiowa.edu/education/books/ourPub.asp>

2. Monday, September 3, 2007

No Class – Labor Day

3. Monday, September 10, 2007

Willard Boyd

The role, nature and history of nonprofit organizations in the U.S. and Iowa, their constituencies, and their missions

Readings: Fishman, pp. 35 – 60

Mission Statement, pp. 1 – 5 and Section III (**Principles and Practices**)
Look at Mission Statements on the websites for the United Way of East Central Iowa and Cedar Valley United Way.

Description of kind of nonprofit to be created due

4. Monday, September 17, 2007

Richard Koontz

Statutory corporate law (Iowa Code 504), Nonprofit articles of incorporation and bylaws

Readings: Fishman, pp. 66 - 87

Starting the Charitable Nonprofit, Section II (**Principles and Practices**), “Articles of Incorporation,” “Articles of Incorporation Issues” “Bylaws,” and “Bylaw Committees,” Statement of Change of Registered Agent” (http://www.sos.state.ia.us/pdfs/buspdfs/static/635_0119.pdf)

5. Monday, September 24, 2007

Willard Boyd

Role of Members, Directors and Officers, and CEOs

Readings: Fishman, pp. 140 – 149

Board of Directors, Section V and VI (**Principles and Practices**)

Note: Larned A. Waterman Iowa Nonprofit Resource Center monograph on board governance is available in the College of Law library.

6. Monday, October 1, 2007

Richard Koontz

Fiduciary Duties, offices and directors

Readings: Fishman, pp. 149 – 152, 160 – 172, 176 – 179, 185 – 194, 219

Mission Statements Due

7. Monday, October 8, 2007

Willard Boyd

Policies and procedures, management, budget, programming, strategic planning

Readings: Section IV, VII, IX & XII (**Principles and Practices**)

8. Monday, October 15, 2007

Dean Carolyn Jones

Basic issues of nonprofit taxation

Readings: Fishman, pp. 320 – 328, 349 – 353, 377 – 383

9. Monday, October 22, 2007

Dean Carolyn Jones

Tax basics of fundraising

Readings: Fishman, pp.894 – 900, 907 – 915, 935 – 945, 953 - 959
Financing and Funding, Section VIII (**Principles and Practices**)

10. Monday, October 29, 2007

Richard Koontz, Casey Mahon

Endowment, UMIFA and debt financing

Readings: Fishman, pp. 223 – 235

11. Monday, November 5, 2007

Dave Triplett and Andrew Sheey

Planned giving

Readings: Fishman, pp. 970 - 976

12. Monday, November 12, 2007 Ethan Stone

UBIT

Readings: Fishman, pp.616 – 630, 659 – 666

13. Monday, November 19, 2007 Mark Sidel

Philanthropy in the United States I: Forms, Activities, Legal Regulation,
and the Role of Private Foundations

Readings: Fishman, pp. 751 - 786

13. Monday, November 26, 2007 Mark Sidel

Philanthropy in the United States II: Community Foundations in the
United States and in Iowa: Roles and Issues

Readings: TBA

15. Monday, December 3, 2007 Willard Boyd and Richard Koontz

Ethics and accountability

Readings: Accountability and Compliance, Section XIII

Nonprofit Startup Project due

Professor: David Brennan

School: University of Georgia School of Law

Course: Taxation of Federal Nonprofit Organizations Seminar

Materials

Jones, Willis, Brennan and Moran, *The Tax Law of Charities & Other Exempt Organizations: Cases, Materials, Questions & Activities*, West Publications 2003

Jones, Willis, Brennan and Moran, *Statutory Supplement to The Tax Law of Charities & Other Exempt Organizations: Cases, Materials, Questions & Activities*, West Publications 2003

Course Overview

This course studies the federal income tax exemption for nonprofit organizations. The class begins by looking at the history behind the tax exemption, as well as the rationales for giving such an exemption. The course covers the policy and legal issues relating to the federal income tax exemption. The course concludes with a look at non-charitable nonprofit organizations. The course grade is mainly determined by an original analytical paper written on an issue of tax-exempt organizations law or policy and on the amount of substantive classroom participation.

Order and Use of Text

The topics studied in this class are not covered in the order they appear in the casebook. The order of topics is as follows:

1. Basic Income Tax Principles
2. Rationales for the Charitable Deduction (Ch. 2)
3. Mechanics of the Federal Income Tax Exemption (Ch. 3)
4. Overview of Charitable Tax Exemption (Ch. 8)
5. Charitable Purpose: Religious (Ch. 3)
6. Charitable Purpose: Education (Ch. 4)
7. Charitable Purpose: Charitable (Healthcare & PILF) (Ch. 6)
8. Charitable Purpose: Public Policy & Illegality (Ch. 2)
9. Exclusivity and Commerciality (Ch. 7)
10. Private Inurement (Ch. 9)
11. Private Benefit (Ch. 10)
12. Lobbying Activities (Ch. 11)
13. Political Activities (Ch. 12)
14. Private Foundations (Ch. 13)
15. Non-Charitable Exempt Organizations – Social Welfare & Social Clubs (Ch. 16 & 19)
16. Unrelated Business Income Tax (Ch. 21)
17. Charitable Contribution Deduction (Ch. 26)

Syllabus for:
TAXATION OF FEDERAL NONPROFIT ORGANIZATIONS SEMINAR
(Course: 5920) (S2007)

Professor:	David A. Brennen	Office Hours:	M/W (10:30-11:20) or by appointment
Office:	311	Email:	brennend@uga.edu
Phone:	706-542-5398	Class:	M (1:30-3:20, Classroom 254/D)

ABOUT THE COURSE: In this course, we will examine various policy and legal aspects of the federal income tax exemption for what are commonly called nonprofit organizations. We will begin by discussing the historical development of tax-exempt organizations and various rationales for their existence. We will then address policy and legal issues surrounding tax-exempt purposes (religious, educational, and charitable), exclusivity and commerciality doctrines, restricted and prohibited activities (private benefit, private inurement, lobbying and political campaigning), and private foundation status. We will conclude by examining non-charitable nonprofits (social welfare organizations and social clubs), the unrelated business income tax and the charitable contribution deduction. You will be expected to write an analytical paper that addresses a tax policy issue that is related to the topics addressed in this course.

RECOMMENDED PREREQUISITES: Federal Income Tax (JURI 5120)

ELEMENTS OF THE GRADING SYSTEM: Your grade will consist of the following elements:

1. Classroom Participation/Attendance/Preparation
Regular and timely attendance is expected. Each person in attendance is expected to have completed the reading assignment and prepared responses to the assigned problems, take part in classroom discussions, bring code/reg supplement to each class, and peer-edit a draft of another student's paper. Less than satisfactory on-time attendance, participation and preparation will have a negative effect on your grade for the course. I typically expect at least 80% attendance.
2. Writing Assignments
The bulk of your grade will be based on the quality of an original analytical paper prepared by you that addresses an issue of tax-exempt organizations law or policy. The purpose of this paper is to allow me to assess your ability to critically analyze an aspect of tax-exempt organizations law or policy with an eye towards its betterment. I will give you a handout on the first day of class describing this project in greater detail.

RECORDING OF LECTURES: Audio or video recording any lectures or classroom discussions is prohibited.

Syllabus For:

**TAXATION OF FEDERAL NONPROFIT ORGANIZATIONS SEMINAR
(Course: 5920) (S2007)**

STUDENTS WITH DISABILITIES: Any student having special needs due to a physical or mental disability should see me immediately or speak to the appropriate associate dean.

COMMUNICATING ASSIGNMENTS: All assignments will be either announced in class, communicated by electronic mail or both. Thus, each of you should check your electronic mail daily. I may provide you with an anticipated assignment list; however, the list is only a guide and may not accurately reflect actual coverage in the course.

COURSE MATERIALS: (1) regular access to the web; (2) an electronic mail address issued by University of Georgia; (3) The Tax Law of Charities & Other Exempt Organizations: Cases, Materials, Questions & Activities, (West Publications 2003) by Jones, Willis, Brennen and Moran; (4) Statutory Supplement to The Tax Law of Charities & Other Exempt Organizations: Cases, Materials, Questions & Activities, (West Publications 2003) by Jones, Willis, Brennen and Moran; (5) 2004-2005 Update for The Tax Law Of Charities And Other Exempt Organizations (handout)

Syllabus For:
TAXATION OF FEDERAL NONPROFIT ORGANIZATIONS SEMINAR
(Course: 5920) (S2007)

Anticipated Reading And Writing Assignments

NOTE: Each item listed below is subject to change and/or addition. "Handouts" are generally available electronically, either from me by e-mail, on e-reserve or via Lexis and Westlaw. Please print them out and bring them to class when indicated.

Week 1:
1/15/07 **Martin Luther King Holiday – No Class**

Week 2:
1/22/07 **Basic Income Tax Principles**
Think about basic principles you learned in your Federal Income Tax course.

Rationales for the Charitable Tax-Exemption

Text: Ch. 2: Part D - Theories of Charitable Tax Exemption (pp. 47-59)

Code: §§ 501(c)(3); 170(a)(1); 170(c)

Reg: none

Handout(s): Brennen, *A Diversity Theory of Charitable Tax Exemption*, 4 PITT TAX REV. 1 (forthcoming 2006); IRS Form 1023

Library Research Day (Room H from 12:30 until 1:30 on Thursday, January 25) (Attendance Required)

*****Note:** A make-up session will be held on Friday, January 26, also in Room H, for those who cannot make it on Thursday. Please contact Ms. Maureen Cahill (mcahill@uga.edu) in the law Library if you will need to attend the make-up session.

Week 3:
1/29/07 Mechanics of Federal Income Tax Exemption (Ch. 1)

Overview of Charitable Tax Exemption (Ch. 8)

Charitable Purpose: Religious (Ch. 3)

Ongoing Writing Project: Initial Letter from Client due at beginning of class

Lexis/Westlaw Research Day (sometime during the week)

Syllabus For:
TAXATION OF FEDERAL NONPROFIT ORGANIZATIONS SEMINAR
(Course: 5920) (S2007)

Week 4:
2/05/07 Charitable Purpose: Educational (Ch. 4)

Charitable Purpose: Charitable (Healthcare & PILF) (Ch. 6)

Thesis, Outline and Initial Bibliography due at beginning of class

Week 5:
2/12/07 Charitable Purpose: Public Policy & Illegality (Ch. 2)

Week 6:
2/19/07 Exclusivity and Commerciality (Ch. 7)

Week 7:
2/26/07 Class canceled*

*****Make-up Class for 2/26/07 will be held on March 2 in Classroom G

3/02/07 Exclusivity and Commerciality (cont.)

Private Inurement (Ch. 9)

First Drafts Due at beginning of class

Week 8:
3/05/07 Private Benefit (Ch. 10)

Week 9:
3/12/07 Spring Break Holiday – Class cancelled

Week 10:
3/19/07 Lobbying Activities (Ch. 11)

Political Activities (Ch. 12)

Ongoing Writing Project: Response From Attorney due at beginning of class

Week 11:

Syllabus For:
TAXATION OF FEDERAL NONPROFIT ORGANIZATIONS SEMINAR
(Course: 5920) (S2007)

3/26/07 Private Foundations (Ch. 13)

Week 12:

4/02/07 Non-Charitable Exempt Organizations - Social Welfare & Social Clubs (Chs. 16 & 19)

Second Drafts Due at beginning of class

Week 13:

4/09/07 Unrelated Business Income Tax (Ch. 21)

Charitable Contribution Deduction (Ch. 26)

Week 14:

4/16/07 **Paper Presentations** (Attendance Required)

Week 15:

4/23/07 **Paper Presentations** (Attendance Required)

Week 16:

4/24/07 **Paper Presentations** (Attendance Required)

4/24/07 **Final Drafts Due at beginning of class**

Professor: Evelyn Brody
School: Chicago-Kent College of Law
Course: Nonprofit Law

Materials

Jack Siegel, *A Desktop Guide for Nonprofit Directors, Officers, and Advisors*, John C. Wiley & Co. 2006

ALI Nonprofit Law Draft

Supplemental Material available on the course Web site

Course Overview

This course focuses on the legal issues faced by nonprofit organizations, with an emphasis on charities. Along with the focus on charities, the course material includes State corporate and trust law, Federal tax law, and First Amendment protections as it relates to association and charitable solicitation. Pending availability of time, the course may also include a discussion on some State tax and Federal election law issues. Legal issues pertaining to running a nonprofit, such as employment law and torts, generally are beyond the scope of this course.

Order and Use of Text

The reading assignments typically contain chapters from Siegel's guide and statutes from the ALI Draft. This course also relies heavily on "works-in-progress" and material available on the internet. The material is divided into four main sections:

1. Legal Landscape for Nonprofit Organizations (Five class sessions)
2. Governance: State Fiduciary Law (Six class sessions)
3. Charitable Contributions (Six class sessions)
4. Tax Exemption and Other Tax Benefits for Charities and other Nonprofits (Ten class sessions)

Prof. Evelyn Brody

Chicago-Kent College of Law, Room 841
ebrody@kentlaw.edu / 312-906-5276

NONPROFIT LAW COURSE SYLLABUS: FALL 2008

Course Coverage:

This is a course in the legal issues raised in governing a nonprofit organization, primarily a charity. We will focus on the appropriate considerations of State corporate and trust law and Federal tax law, as well as some State tax issues and Federal election law issues if we have time. We will also study First Amendment protections relating to association and charitable solicitation. Additional legal issues implicated in running a nonprofit, such as employment law and torts, are generally beyond the scope of this course.

Class Assignments:

Because the law in this area is so rapidly evolving, both in prescription and practice, we will rely heavily on works-in-progress and materials available on the Web. Initially, you need:

1. **Nonprofit Governance Guide:** A DESKTOP GUIDE FOR NONPROFIT DIRECTORS, OFFICERS, AND ADVISORS (John C. Wiley & Co. 2006), by Jack Siegel (full disclosure: my husband).

This Guide is supplemented by a **CD-ROM containing primary sources** – case law, statutes and regulations, and other material. See index to assigned material, by class number, after this Syllabus.

2. **ALI Nonprofit Law Draft:** We will read selections from the draft I'm preparing as Reporter for the American Law Institute's project on Principles of the Law of Nonprofit Organizations. Caveat: Only some portions of this draft have not yet been submitted to the ALI (and even those portions are subject to revision); however, all of it reflects feedback from the project's Advisers, ALI Members Consultative Group, and others. Your suggestions will be most timely and welcome!

3. My photocopied set of **SUPPLEMENTAL MATERIAL:** Besides this Syllabus, this packet contains additional authorities, forms, commentary, and news stories. These pages are numbered by the Assignment to which they relate; unless otherwise indicated, each numbered assignment will take about one class hour. We will, of course, slow down or speed up as necessary.

Note: You have two ways to access the assigned Internal Revenue Code sections we will read: at the beginning of the Supplementary Material is a document called "**Code & Regs**", and the Guide's CD-ROM, under Chapters 6 and 7, contains longer versions. By contrast, only two of the Treasury Department regulations (one amended in 2008) appear in the Supplement; the rest are only on the CD-ROM.

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4. **Course Website:** Additional assigned documents are available as Online Course Materials (<http://www.kentlaw.edu/classes/ebrody>). The Course Webpage also has links to the following key sites, which you should access where assigned and monitor for developments:

<http://www.irs.gov/charities> (with material on all types of tax-exempt organizations)
<http://www.charitygovernance.com> (maintained by Jack Siegel)
http://www.sos.state.il.us/services/services_business.html (Ill. Sec. State)
<http://www.ag.state.il.us/charities> (Illinois Attorney General, Charities Division)
<http://www.philanthropy.com/news> (links to news stories on nonprofits)
<http://www.guidestar.org> (all filed IRS Form 990s for charities) (free registration)

Buddy System:

To make your preparation for class more effective, you must form into groups of two or three. Pick your own co-counsel, or, if you wish, come to me and I'll pair you off. Let me know who your co-counsel are. You should meet with each other regularly to discuss the material.

Assignments, Attendance, Preparation, Exam, and Grade:

We meet three times a week, on Mondays, Tuesdays, and Wednesdays, from 1:55 - 2:50.

Given the size of our class, I will rotate you and your co-counsel(s) through the assignments to be prepared to be "lead discussant" on the day's topics. Of course, all of you are required to prepare the material assigned for each class, and to be ready to discuss the material. If you're unprepared, at least come to class, but let me know.

The grade will be based primarily on your exam. The exam will be 3 hours long, and completely open-book. I reserve the right to raise or lower your grade up to one full grade point based on the quantity and quality of your class participation. You may take this course pass/fail.

Get organized; *keep up*; and contact me with questions (preferably with your co-counsel).

LEGAL LANDSCAPE FOR NONPROFIT ORGANIZATION**1. Overview of the Legal Landscape for Nonprofit Organizations**

Guide: Forward: pp. xxxi-xxxiv; Chapter 1, **Setting the Stage**: pp. 1-18;
 Chapter 2, **Before Signing On**: pp. 19-22.

Supp.: NCCS, "The Nonprofit Sector in Brief (2008)"
[\[http://nccsdataweb.urban.org/kbfiles/797/Almanac2008publicCharities.pdf\]](http://nccsdataweb.urban.org/kbfiles/797/Almanac2008publicCharities.pdf) and other data, Supp. at 1-1 through 1-12; and "The 50 Largest

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Charities,” Supp. at 1-13 through 1-16.

To see what information we can readily learn about a charity, skim the Smithsonian Institution’s 2006 Form 990, Supp. at 1-17 through 1-32.

2. **Private Associations: Constitutional and Policy Issues**

(This topic will take two class hours.)

ALI Draft: § 110 (Autonomy and Public Policy Limitations).

Guide: Chapter 3, **Organization Basics**, part (c), “Members,” at pp. 43-51; skim Chapter 8, **Other Benefits**, “Federal Funding for Faith-Based Organizations,” at pp. 403-10.

Supp.: *State ex Rel. Grant v. Brown* and *Association for the Preservation of Freedom of Choice v. Shapiro*, Supp. at 2-1 through 2-10; excerpts from *Boy Scouts of America v. Dale.*, Supp. at 2-11 through 2-26; and Boy Scouts and diversity news stories, Supp. at 2-27 through 2-31.

CD-ROM: Under Ch. 3, you can the full text of *Boy Scouts* (at \Associative Rights); under Ch. 6, skim *Bob Jones University* (at \Charitable), especially pp. 11-13 (majority opinion) and pp. 20-21 (Powell’s famous concurrence).

3. **Charitable and Nonprofit Purposes**

ALI Draft: § 210 (Charitable Purposes and Activities).

Web: Read Article 3 (Purposes and Powers) in the Illinois Not-for-Profit Corporation Act, available on the Secretary of State’s website (from the course Website, go to http://www.sos.state.il.us/departments/business_services/home.html and click on “Business Organization Acts,” and then click on “805 ILCS 105 / General Not-for-Profit Corporation Act of 1986”).

Guide: Chapter 6, **Tax Exemption**: Introduction and “Tax Exempt Entities,” at pp. 219-29; and “Terrorism and the Non-Profit Sector,” at pp. 325-27.

Note: We consider tax exemption beginning with Assignment 19. We will cover political and lobbying activity in Assignment 22 and the prohibition on “private inurement” in Assignment 20.

Supp.: *Marsh v. Frost National Bank*, Supp. at 3-1 through 3-6;

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news stories on terrorism conviction and Ford Foundation grantee policy, Supp. at 3-7 through 3-14.

4. Organizational Form: Comparing Charitable Trusts and Nonprofit Corporations

ALI Draft: § 200 (Choice of Form and State of Organization).

Guide: Chapter 3, **Organization Basics**: pp. 23-31 (choice of form; the players) and pp. 35-43 (directors and officers).

CD-ROM: Under Ch. 4\Director Removal, *Oberly v. Kirby* – especially footnote 15.

Supp.: Brody and Brody & Fremont-Smith on the Model Nonprofit Corporation Act, Third Edition (Jan. 2008 Exposure Draft), Supp. at 4-1 through 4-12.

5. The Corporate Form: Registration and Reporting.

(This topic will take two class hours.)

ALI Draft: § 320 (Board Responsibilities, Functions, and Composition). (We examine board duties more thoroughly in the next few classes.)

Guide: Chapter 3, **Organization Basics**: “The Regulators–States Attorneys General,” at pp. 51-54; and “Organizational Documents”, “Meetings”, and “Major Events,” at pp. 56-74.

Web: Go to the Charities Bureau on the Illinois Attorney General’s website (from our Course Website, click on <http://www.ag.state.il.us/charities>).

Read: (1) FAQs;
 (2) Filing Requirements;
 (3) Registration and Annual Report Forms;
 (4) Rules and Statutes (just skim the Charitable Trust Act; recall from Assignment 3 that the Not-for-Profit Corporation Act is on the Secretary of State’s website);
 (5) Forming a Charitable Organization;
 (6) Volunteer Board Members of Illinois Not-for-Profit Orgs.

Go to the Secretary of State’s website (from the Course Website, click on http://www.sos.state.il.us/services/services_business.html), go to “Business Organizations Act,” and then to “Nonprofit Corporations.” Read the Illinois requirements for the articles of incorporation. Now go

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back to the homepage, click on Publications and Forms, and then click on Not-for-Profit Corporations. Read “Articles of Incorporation” (and “A Guide for Organizing Not-for-Profit Corporations” (May 2008)) and “Not-for-Profit Annual Reports” (May 2008)

Take advantage of the Ford Foundation’s laudable amount of disclosure – go to <http://www.fordfound.org/about/governance>, and explore the links to the Foundation’s Charter/Articles of Incorporation, Bylaws, Committee Charters and Membership, and procedures for the receipt, retention and treatment of complaints regarding accounting, internal accounting controls, and auditing matters.

GOVERNANCE: STATE FIDUCIARY LAW

6. Fiduciary Duties in General

(This topic will take two class hours.)

ALI Draft: Introductory Notes to Chapter 3 (Governance); § 300 (Fiduciary Duties); § 305 (Modification of Fiduciary Duties); § 310 (Duty of Loyalty); § 315 (Duty of Care); § 340 (Informational Rights and Obligations of Governing-Board Members).

Guide: Chapter 4, **Legal Duties & Obligations**: pp. 77-99.

CD-ROM: Under Ch. 4\Breach of Duties: *Stern v. Lucy Webb Hayes National Training School* (known popularly as the “Sibley Hospital Case”).

7. Exploring the Duty of Loyalty: Conflicts of Interest

Guide: Chapter 4, **Legal Duties and Obligations**: “Another Look at Conflicts of Interest,” at pp. 116-28.

ALI Draft: § 330 (Conflict-of-Interest Transactions).

Supp.: Ostrower, “Findings on Financial Transactions between Nonprofits and Board Members” (2007), Supp. at 7-1 through 7-6; Smithsonian Institution materials (2007 through 2008), Supp. at 7-7 through 7-23.

Web: Continue exploring the Ford Foundation’s website – at <http://www.fordfound.org/about/governance> – specifically, the Foundation’s Standards of Independence, Trustee Code of Ethics, Staff

Code of Conduct and Ethics, and Procedures for approving affiliated grants.

8. Exploring the Duty of Care: Delegation vs. Abdication and Investments

ALI Draft: § 325 (Committees and Delegation); and § 335 (Investment Management and Spending Policy).

Guide: Chapter 3, **Organizational Basics**: “Board Committees,” at pp. 31-35; and Chapter 4, **Legal Duties and Obligations**: “A Further Look at Investments,” at pp. 99-115. (We also cover UMIFA/UPMIFA in Assignment 12.)

CD-ROM: Ch. 4\Bielfeldt Foundation\Ill. AG Complaint.

9. Understanding Nonprofit Financial Statements

(This topic will take two class hours.)

Guide: Chapter 5, **Financial Statements, Internal Controls, and Sarbanes-Oxley**: pp. 137-81 (accounting rules and audited financial statements); pp. 184-88 (intro to internal controls); pp. 195-98 (conclusion); and pp. 206-15 (“Sarbanes-Oxley”).

Web: See Jack Siegel’s list of 101 questions on governance, financial controls, and safeguards that he posts on his website:
www.charitygovernancelaw.com/Courses/101%20Questions%20for%20Your%20Consideration/player.html.
Read his “Ten Financial Controls that Every Charity Should Put in Place”:
www.charitygovernance.com/charity_governance/2007/10/ten-financial-c.html

10. Sanctions for Breach and Enforcement of Fiduciary Duties

(This topic will take two class hours.)

ALI Draft: Chapter 3 (Governance), Introductory Note to Topic 2;
§ 350 (Enforcement of Fiduciary Duties by Charity or Co-Fiduciary);
§ 360 (Remedies and Sanctions for Breach of Duties).

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Note: Assignment 13 covers suits by donors. I'll describe there the difficulties of the current legal regime for private standing and "derivative" litigation on behalf of nonprofit organizations.

- CD-ROM: Under Ch. 4: *John v. John* (at \Breach of Duties); and King Foundation Jury Instructions and Jury Questions (at \King Foundation).
- Guide: Chapter 6, **Federal Tax Exemption**, discussion of King Foundation, at pp. 276-77; and of Maddox Foundation, at pp. 279-80 (note: Maddox settled in May 2007 – by splitting into two, one in each state).
- Supp.: News story on Schlinger Foundation, Supp. at 10-1 and 10-1A; sentencing in Independence Seaport Museum, Supp. at 10-2 through 10-9; Brody, outline for 2008 Attorney General Conference, Supp. at 10-10 through 10-15; Strom, *Less Oversight*, Supp. at 10-16 through 10-21.

11. Limitations on Fiduciary Liability

- ALI Draft: § 365 (Business Judgment Rule); § 370 (Limitations on Monetary Liability for Breach); § 375 (Establishing and Defending a Claim for Breach); and § 380 (Immunity from Third-Party Suit, Indemnification, and Insurance).
- Guide: Chapter 4, **Legal Obligations & Duties**, "Relief for Directors and Officers," at pp. 128-36.
Skim Chapter 12, **Risk Shifting, Indemnification and Insurance**, "Availability of Volunteer Protection Act Coverage," at pp. 601-25 and pp. 627-28.

CHARITABLE CONTRIBUTIONS

12. Exploring Fiduciary Duties: Restricted Gifts

- ALI Draft: Chapter 4 (Gifts), Introductory Note; § 400 (Effects of Gifts to Charity); § 405 (Creation of Gift Restrictions or Conditions); § 410 (Permitted Terms in a Gift Instrument); § 415 (Unenforceable Gift Provisions).
- Guide: Chapter 10, **Fundraising**, "Donor-Restricted Endowments," at pp. 456-66.
- CD-ROM: Ch. 7\Restrictions\PLR 200202032.
- Supp.: Bequest of cat, Supp. at 12-1 and 12-2.

13 & 14. Board Responsibilities With Respect to Donors; Consequences of Breach

(Note: As suggested, this topic will take us two class hours, but please prepare all indicated material before the first class.)

- ALI Draft: § 420 (Compliance With Gift Restrictions and Conditions); and § 470 (Ratification of Charity's Breach).
- Guide: Chapter 10, **Fundraising**: "Truth in Soliciting," at pp. 429-35; "Restricted Gifts," at pp. 441-55; and "Gift-Acceptance Policies," at pp. 468-73.
- CD-ROM: Under Ch. 10: At Hastings College of Law, *Van de Camp v. Hastings*; at \Restricted Gifts, *Glenn v. USC* and *Smithers*; and at \Naming Rights: *Stock v. Augsburg College* and *United Daughters v. Vanderbilt*.
- Supp.: Brody, *Donor Standing*, Supp. at 13-1 through 13-17; compare the May 2007 preliminary draft of § 94 of the Restatement (Third) of Trusts, Supp. at 13-18 through 13-25.
- Web: *Robertson v. Princeton*: Compare www.princeton.edu/robertson and www.robertsonvprinceton.org.

15. Change of Purpose: Cy Pres and Equitable Deviation Charitable-Trust Doctrines; "Duty of Obedience"; Nonprofit "Conversions" to For-Profit Form

(This topic will take two class hours.)

- ALI Draft: § 240 (Effecting a Change in Charitable Purpose); § 250 (Effect on Assets from a Change in Charitable Purpose); § 430 (Procedures When Circumstances Require Modification of a Restriction)); § 440 (Proceeding to Modify a Restriction (Deviation and Cy Pres)); § 450 (Effect of Passage of Time), pp. 186-90.
- Guide: Chapter 10, **Fundraising**, "Changed Circumstances," at pp. 466-68.
- CD-ROM: CH. 10\Cy Pres: *In the Matter of Estate of Donald Othmer*.
- Web: *Dodge v. Randolph-Macon Woman's College* (Va. 2008), available at <http://www.courts.state.va.us/opinions/opnscvwp/1071248.pdf>

16. Regulation of Charitable Solicitations

Guide: Chapter 9, **Regulation and Registration**: p. 411 and pp. 413-24.

CD-ROM: Ch. 9\World Church of the Creator. Under \Supreme Court Trilogy, read the most recent case, *Madigan v. Telemarketing Associates, Inc.*

Web: On the Illinois AG's website, click on "Charities," then Rules and Statutes, and skim the Solicitations for Charity Act.

Skim the New York attorney general's 2006 report "Pennies for Charities," at <http://www.oag.state.ny.us/charities/pennies06/2006%20Pennies.pdf>.

17. Pledges

ALI Draft: § 480 (Donor's Failure to Perform a Charitable Pledges).

Guide: Chapter 10, **Fundraising**, pp. 435-41 ("Pledges").

CD-ROM: Ch. 10\Pledges: *Woodmere Academy* (Saul Steinberg); and skim *Maryland National Bank*.

TAX EXEMPTION AND OTHER TAX BENEFITS FOR CHARITIES AND OTHER NONPROFITS

18. Tax Treatment of Charitable Contributions

(This topic will take two class hours.)

CD-ROM: Note: The Supplement begins with excerpts from Code § 170.

Ch. 7\Internal Revenue Code: Skim § 170(a)(1), (c) and (f)(8), (f)(16) [not on CD-ROM] & (f)(17) [not on CD-ROM]. In class we will briefly discuss subsections (b) and (e) [not in the Supplement].
Skim § 6115 (quid-pro-quo contributions) and regs under \Regulations.

In the cases, skim *Sklar v. Commissioner*, 282 F.3d 610 (9th Cir. 2002), where the Ninth Circuit not only rejected a claim by orthodox Jewish parents that they could deduct the portion of private-school tuition paid for

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religious training, but it also ruled that the settlement between the IRS and the Church of Scientology (not a party to this case) was unconstitutional! The taxpayer also lost in Tax Court in the subsequent case (a later year).

Guide: Chapter 7, **Tax Aspects of Charitable Giving**: “Deduction Basics,” “Disclosures and Notices by Charities,” and “Substantiation,” at 329-55.

Supp.: I.R.C. § 170 (excerpts), in Supp. at Code & Regs 1-3; NY Times editorial, “Charity Begins in Washington,” Supp. at 18-1; IRS data on noncash gifts, Supp. at 18-2 and 18-3; ILM 200623063 (quid-pro-quo penalty), Supp. at 18-4 through 18-8; and “IRS Studying Bold Policy,” at 18-9.

19. **Federal Tax Exemption: Basic I.R.C. § 501(c)(3) Requirements**

(This topic will take two class hours.)

Guide: Review the first part of Chapter 6, **Federal Tax Exemption**, pp. 219-29, which we covered in Assignment 3. Continue with pp. 229-33 (organizational and operation test for 501(c)(3)’s); pp. 234-38 (“Obtaining Tax-Exempt Status”); and pp. 317-22 (“Reporting Requirements”).

CD-ROM: In Ch. 6, under \Internal Revenue Code Provisions, read I.R.C. § 501(c), particularly subsection (3) [also in Supp. at Code & Regs 3-6]; and under \Taxexempt Status_Generally\Tax Regulations, read Treas. Reg. § 1.501(c)(3)-1(a), (b), (c) & (d) [also in Code & Regs, in Supp.].

Web: Explore the application form for charities, Form 1023, available at www.irs.gov/charities.

This website also has links to the annual information returns (Forms 990, 990-EZ, and 990-PF); and to Forms 990-T (UBIT) (which we cover in Assignment 23) and 1120-POL (which we cover in Assignment 22), as well as Form 8283 (covered in Assignment 18). For 2008, the IRS is phasing in a major re-design of the Form 990. The core form of the revision is also in the Supp. for Assignment 24, where we’ll focus on the governance questions.

Starting in 2007 (filings made in 2008), organizations too small to file a Form 990 or 990-EZ must file an e-Postcard – failure to file 3 years in a row causes loss of tax exemption. How many orgs will have to re-apply for exemption?! For FAQs on the e-Postcard, go to the IRS Website.

Supp: Sample exemption letter, Supp. at 19-1 through 19-4.

20. Prohibitions on Private “Inurement”

(This topic will take two class hours.)

Private Inurement and Private Benefit:

Guide: Chapter 6, **Federal Tax Exemption**: “Private Inurement,” at pp. 238-40.

CD-ROM: See Treas. Reg. § 1.501(c)(3)-1(c)(2) and -1(d)(1)(ii) (private benefit prohibition) [this Reg is also in the Code & Regs in the Supp.].

Supp: *Ramses School v. Commissioner*, Supp. at 20-1 through 20-10.

Intermediate Sanctions:

Guide: Chapter 6, **Federal Tax Exemption**, “Intermediate Sanctions,” at pp. 240-41, 243-60, and 261-63; and “Watch Out for Question 89b,” at pp. 318-19. Chapter 12, **Indemnification and D&O Insurance**, tax issues, at pp. 625-27 (just skim the private foundation issues on pp. 625-26).

Supp.: I.R.C. § 4958 and Treas. Reg. § 53-4958-3 (defining disqualified persons), on CD-ROM and in Supp. in Code & Regs.

Interaction Between § 501(c)(3) and § 4958:

Guide: Chapter 6, **Federal Tax Exemption**, “Where Is the Line?,” pp. 241-42.

Supp.: Final regulations (issued in 2008), in Code & Regs in Supp. (the proposed version is in CD-ROM, under Ch. 6\Intermediate Sanctions\ at \Proposed Regulations_September 9 2005_Private Benefit.pdf).

21. Private Foundations

Note: The full ramifications of “private foundation” status are beyond the scope of this course; just appreciate that it carries more restrictions than the “public charity” alternatives under Code section 501(c)(3). All 501(c)(3)’s are presumed to be private foundations unless excluded under the rules of I.R.C. § 509.

Guide: Chapter 6, **Federal Tax Exemption**, “Private Foundations,” at pp. 263-85.

**22. Advocacy, Lobbying, and Political Activities;
501(c)(3)/(c)(4)/PACs (§ 527) Affiliations**

(This topic will take two class hours.)

Guide: Chapter 6, **Federal Tax Exemption**, “Lobbying,” at pp. 296-99; and Chapter 9, **Registration and Reporting**, “Lobbying,” at pp. 424-28.

Chapter 6, **Federal Tax Exemption**, “Political Activity,” at pp. 285-96.

CD-ROM: In Ch. 6, I.R.C. § 501(h) [also in Supp.]. Note: The dollar limits are in § 4911 (not in your Code & Regs).

Also in Ch. 6, under \Lobbying, read *Regan v. Taxation With Representation*.

Web: On our Course Website, read *Revenue Ruling 2007-41* (classifying activities by (c)(3)’s) (go to “politics-rr-2007-41”). Skim *Revenue Ruling 2004-6* (advocacy activities by (c)(4)’s, (c)(5)’s, and (c)(6)’s).

Supp.: IRS, “2008 Political Campaign Season,” Supp. at 22-1 through 22-4; material relating to IRS investigation of the United Church of Christ, Supp. at 22-5 through 22-14; and “Pastors May Defy IRS Gag Rule” and other news, Supp. at 22-15 through 22-19.

23. Commercial Activities and the “Unrelated Business Income Tax”

(This topic will take two class hours.)

Guide: Chapter 6, **Federal Tax Exemption**, “UBIT,” at pp. 299-317.

Supp.: In Code & Regs, read Code §§ 511(a) & (b); 512(a)(1) & (3) (social clubs), and (b)(1) through (12); § 513(a), (c), & (i); Treas. Reg. § 1.501(c)(3)-1(e) [also on CD-ROM].

Brody, “Business Activities of Nonprofit Organizations,” pages 15-24, at Supp. 23-1 through 23-11; Private Letter Ruling 200722028 (no UBIT from sale of breast cancer items), Supp. at 23-12 through 23-15; skim Smithsonian Institution’s 2006 Form 990-T, Supp. at 23-16 through 23-20.

Web: Go to the Metropolitan Museum of Art’s webpage at <http://www.metmuseum.org/store/> and explore. Don’t miss “Luxury Fine Jewelry” in the left-hand column. Is the profit on these items exempt?!

24. IRS and Peer Group Role in Charity Governance

Supp: New Form 990 and news story and my comment letter on the draft form, Supp. at 24-1 through 24-22.

Web: The Panel on the Nonprofit Sector, convened by Independent Sector at the request of the Senate Finance Committee, released its report on self-regulation in Fall 2007. Go to <http://www.nonprofitpanel.org>.

Go to the Council on Foundation's report on models of cooperation between AGs and nonprofit associations, available at <http://www.cof.org/files/Documents/Building%20Strong%20Ethical%20Foundations/06AGreportfull.pdf>, and read discussion of the Illinois Advisory Council (at pages 23-27). Then go to www.ag.state.il.us/charities/charitable_advisory.html, and click on the link to the Donor's Forum for best practices.

Explore other Websites of charity watchdogs and "peer regulators":

- * BBB Wise Giving Alliance Charity Standards, at <http://www.give.org/standards/index.asp>
- * Association of Fundraising Professionals Ethics Guides, at <http://www.afpnet.org/ethics>
- * Wall Watchers, at <http://www.ministrywatch.com>, and read a couple of "Donor Advisories."

25. IRS and Congressional Initiatives (a.k.a. "Grassley Love Letters")

Guide: Chapter 6, **Federal Tax Exemption**, box on pp. 260-61.

Supp.: On college endowments, Supp. at 25-1 through 25-11;
on nonprofit hospitals, Supp. at 25-12 through 25-17;
on "prosperity theology" televangelists, Supp. at 25-18 through 25-28;
on IRS's commensurate-in-scope test, Supp. at 25-29 through 25-33.

26. State Tax Benefits for Charities

- Guide: Chapter 8, **Other Benefits**, “Property Taxes” and “Sales Taxes,” at pp. 375-88.
- CD-ROM: In Ch. 8\Property Taxes, read the Providence, R.I., PILOTs agreement; and *Matter of Pacer* (re zoning approvals).
- Supp.: Strom, *Exemptions for Charities Face New Challenges*, Supp. at 26-1 through 26-5
- Web: On our Course Website, skim brody-EOTR-prop-tax.pdf.

27. The “Non-(c)(3)’s” [IF TIME]

- Guide: Chapter 6, **Federal Tax Exemption**, at pp. 221-24.
- Supp.: Table of types of exempt entities from Joint Committee on Taxation (July 2007), Supp. at 27-1 through 27-3.

28. Exam Practice

(We will spend two class hours on these.)

On our Course Website, you can find all my old exams. I’ll divide up the class into groups to prepare and present questions for us to discuss.

EXAM

The exam will be on Thursday, December 11, at 8:30 a.m. This will be a 3-hour, open-book exam.

Take into the exam all of your written course material and your notes, and any other written material you wish. Some of you might be living out of your notebook computers. You **may** bring your computer into the exam, including your notes and outlines, but you **may not** bring any CD-ROMs or go online. Anyone who prepares for class, attends regularly, and studies the material should be able to do well on the exam; by contrast, anyone who does not keep up should not be able to do well on the exam simply by having an electronic outline.

Professor: Laura Brown Chisolm
School: Case Western Reserve School of Law
Course: Law of Nonprofit Organization

Materials

Fishman & Schwarz, *Nonprofit Organizations: Cases and Materials*, Third Edition, Foundation Press 2006
Supplement to Fishman & Schwarz, *Nonprofit Organizations: Cases and Materials*, 2007
Various Statutory Selections
Ohio Revised Code Chapters
IRS Forms

Overview

This course provides a comprehensive overview of the law of nonprofit organizations, covering the various topics that affect the function and form of a nonprofit organization. The course also examines the activities a nonprofit may undertake, and those which it cannot. Additionally, most classes focus on a question or problem, the purpose of which is to guide the reading and discussion. Finally, the case uses the Ohio Revised Code as a statutory model of state nonprofit law.

Order and Use of Text

The Fishman & Schwarz textbook is used extensively, requiring most of the material in the first eight chapters. The course does not cover the casebook in order, and does not cover the last three chapters. In addition to readings assigned from the casebook, most classes ask students to read relevant statutory and supplemental material that go along with the Fishman & Schwarz readings.

Law of Nonprofit Organizations

Law 234
Spring 2008

Room 201

Professor Chisolm
368-2655

e-mail: lbc

SYLLABUS

Below is a list of the topics we will cover in the course. Page numbers refer to Fishman and Schwarz, Nonprofit Organizations: Cases and Materials, Third Edition. Please read materials identified as an assignment together. I have put an asterisk by casebook assignments that have associated pages in the 2007 Supplement – be sure to incorporate those pages into your reading as appropriate. Be sure to read the statutory materials indicated in bold at the beginning of text sections. Cases and other materials that are listed separately are not in the book; they will be distributed in class and/or made available on the Blackboard site for the course. Relevant Ohio Revised Code sections may be found in the course Blackboard site under “Course Documents.” The “Links” section of the site will take you to the IRS website, where you can find forms and publications you may need as we go along (along with links to a number of other useful sites and materials). This syllabus is, of course, subject to adjustment as the semester proceeds. We may drop some topics to allow us to expand others, and I may change

Overview of the Nonprofit Sector

1. pp. 2-34**; 39-45**; 60-63; Problem p. 63 . Please read this material with an eye to connecting it to your own experience and to generating some thoughtful impressions, guided by the questions below.

Drawing on the assigned reading and your own experience, please consider the following questions:

- What is the nonprofit sector?
- What does "nonprofit" mean? What is the legal significance of the term?
- Why is there a nonprofit sector?
- The nonprofit sector is sometimes called "the third sector." What does that mean? What are the other two? Why aren't two enough?
- What are the proper functions of the nonprofit sector? Are there things that should not be done by nonprofit organizations? Are there things that should be done only by nonprofit organizations?
- What is "the law of nonprofit organizations"? What functions should that law serve?

Now, please read the REACH story that you can find under Course Documents. Based simply on your own experience to date, what legal issues do you think might be raised by the story?

State Law – a Brief Introduction

Choice of form; defining rules - what is nonprofit? what is charitable?

2. pp. 66-87 [omit Uniform Unincorporated Association Act]; 351-353; consult Ohio Revised Code Chapter 1702 - if Tom and Leona (of Problem on p. 63) want to set up their CLE enterprise in Ohio, how should they proceed?

On the first day of class, I will give you a set of organizational documents – articles of incorporation and by-laws or code of regulations (not necessarily up-to-date) of a real organization. Alternatively, if you have access to the organizational documents of an organization that is of interest to you, you may use those. Please review these documents to answer the questions posed in Documents Review, found in the “Course Documents” section of the course Blackboard site.

3. pp. 87-100; Problems p. 101. Do you think Tom and Leona's organization is "charitable"? Is it a public benefit corporation under Ohio law? What more do you need to know to answer that question?

Brody chapter (in Course Documents) pp. 243-245

Look at Ohio Revised Code chapter 109 (in Course Documents). What is chapter 109 about? How do you think it relates to chapter 1702?

Federal Tax Exemption Law

Introduction and rationales

4. pp. 320-332; pp. 349-353; pp. 571-576**; ORC §§ 109.26, 109.31. The Revised Form 990 was published by the IRS just before Christmas – you can find it on the IRS website, to which there is a link under Links in the Blackboard site for the course. Print it out, and we'll refer to it from time to time as we go through the tax exemption materials.

Go to Guidestar.com (there is a link in the “Links” section of the course Blackboard site) and find the most recent Form 990 for an organization in which you are interested. Print it out and keep it with your course materials. Bring it to

class with you as we study the tax exemption materials, as we may turn to it at any time! For each reading assignment, please take a look at “your” organization’s Form 990 to see if you can find the relationship between what you are reading and what the organization must report on the 990. Also, for each reading assignment in this section of the course, please see how the Form 1023 relates to the material.

Public purpose and redistribution; charitable health care; community benefit

5. pp. 353-376**; 384-390; 395-399**

"Charity" and public policy/discrimination

6. pp. 400-427**

Education vs. "propaganda;" Religion and "church"

7. pp. 427-461

Retained private benefit; private inurement and private benefit

8. pp. 476-486; 276-282

Intermediate sanctions

9. pp. 487-500**. Please work carefully through the problems on pp. 497-500 – to do so, you will have to work closely with the relevant statutes and regulations.

Advocacy and political activities; lobbying

10. pp. 500-523. How does this material relate to what you read about advocacy activities in assignment 7?
11. pp. 523-532; Problem 1, pp. 568-569. This is another one that will require close attention to the relevant statutes and regulations.

Campaign intervention; social welfare organizations; political organizations

12. pp. 532-560**; 564-568; Problems 2 and 3, pp. 569-570. Does Revenue Ruling 2007-25 (in the Supplement pages) eliminate the doctrinal uncertainties of the earlier Congressional, court, and IRS statements about the rules on election intervention?

Commercial activities - basic qualification issues

13. pp. 593-616; Problems pp. 615-616.

Commercial activities – unrelated business income tax

14. pp. 616-628 (skim for background); 628-639; 646-666; problems pp. 666-668

In connection with the material in this assignment and the next, please look at Form 990T and its instructions and at IRS Publication 598.

15. pp. 668-684**; Problems pp. 684-685; pp. 685-693; Problems pp. 693-694; pp. 694-696; 705-708.(read pp. 694-696 and 705-708 for a basic introduction to the concepts those pages address – don't worry about the details); pp. 744-750

The special case of private foundations - what they are and how to avoid being one

16. pp. 751-780** (skim for background); 781-803** (focus on Burbank Foundation problem on pp. 802-803 – this is another one that takes careful attention to the details of the relevant statutes and regulations); 829-832; ORC § 109.231

Charitable contributions

17. pp. 874-894** (background); 894-900** (up to beginning of Davis); ; 907-915; 927-935; 938-942**; Problems pp. 942-944.
18. pp.970-976

Procedure issues; disclosure and reporting requirements

19. pp. 571- 592; ORC §§109.31

Now Back to State Law . . .

Why does it matter what is "charitable"? Distribution of assets on dissolution; cy pres doctrine

20. pp. 101-139 (skip problems on pp. 105 and 119); ORC §§ 1702.35, 1702.39, 1702.41, 1702-47 – 1702.52, 109.34, 109.35

Operation and governance of nonprofit organizations; duty of care

21. pp. 140-143; 149-173**; Scheuer Family Foundation; Celebrezze v. Variety Club Tent No. 6 Charities, Inc., Problems pp. 172-173; ORC § 1702.30

Read the cases in this assignment for (1) the nature of the alleged misbehavior; (2) the standard applied by the court; (3) the court's justification for applying that particular standard; (4) the consequences of the court's choice of standard; and (5) the remedies sought and granted or denied, along with the reasons for the particular choice of remedies. What is the difference between the trust standard and the corporate standard (is there a difference)? What standard makes sense in the context of nonprofit corporations, particularly charitable nonprofit corporations?

Operation and governance of nonprofit organizations; duty of care; duty of obedience

22. pp. 219-222; Hecker v. White; Attorney General v. Hahnemann Hospital; Cathcart Institute problem

We will use the Cathcart Institute problem as the focus of our discussion of this material. Please bring to class written notes outlining your approach to the problem. The materials we discussed in connection with Assignments 20 and 21 are also relevant to your thinking about this problem.

Operation and governance of nonprofit organizations; duty of loyalty

23. pp. 176-216; Franklin v. Neighbors Org. for Action in Housing; Problem 1 pp. 216-217; ORC § 1702.301, 1702.55; Camp Uplift problem; pp. 173-176; John v. John; The Strange Case of Harry John; ORC 1702.12(E)

Read the cases in the casebook and Franklin for (1) the nature of the alleged misbehavior; (2) the standard applied by the court; (3) the court's justification for applying that particular standard; (4) the consequences of the court's choice of standard; and (5) the remedies sought and granted or denied, along with the reasons for the particular choice of remedies. Read John v. John mostly for the story, and for what it has to say about indemnification.

Our discussion of this material will focus on the Problem 1 on pp. 216-217 and the Camp Uplift problem. Please read and think about all parts of problem 1 on pp. 216-217, but carefully prepare (and bring to class your brief written notes on) just the subpart(s) that I will assign to you. Everyone should work carefully through the Camp Uplift problem and bring written notes to class outlining your approach.

Professor: Robert J. Desiderio
School: University of New Mexico School of Law
Course: Nonprofit Corporations

Materials

Phelan and Desiderio, *Nonprofit Organizations Law and Policy*, 1st Edition, West 2003

Overview

This course covers the topic of Nonprofit Organizations. The course is split into two main topics; The Nonprofit Corporation Class, and Tax Exemption. The Nonprofit Corporation Class covers the following topics:

1. Nature of the nonprofit sector; Organizational structure of nonprofit organizations
2. Nonprofit corporation
3. Governance of a nonprofit organization

The Tax Exemption part covers the following topics:

1. Charitable organizations
2. Obtaining and maintaining tax-exempt status
3. Public charity and private foundation status
4. Unrelated business taxable income
5. Schools
6. Hospitals

The course also requires students to prepare a manual for a nonprofit organization of their choice, which must detail the articles of incorporation, bylaws, tax-exemption application, New Mexico labor laws, tax and revenue and charitable solicitation documents.

Order and Use of Text

This course uses the Phelan and Desiderio 2003 casebook. The course covers the topics in the order it occurs in the book, skipping pages 338-406 and 470-528.

NONPROFIT CORPORATIONS

SYLLABUS

Pages refer to M. Phelan & R. Desiderio, NONPROFIT ORGANIZATIONS: LAW AND POLICY (West 2003)

A. THE NONPROFIT CORPORATION CLASS

- | | |
|---|-------------|
| 1. Nature of the nonprofit sector; Organizational structure of nonprofit organizations. | 1-47: 54-61 |
| 2. Nonprofit corporation | 62-92 |
| 3. Governance of a nonprofit organization | 93-129 |
| 4. Governance of a nonprofit organization | 129-168 |

B. TAX EXEMPTION

- | | |
|---|---------|
| 5. Charitable organizations | 169-195 |
| 6-7. Obtaining and maintaining tax-exempt status | 196-265 |
| 8-9. Public charity and private foundation status | 266-337 |
| 10-11. Unrelated business taxable income | 407-469 |
| 12. Schools | 529-576 |
| 13-14. Hospitals | 577-637 |

REQUIREMENTS

1. Each student is required to prepare a manual for a particular type of organization, e.g., an educational, health-related, social welfare, trade association, or other tax-exempt organization. The manual must contain (1) articles of incorporation, bylaws, tax-exemption application, New Mexico labor, tax and revenue and charitable solicitation documents; and (2) a memorandum explaining the law process and other requirement

Page 2
Nonprofit Corporations

for the creation and maintenance of the tax-exempt organization. During the semester, you will be required to draft preliminary articles, bylaws, a tax-exemption application and possible other documents. I will comment on this drafts and return to you. You will be required to make necessary corrections for your final project.

- 2. Class attendance and participation are required. I reserve the right to increase or reduce a student's grade for attendance and participation, and for turning in draft documents late or failing to turn in any document.**

Professor: James Fishman
School: Pace University School of Law
Course: Nonprofit Organizations

Materials

Fishman & Schwarz, *Nonprofit Organizations: Cases and Materials*, Third Edition, Foundation Press 2006
Fishman & Schwarz, *Nonprofit Organizations: Statutes, Regulations and Forms*, Foundation Press 2006
Nonprofit Organizations 2008 Supplement
Various articles assigned from the course Web site

Overview

This seminar teaches the law of nonprofit organizations through reading assignments and a research paper. The seminar examines the scope and meaning of the nonprofit concept and covers the following areas:

- Problems of nonprofit corporations under State corporate law
- Tax problems of exempt organizations
- Public accountability
- State and federal supervision
- Limitations of lobbying
- Competition with the for-profit sector
- Investment policies and patterns of exempt organizations

Order and Use of Text

This seminar covers most of the topics taught in the book, only omitting the second half of chapter 6 on commercial activities and unrelated business, chapter 7 on private foundations, chapter 9 on mutual benefit, and chapter 11 on antitrust and nonprofits. This course is taught mainly in the order of the book, with the exception of the reading on the affirmative requirements of charitable tax when covering the Purposes and Power of Nonprofit Corporations. The topics are covered in the following order:

1. An Overview of the Nonprofit Sector
2. Formation and Dissolution of Nonprofit Organizations
3. Operation and Governance of Nonprofit Organizations
4. Regulation of Charitable Solicitation
5. Tax Exemption: Public Benefit Organizations
6. Commercial Activities and Unrelated Business Income
7. Special Problems of Membership Associations

PACE UNIVERSITY SCHOOL OF LAW

Law 735 Nonprofit Organizations
Spring 2008
Tuesday 6:00 – 8:00

Professor James Fishman
Preston 313
(914) 422-4222
jfishman@law.pace.edu

Syllabus

Required materials are James J. Fishman and Stephen Schwarz, Cases and Materials on Nonprofit Organizations (Foundation Press, 3rd ed. 2006); Nonprofit Organizations 2007 Supplement (Foundation Press, 2007), and Nonprofit Organizations-Statutes, Regulations and Forms (Foundation Press, 3rd ed. 2006).

Office Hours: Monday 4:00 – 5:00, Tuesday 5:00 – 6:00. If these hours are inconvenient, I shall be happy to make an appointment at a mutually agreeable time. It may be more efficient for you to speak with me by telephone, 422-4222 or communicate by e-mail: <jfishman@law.pace.edu>. For an appointment at a time other than the regular office hours please telephone my assistant, Brenda Zamboni, at 422-4668. Pages refer to the casebook. The "Supplement" refers to the 2007 Supplement. TWEN refers to the course web page. The citations are located under "Course Materials" on the TWEN page.

Week 1 I. An Overview of the Nonprofit Sector

pp. 2-17
Supplement, pp. 1-2
pp. 17-43
Supplement, pp. 2-3
p. 43-56, 60-63
"A Roundabout Journey to Glamour; Nonprofit Rise from a Chelsea
Basement to New Times Square", TWEN
"New Yorkers & Co.: The War of the Film Worlds", TWEN

Week 2 II. Formation and Dissolution of Nonprofit Organizations

- A. Choice of the Legal Form of a Nonprofit Organization
- B. Basic Statutory Approaches to the Nonprofit Corporation
- C. Purposes and Powers of Nonprofit Corporations

pp. 66-87, 470-476, 87-106
"Getting Organized", TWEN

Week 3	D.	Dissolution and Distribution of Assets	
	E.	Conversion from a Nonprofit Organization to a For-profit Entity	
			pp. 106-139
Week 4	III.	Operation and Governance of Nonprofit Organizations	
	A.	Introduction	
	B.	Boards of Directors and Trustees	
	C.	Fiduciary Obligations	
			pp. 144-170
			Supplement pp. 4-6
			pp. 170-176
Week 5	C.	Fiduciary Obligations (continued)	
			pp. 176-229
			Supplement, pp. 6-8
			pp. 229-239
			Supplement, p. 9
			pp. 239-242
	D.	Enforcement of Fiduciary Obligations	
			pp. 242-268
Week 6	IV.	Regulation of Charitable Solicitation	
			pp. 269-318
Week 7	V.	Tax Exemption: Public Benefit Organizations	
	A.	Introduction and Rationale for Tax Exemption	
			pp. 319-332
	B.	Charitable Contributions	
			pp. 874-879, 884-890, 894-895, 907-915, 927-935, 938-942
			Problems (c), (d), (f), (g), (i), (j), (k), (m) (n)

C. Basic Requirements for Exemption -- Organizational and Operational Tests, The Meaning and Scope of Charity, Public Policy Limitations

pp. 349-353
 Supplement, p. 10
 pp. 353-373
 Supplement, pp. 10-11
 pp. 373-384, 395-426
 Supplement, p. 14
 pp. 426-427

Week 8 Educational Organizations, Religious Organizations

pp. 427-461

Week 9 D. Inurement and Private Benefit Limitations

pp. 476-498
 Problems 1(a), (c) Consider only the Intermediate Sanctions Issues

Week 10 E. Limitations on Lobbying and Political Activities

pp. 500-523
 Supplement, pp. 16-28
 pp. 540-553

F. pp. § 501(c)(4) and § 527 Organizations and other Regulation of Political Activities

pp. 553-568,
 pp. 568-570, Problems 1(a), 1(e), 2(a), 2(b), 2(c), 2(d), 2(e), 2(i)

G. Procedural Issues

pp. 571-574
 Supplement, pp. 28-29
 pp. 574-575
 Supplement, p. 29
 p. 576
 Supplement, p. 29-30

Week 11-12	VI.	Commercial Activities and Unrelated Business Income
	A.	Introduction
	B.	Impact of Commercial Activities on Exempt Status
		pp. 593-616
	C.	The Unrelated Business Income Tax; History and Policy
		pp. 616-628
	D.	The Nature of an Unrelated Trade or Business
		pp. 628-646, 648-659
		pp. 666-667, Problems 1(a), (e), (g), (h), 2(b), (c), (d)
Week 13-14	VIII.	Special Problems of Membership Associations
		pp. 1031-1035, 1044-1081

Law 735 Nonprofit Organizations
Professor Fishman
Spring 2008

Course Requirements

A research paper will count for eighty percent of your final grade. The paper can be a maximum of twenty-five pages. Footnotes must be in Bluebook form, and the format of the paper is that of a law review note. The paper can fulfill the upper level writing requirement.

Because this is a seminar, class participation is essential for an interesting class session. Class participation will count for twenty percent of the grade. During meetings of the seminar we will focus on the problems at the end of each section of the casebook. It is essential to read both the materials assigned in the casebook and supplement, and the statutory citations indicated in bold at the beginning of sections of the casebook.

You must select your paper topic by the third meeting of the class, January 28th. Please feel free to discuss potential topics with me. For your sake, select a subject that is of interest to you. This course may satisfy as a requirement for some of the certificate programs if the paper is written in the same area of specialization as the certificate you seek, and the certificate advisor approves.

A useful approach to selecting a paper topic is to go through the casebook and find a topic that may interest you. Then, explore the subject in more detail to see if it is sufficiently narrow and interesting. There is a very incomplete list of possible topics on the TWEN site in the syllabus section. After you select a topic, you must keep a research log which details the authorities, cases, statutes and other materials you have consulted in the course of your research. A copy of a research log by former students in the seminar will be distributed. A first draft of your paper is due the eleventh week of the semester, April 8th. I will review, comment, and correct that draft and offer feedback. The paper is due the last class of the semester. I highly recommend Fajans and Falk, *Scholarly Writing for Law Students*, on reserve in the Library.

Professor: Joel L. Fleishman

School: Duke University; Department of Public Policy Studies & the School of Law

Course: The Idea of the Voluntary Society: Philanthropy, the Not-for-profit Sector, and Public Policy

Materials

Fishman & Schwarz, *Nonprofit Organizations: Cases and Materials*, Third Edition, Foundation Press 2006

Brian O'Connell, ed. *America's Voluntary Spirit: A Book of Readings*. The Foundations Center, 1983

Jim Collins, *Good to Great and the Social Sectors: A Monograph to Accompany Good to Great*, 2005

Overview

This is a joint course between the law school and the Public Policy Department at Duke, and as such, does not take an entirely critical legal approach. This seminar course takes a broad approach to the idea of a voluntary society, with an emphasis on how this idea has shaped out in the United States. The core of the course focuses upon how people living in a society such as America come to rely on a foundation of voluntary organizations like nonprofits, and the ways to go about so doing. To facilitate this end, the course examines why it is that organizations like nonprofits exist, and how they form and proliferate.

Order and Use of Text

Given the broad scope of the course, each class focuses on a number of issues, each of which is outlined in the syllabus to provide a context for the class discussion. The required readings for each class session vary between selections from the casebook and articles from numerous sources, including newspaper articles and other selections from the internet. There is a heavy reading requirement for each of the classes, so as to meet the goals outlined in the syllabus. In addition, each class enumerates a number of ancillary, though not required, sources of reading for a better understanding of the topic. Each class also has a number of study questions that students are asked to prepare.

Syllabus

PPS 280S.01; LAW 585

The Idea of the Voluntary Society:
Philanthropy, the Not-for-profit Sector, and Public Policy

Department of Public Policy Studies and the School of Law
Duke University

Spring Semester, 2008
Wednesdays, 8:30 a.m. until 11:00 a.m.

Sanford 05

Professor Joel L. Fleishman
239 Sanford Institute
(919) 613-7376
joel.fleishman@duke.edu

This syllabus will guide our proceedings, gently and flexibly. Although I may adjust it as we proceed, I do not anticipate major departures. I will advise you of significant changes, if any, at least a couple of weeks in advance.

BOOKS TO PURCHASE:

James Fishman and Stephen Schwarz, Nonprofit Organizations: Cases and Materials, 4th ed. Foundation Press, 2006.
Brian O'Connell, ed., America's Voluntary Spirit: A Book of Readings. The Foundation Center, 1983.
Jim Collins, Good to Great and the Social Sectors: A Monograph to Accompany Good to Great. Jim Collins, 2005.

Most required readings, except for Fishman/Schwarz, O'Connell, and Collins, will be available on the course Blackboard site. The items listed "for further reading" are not assigned; they are available either in the files in my office or on the library electronic databases. As new articles of importance are published during the semester, they will appear on the Blackboard site or be circulated in class; please check the Blackboard site regularly for announcements regarding additions or changes to the reading assignments. I will also distribute additional clippings or readings every week, not intended to be assignments but to be illustrations that will inform class discussions. I encourage members of the class to communicate with one another and with me via e-mail in between class sessions so as to enrich class discussion and participation. My e-mail address is joel.fleishman@duke.edu. Paul Esformes, the teaching assistant for the class, will be available throughout the semester to answer questions about locating the course materials. He can be reached at paul.esformes@duke.edu or at 571-236-9801. If you wish to make an appointment with me, please call Pam Ladd, my assistant, at 613-7376. I am usually available in my office at Duke, Room 239 of the Sanford Institute, on Wednesdays only.

The World Wide Web is a rich source for information concerning philanthropy. In addition to the occasional reading additions that will appear on the course Blackboard site mentioned above, the site also has a collection of numerous links to websites important in the nonprofit sector. Please take time to explore these websites throughout the semester.

Also, the Chronicle of Philanthropy will be distributed throughout the semester for you to browse. During class, I will identify articles of primary importance, identifying trends or major events occurring in the philanthropic world.

GENERAL RECOMMENDED READINGS (not required)

Marion Fremont-Smith, Governing Nonprofit Organizations: Federal and State Law Regulation. Harvard University Press, 2004.
Peter Frumkin, Strategic Giving: The Art and Science of Philanthropy. University of Chicago Press, 2006.
Giving USA 2007: The Annual Report on Philanthropy for the Year 2006. AAFRC Trust for Philanthropy.
David Bornstein, How to Change the World: Social Entrepreneurs and the Power of New Ideas. Oxford University Press, 2004.
Joel Fleishman, The Foundation: A Great American Secret. New York: Public Affairs Press, 2007.
Leslie Crutchfield and Heather McLeod Grant, Forces for Good: The Six Practices of High-Impact Nonprofits. New York: Jossey-Bass, 2007.

Ray Bacchetti and Thomas Ehrlich, eds., Reconnecting Education & Foundations: Turning Good Intentions into Educational Capital, San Francisco: Jossey-Bass, 2007.

Elizabeth T. Boris and C. Eugene Steuerle, Nonprofits and Government, 2d ed., Urban Institute Press, 2006.

David Cannadine, Mellon: An American Life. Vintage, 2008.

Conor O'Clery. The Billionaire Who Wasn't: How Chuck Feeney Made and Gave Away a Fortune Without Anyone Knowing. PublicAffairs, 2007.

FOUNDATION IMPACT RESEARCH GROUP

Students are invited, but not required, to attend seminars held almost every other Wednesday afternoon at 4:30 p.m. in the Rhodes Conference Room with the Foundation Impact Research Group. The purpose of these seminars is to stimulate faculty and student research on strategic choice-making of foundations and the more precise measurement of foundation impact in society. The FIRG dates and speakers are listed throughout the syllabus and will be announced in class.

COURSE OVERVIEW

The scope of this seminar is as broad as the idea of the voluntary society itself, with particular attention to the American version thereof. The central question to be addressed is the extent to which, and how, a large number of people of varying ethnic, racial, religious, and cultural backgrounds, living together in a country, state, or city, governed by democratically elected officials, can or should rely on organized or unorganized voluntary action by citizens to fulfill both their own individual needs and the needs of their respective communities. In the wake of the September 11th challenges to American society, the role of the not-for-profit sector in bringing Americans together across the lines that divide us is all the more important.

To explore that question we will examine alternative allocations of responsibility for solving particular problems -- voluntary, not-for-profit, for-profit, joint public/private, publicly encouraged/subsidized, and publicly coerced -- along with examples, reasons, and theories for particular forms of organization. We will probe what it is that motivates donors and volunteers to give money and time, and to assess not only their effectiveness in solving problems but also the comparative praiseworthiness of their respective motives. Private, community and corporate foundations, as well as the tax-exempt organizations to which they and other donors contribute, are part of the inquiry, especially as to their goals, decision rules, governance, and public accountability. We will compare the experience of other countries with that of the U.S. in these regards, and we will continuously examine the framework of public policy that embodies public judgments about the desirability of allocating some part of the burden of social problem-solving to voluntary organizations alone or in partnership with public organizations, as well as the tax policies that are crafted to facilitate such problem-solving policies. We will also examine the laws defining the boundaries between permissible and impermissible action by not-for-profits. Because of the growing demand for accountability of the not-for-profit sector in general, and foundations in particular, we will focus throughout the course on the extent to which foundations are achieving social impact commensurate with the tax benefits they and their donors are receiving. We will also examine the social utility of perpetuity in foundations as opposed to a more rapid distribution to society of foundation assets than the usual minimum payout of 5% of asset value. Finally, we will address a more recent concern in the not-for-profit sector—prevention of terrorist funding through foundations and other not-for-profit organizations.

The class will be conducted as a discussion seminar, with so-called Socratic dialogue as the dominant practice. You will be expected to know the central ideas in the assigned readings and to be prepared to answer questions about them. Class attendance will be recorded and the quality of your participation in class discussion will be noted.

No laptop computers will be permitted for use in class. Laptops are distracting and impede the quality of the seminar, which relies heavily on class discussion.

The principal reason this course is a seminar rather than a lecture stems from my hope to help enable you to learn better writing through careful analysis of good ideas about public policy. Five weekly papers, of not more than five pages double-spaced, are required, beginning with the second class. Please note that no paper is required for either the February 6th or the March 5th class. As your paper is intended to help you frame the readings of the week, it must be submitted in time for me to correct it and return it to you at the class in which the readings you write about are discussed. To meet that schedule, each week's **papers must be in my office by 4:00 p.m. on the Sunday before class**. You may email them to me at joel.fleishman@duke.edu, as **Word attachments only**. I will correct them and return them to you, graded, at class the following Wednesday, with detailed comments on grammar, syntax, style, and usage.

For all sessions except as specified in the syllabus section on each class, I will expect you to use the assigned paper both to synthesize and criticize the main ideas presented in the required readings. As this seminar offers you an

opportunity to help you improve your writing, spelling and syntax by learning from the mistakes of others as well as your own, we will spend the first part of the five class sessions for which papers are required in discussing writing transgressions frequently committed, without identifying the individual grammatical miscreants.

In addition, a term paper of approximately 25 pages (if working individually) or 50 pages (if working as a team) will take the place of a final examination. It will be due in my office on or before Monday, April 28. It is my practice to keep clean copies of student papers, so you will be asked to resubmit a corrected version of your paper after I have returned it to you corrected and graded.

Your term paper should present a careful analysis of any significant issue affecting foundations that is of particular interest to you. It could be one significant achievement of a foundation or a group of foundations working together in bringing about, or trying unsuccessfully to bring about, a major change in public policy, or in pioneering what eventually became widespread practice in an area that affects the public interest. You may also focus on the strategy of a community foundation in dealing with a significant problem within the area of the foundation's geographical focus. If you choose a particular foundation initiative, your paper should also assess the strengths and weaknesses of the strategies implemented by that foundation or group of foundations for taking the achievement(s) to relevant scale. You should also feel free to write your paper on such issues as the investment policy of foundations, including whether it is beneficial to their purposes to use social investing criteria, program-related investments, and/or mission-related investing. If you choose this topic, it's imperative to gather empirical data on different rates or returns that foundations have achieved in comparison with investment policies that do not include social investing criteria. Your paper should also provide as much empirical data on impact as you can obtain with reasonable effort. I will be happy to introduce you to persons at the foundation or foundations about which you are writing who can give you access to such documents or data as you need.

You may review the case studies as published on the Duke Foundation Research Program's website (<http://www.pubpol.duke.edu/dfrp/cases/index.php>) for brief analyses of historic foundation initiatives to spark your thinking. Among the relatively recent themes and approaches you might consider are donor experimentation with for-profit entities to carry out their philanthropic endeavors fashioned as social entrepreneurship and alliances between foundations and governments, foundations and business, or foundations and public charities or other foundations to achieve shared objectives.

If you prefer to do your term paper on some other topic related to this course, feel free to discuss your proposal with me, but you must have my approval before proceeding. Possibilities include analyzing ongoing proposals for reform in the nonprofit sector, proposing your own reforms that balance the interests of accountability and flexibility or effectiveness, or evaluating the various forecasts of tremendous upcoming intergenerational wealth transfers and the implications for the charitable sector.

IT IS ESSENTIAL THAT YOU THINK ABOUT POSSIBLE TOPICS AS SOON AS POSSIBLE AND CLEAR TOPICS WITH ME BEFORE BEGINNING RESEARCH. FOR YOUR OWN BENEFIT, I NEED TO BE CERTAIN THAT YOU ARE NOT TAKING ON MORE THAN YOU CAN DO AND ARE FRAMING YOUR TOPIC IN A WAY THAT MAKES SENSE IN THE CONTEXT OF THIS SEMINAR. Think about your term paper topic now and plan to start researching it before spring break.

The weekly papers will be graded on a scale of 1 to 10 or more, with 10 generally equivalent to an A. The grades will be recorded, along with one's presence or absence in class and the quality of one's contribution to class discussion. The term paper will also be graded, but on a scale that is in accordance with the grading system of Trinity, the Graduate School, or the professional school in which you are enrolled. Grades on the weekly papers and class participation will constitute 75 percent of the term grade, and the grade on the term paper will supply the other 25 percent. Please note that, in the past, students have sometimes received grades as high as 12 on the weekly papers.. In prior years, students who received an average grade of 10 on the weekly papers have not necessarily received an A for the course because overall grades for the course are required to be curved.

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CHRONOLOGY

I. WEDNESDAY, JANUARY 16, 2008 -- INTRODUCTORY SESSION: AN OVERVIEW OF THE COURSE

Study Questions (Topical Issues Recurring Throughout the Course):

1. Should not-for-profit organizations, including foundations, be made more accountable to the public, and, if so, how? What are the arguments against too great an increase in accountability to government? From what source, if any, do foundations derive their legitimacy in general, as well as in efforts to effect change in public policy in particular?
2. Consider the pros and cons of the charge that foundations, which are substantially unaccountable to the public, improperly shape public policy. To what extent should the public encourage or discourage initiatives in policy-related fields by foundations, given their lack of accountability to the public? What are the arguments for and against?
3. How effectively do not-for-profit organizations, including foundations, perform their responsibilities? How can they or we measure their impact? Can metrics of impact be developed, and, if so, how? Are there ways of increasing the effectiveness of foundations without adversely affecting their freedom to benefit society according to their own views of the public interest?
4. Should the minimum private foundation five percent annual pay-out requirement be increased, and, if so, to what level?
5. Should financial services companies be restricted in creating public charities that compete with community foundations?
6. What are the arguments for and against placing a ceiling on endowments? Should universities, foundations, and other endowed entities be permitted to increase their endowment in perpetuity with no limitation on size?
7. What are the relevant standards of propriety for the amount of compensation to be given to not-for-profit executives? What are the appropriate comparison groups for the salaries of large foundation, hospital, and university presidents? When is it appropriate to use for-profit salaries as comparisons? When are such salaries excessive?
8. How is the Internet changing the ways in which charities raise, maintain and deploy money and volunteers? Does the Internet offer better means of improving the accountability of foundations and other not-for-profits to the public?
9. By what decision rule can America decide which social functions should be performed by which sectors—public, for-profit, not-for-profit...either separately or in some combination of two or three?
10. What do we know about percentage of giving by income group? What might be done to increase giving by the wealthier?
11. What are the pros and cons for extending income tax charitable deductions for non-itemizers?

Main Questions for the First Class Session:

- 1) How does each of you perceive the role of the not-for-profit sector?
- 2) Why are you interested in learning more about the not-for-profit sector?
- 3) What kinds of experience have you had in working or volunteering for nonprofit organizations?

Required Reading:

- Fishman/Schwarz, 1-64.
- Elizabeth T. Boris and C. Eugene Steuerle, Nonprofits and Government, 2d ed., Urban Institute Press, 2006, 1-76.

GUEST SPEAKER: HILARY PENNINGTON DIRECTOR OF SPECIAL INITIATIVE, GATES FOUNDATION

Study Questions:

1. What is the essential nature of the Not-for-Profit Sector, Independent Sector or Third Sector? What different connotations does each of those descriptors of the sector have?
2. How does it differ from, as well as most effectively relate to, the for-profit and public sectors?
3. What roles do philanthropy and volunteerism properly play in it?
4. What do we mean by "civil society," and how, if at all, does it differ from what we mean by "not-for-profit sector"?
5. What are the most pressing challenges facing the not-for-profit sector today?
6. What is the meaning of civic engagement and what role does the not-for-profit sector play in facilitating it?
7. How do the events of September 11 complicate or motivate the achievement of civic engagement?
8. How much emphasis should charitable donors give to charities for the needy as compared with other charities?

Required Readings:

- "The Nonprofit Sector in Brief: Facts and Figures from the Nonprofit Almanac 2007," Urban Institute, 2006, 1-7.
- Giving by Community Foundations Rises to a Record \$3.6 Billion," *Press Release: Foundation Center*, 9/11/07.
- Paul Arnsberger, "Charities and Other Tax-Exempt Organizations, 2004," SOI Tax Stats – Charities & Other Tax-Exempt Organizations Statistics, available at <http://www.irs.gov/pub/irs-soi/04eochar.pdf>.
- Janelle A. Kerlin and Supaporn Thanasombat, "The International Charitable Nonprofit Sector: Scope, Size, and Revenue," Urban Institute Policy Brief, September 2006, 1-6.
- Jacqueline L. Salmon, "A Mammoth Wealth Transfer Awaits the Area, Study Predicts," *Washington Post*, 7/26/2006, A1.
- Andrea Kannapell, "From One Disaster Response, Lessons for Another," *New York Times*, 11/14/05, F31.
- Edward Wasserman, "Why Do the Media Report Little on Foundations?" *Miami Herald*, 10/20/03.
- Sacha Pfeiffer, "Fidelity Program Encourages Good Will," *Boston Globe*, 12/14/07.
- Geraldine Fabrikant, "For Yale's Money Man, a Higher Calling," *New York Times*, 2/18/07.
- "Converting Donations and Good Intentions Into Meaningful Charity," *Letter to the Editor: Wall Street Journal*, 4/13/07.
- Meghan Daum, "The Overshadowing 'I' in Charity Today," *Los Angeles Times*, 7/30/07.
- Katie Zezima, "Food Banks, in a Squeeze, Tighten Belts," *New York Times*, 11/30/07.
- Stephanie Strom, "Big Gifts, Tax Breaks and a debate on Charity," *New York Times*, 9/6/07.
- Zachary M. Seward, "Rich Alumni Stiff Elite Alma Maters, Give to Needier Colleges," *Wall Street Journal*, 8/28/07.
- "Is Giving to Harvard Charity," *The Wall Street Journal*, 10/9/07.
- Robert B Reich, "Is Harvard a Charity," *Los Angeles Times*, 10/1/07.

Giving While Living

- Liz Skinner, "Fewer Clients Waiting Till Death to Part with Charitable Dollars," *Investment News*, 10/1/07.
- "31% of Donations by Individuals Benefit the Poor, Study Finds," *The Chronicle of Philanthropy*, 7/26/07.
- Mindy Fetterman, "'Giving While Living' Alters Inheritances," *USA Today*, 8/23/07.

IRS Oversight

- Ben Gose, "IRS Official Says Tax Agency May Step Up Efforts to Identify Ineffective Charities," *The Chronicle of Philanthropy*, 11/12/07.
- Peter Panepento, "IRS Revises Proposed Tax Form in Response to Critics," *The Chronicle of Philanthropy*, 10/1/07.

The Economy's Impact on the NFP Sector

- Harvey Lipman, "Charities Account for 5.2% of the Economy, Study Finds," *Chronicle of Philanthropy*, 11/9/2006, 31.
- Sharon Bond, "US Charitable Giving Reaches \$295.02 Billion in 2006," Press Release: Giving USA Foundation, 6/26/07.

Warren Buffett Gift to the Bill and Melinda Gates Foundation

- Warren Buffett, letter to Bill and Melinda Gates, June 26, 2006, available at <http://www.berkshirehathaway.com/donate/bmgfltr.pdf>.
- Timothy L. O'Brien and Stephanie Saul, "Buffett to Give Bulk of Fortune to Gates Charity," *New York Times*, 6/26/2006, A1.
- Donald G. McNeil Jr. and Rick Lyman, "Buffett's Billions Will Aid Fight Against Disease," *New York Times*, 6/27/2006, A1.

- Jeff Bailey, "Buffett Children Emerge as a Force in Charity," *New York Times*, 7/2/2006, A1.
- "Billanthropy," *Economist*, 7/1/2006.
- Daniel Gross, "Giving it Away, Then and Now," *New York Times*, 7/2/2006, C1.
- John Hechinger and Daniel Gordon, "The Great Giveaway—Like Warren Buffett, a New Wave of Philanthropists Are Rushing to Spend Their Money Before They Die," *Wall Street Journal*, 7/8/2006, A1.
- Bruce Sievers, "Blog: Eight Questions Reporters Should've Asked About the Buffett Donation," *Stanford Social Innovation Review*, 11/28/2006, available at <http://www.ssireview.org/opinion/entry/491>.
- Andrew Jack, "Manna from Omaha: A Year of 'Giving While Living' Transforms Philanthropy," *Financial Times*, 12/27/2006, 11.

Russian Regulation of Non-Government Organizations

- Steven Lee Myers, "Putin Defends Reining in Private Groups," *New York Times*, 11/25/05.
- Peter Finn, "Revised Russian Bill Governing NGOs Fails to Mollify Critics," *Washington Post*, 12/22/2005, A21.
- C.J. Chivers, "Kremlin Puts Foreign Private Organizations on Notice," *New York Times*, 10/19/2006, A8.
- Steve Gutterman, "Head of U.S.-Funded Group Fled Russia," *ABC News*, 6/29/07.

For Further Reading:

- Beth Breeze, "UK Philanthropy's Greatest Achievements," Institute for Philanthropy, 2006.
- Elizabeth T. Boris, "Nonprofit Organizations in a Democracy—Roles and Responsibilities," in Elizabeth T. Boris and C. Eugene Steuerle (ed.) *Nonprofits and Government: Collaboration and Conflict*, Urban Institute Press, 1999, 1-79.
- Harvey Lipman, "Tax Data Shows Utah Donors are Most Generous to Charitable Groups," *Chronicle of Philanthropy*, 8/8/02, 11-12.
- Caroline Preston, "Nonprofit Officials Offer Warnings, Share Advice About Next Generation of Leaders," *Chronicle of Philanthropy*, 7/30/07.
- Hollis A. Hope, et. al., "Philanthropy in the News: An Analysis of Media Coverage, 1990-2004," Foundation Works: Philanthropy Awareness Initiative, 2006, 1-22.
- "Challenges Facing Philanthropy: A Summary of the 2004 Philanthropy Summit," conference convened by the Center on Philanthropy at Indiana University, April 13-14, 2004, 1-40.
- Steven Lee Myers, "Putin Hits Hard at Plots," *Raleigh News and Observer*, 1/26/2006, 10A.
- Woods Bowman, "Confidence in Charitable Institutions and Volunteering," *Nonprofit and Voluntary Sector Quarterly*, Vol. 33, No. 2, June 2004, pp. 247-270.
- Lester M. Salamon, ed., *The State of Nonprofit America*. Brookings Institution Press, 2002, 3-52.
- *Giving USA*, 2004.
- Paul C. Light, "The Content of Their Character: The State of the Nonprofit Workforce," *The Nonprofit Quarterly*, Fall 2002, 6-16.
- Lester M. Salamon, ed., *The State of Nonprofit America*. Brookings Institution Press, 2002, 65-298.
- Giving Section, *New York Times*, 11/17/03, F1-F31.
- America's Top Givers, Special Report, *Business Week*, 12/1/03, 78-96.
- Alnoor Ebrahim, *NGOs and Organizational Change: Discourse, Reporting, and Learning*. Cambridge University Press, 2003.
- Jane Kendall, "The State Saves with Nonprofits," *News and Observer*, 7/1/02.
- "Nonprofits, Foundations Feel Money Crunch," Press Release, *Donors Forum of Chicago*, 7/17/03, (2 pages).
- Wes Smith, "Foundations Pull Back," *Orlando Sentinel*, 7/7/03, (3 pages).
- Stephen Kinzer, "As Funds Disappear, So Do Orchestras," *New York Times*, 5/14/03, B1, B9.
- Sara Rimer, "Harvard is Returning Donation from Jane Fonda for New Center," *New York Times*, 2/4/03, A14.
- John S. Griswold, Jr. and Geoff Phelps, "Private and Community Foundations Outperform Indexes with Average Annual Returns of -8.7% for Fiscal Year 2002," Press Release, *Commonfund*, 7/8/03, (5 pages).
- John Seely and Julian Wolpert, "The Financial Squeeze for New York City's Nonprofit Human Service Providers," New York City Nonprofits Project, Aug. 2004.
- National Commission on Philanthropy and Civic Renewal, *The 1997-1998 National Survey on Philanthropy & Civic Renewal*. Hudson Institute, 1998, 1-45.
- Interagency Task Force on Nonprofits and Government, "Partnerships For a Stronger Civil Society," 2000.
- David Hammack, ed., *Making the Nonprofit Sector in the United States*. Indiana University Press, 1998.
- Alan Reynolds, "The Size and Scope of Charitable Activities," in The National Commission on Philanthropy and Civic Renewal, *Giving Better/Giving Smarter Working Papers*, 1997, 19-30.

Disaster Response and Charitable Giving

- "Donors' Guide to Gulf Coast Relief & Recovery," New York Regional Association of Grantmakers: Gulf Coast Recovery Task Force, May 2006, 1-68.
- "Donors Get a Second Wind After a Tough Year, Pumping Up Holiday Giving," *Raleigh News and Observer*, 12/15/2005, 7A.
- Alan Abramson, "Responding to the Tsunami Disaster: Challenges for Charities and Donors," The Aspen Institute: Snapshots, May 2005, 1-5.
- "The Response of Local Nonprofits to Hurricane Katrina," The Aspen Institute: Snapshots, August 2006, 1-5.
- Tony Pipa, "Weathering the Storm: The Role of Local Nonprofits in the Hurricane Katrina Relief Efforts, Summary," The Aspen Institute, 1-3.
- Elizabeth T. Boris and C. Eugene Steuerle, *After Katrina: Public Expectation and Charities' Responses*, Urban Institute, 2006, 1-29.

Faith Based Giving

- Mike Allen "Bush Presses 'Faith-Based' Agenda; President Proposes Regulations to Ease Federal Funding" *Washington Post*, 9/23/03, A10 (2 pages).
- E.J. Dionne, Jr., "Faith-Based Talk—Where's the Action?" *Washington Post*, 6/10/03, A21.
- Alan Cooperman "Faith-Based Charities May Not Be Better, Study Indicates" *Washington Post*, 5/25/03, A7 (2 pages).
- Dana Milbank "Bush Legislative Approach Failed in Faith Bill Battle; White House Is Faulted for Not Building a Consensus in Congress" *Washington Post*, 4/23/03, A1 (5 pages).
- Elizabeth Becker, "Bush is Said to Scale Back His Religion-Based Initiative: But He Hopes to Push for Full Bill Next Year," *New York Times*, 10/14/01, A18.
- Valerie Richardson, "The Future of the Faith-Based Initiative," *Philanthropy*, May/June 2001, 10-12.
- Patricia Zapor, "Wait and See: Religious Charities Aren't Rushing to Embrace Bush's Initiative," *Philanthropy*, May/June 2001, 13-15.
- Brendan Miniter, "Following the Money," *Philanthropy*, May/June 2001, 16-19.
- Bill Broadway, "Good for the Soul - and the Bottom Line: Firms Promote Spirituality in the Workplace and Find It Pays," *Washington Post*, 9/19/01, A1.
- Dana Milbank, "Bush Issues 'Faith-Based Initiative' Orders; Decrees Would Allow Religious Programs to Get Federal Money," *Washington Post*, 12/13/02, A4.
- Mike Allen and Alan Cooperman, "Bush Backs Religious Charities on Hiring; Hill is Urged to Ease Bias Rules on Groups that Get U.S. Funds," *Washington Post*, 6/25/03, A1, (3 pages).
- David Nather, "Faith Initiative Backer Backs Away from GOP," *CQ Weekly*, 6/7/03, 1355.

FIRG Seminar, Wednesday, January 23rd, 4:30 p.m.: Hilary Pennington Director of Special Initiative, Gates Foundation

All students are invited to attend buffet dinner in honor of Hilary Pennington to follow at 7:00 PM at home of Professor Fleishman in Chapel Hill.

Topic for Paper Due on Sunday, January 20, 4:00 p.m.: Warren Buffett's decision to give \$31 billion over ten years to the Bill and Melinda Gates Foundation has raised public consciousness about philanthropy more than any other single event in the last hundred years. Write a paper on whether you consider his decision to be a wise decision. Explore the social benefits of spending money in that fashion as opposed to (1) setting up his own foundation, (2) dividing the gift solely among the four philanthropic foundations run by his children, (3) giving the money directly to operating charities without using a grantmaking intermediary, or (4) any other alternative you can imagine. In other words, comment on and criticize his gift.

Study Questions:

1. Carnegie, Rockefeller, Duke, Mellon, Scaife, Turner, Gates, Soros, Buffett: Why did they give away such large amounts of money? What were their motivations for doing so? What ideas influenced them to do so? Who influenced them to do so? Their parents? What role, if any, did their education play in motivating them to do so? What role did their religion play? What did their critics say about their intentions?
2. Do wealthy people give a larger percentage of their income to charity than poor people do? Do founders of foundations give from income or from capital? Do they usually get a tax benefit from doing so? What is the nature of that tax benefit, if any?
3. Do large donors seek to make money in order to give it away, or do they accumulate wealth because of greed or ambition as an end in itself? How does the motivation of the wealthy towards giving differ, if at all, from that of people of lesser means?
4. Do the motivations of donors for their giving make any difference to you so long as their deeds accomplish good for others? If so, what difference do the motivations make? If they are scoundrels or crooks in the making of their money, does that affect how you view their giving?
5. As a wealthy parent, how should you think about the question of whether and how much to give of your wealth to your children?
6. As the creator of a foundation, how would you think about the question of whether to establish your philanthropy in perpetuity as opposed to one with a limited time-span?
7. What are the arguments for and against anonymous giving?
8. As the president of a university which is offered a large gift by someone known to have been convicted of securities fraud, would you accept the gift even if you know it was motivated by the donor's wish to gain or regain respectability? How does the motivation of such a donor differ from that of other donors who give similar gifts?
9. Is the virtue of donors that arises from their giving mitigated by the fact that they receive a tax deduction for making donations?
10. Is the purpose of making available tax deductions in any way undermined by donors' decisions to make gifts consonant with their tastes, substantive interests and backgrounds, rather than with those social ills thought to be more pressing?
11. Consider the different styles of giving by different foundations and individuals. Some prefer to think of themselves as social venture capitalists who prefer to start new initiatives. Others prefer to assist efforts already under way. Some choose to support those with greatest material needs. Others concentrate on helping scholars and artists. Some foundations prefer to avoid both politics and criticism, while others see their role as activating political criticism. Some foundations prefer to cooperate on grants (indeed, seek to draw in partners), while others prefer to go it alone. Some donors seek to gain legitimacy for themselves by giving to institutions or organizations which already enjoy high public regard, while other donors are oblivious to such concerns, and still others seek to put their money and prestige behind thoroughly controversial recipients. Some donors prefer to give to many different objectives, while some choose to concentrate on one field of need. Some prefer to give only in their own community while others choose to reach out nationally.
12. To what extent are projects that greatly benefit a few individuals as worthy as other projects that benefit many more people but diffusely?
13. Are there any objective criteria of worthiness that donors can use to choose among the many competing potential recipients, or are such choices ultimately always subjective? How do individuals make these choices? How do foundations make these choices?
14. To what extent do donors' religious, philosophical, economic or political views determine how and what they give?
15. How do donors choose between giving to a rich, well-endowed university, and giving to a struggling community organization striving to help the indigent?
16. Venture philanthropy—the new philanthropy of the twenty-first century: what does it mean?

Required Readings:

- Andrew Carnegie, Carnegie Corporation of New York biographical booklet to be distributed the prior class session and collected back this session.
- Andrew Carnegie: Special Features. Please browse the special features section of the PBS website on *American Experience: Andrew Carnegie*, including "Meet Andrew Carnegie" and "Philanthropy 101," available at <http://www.pbs.org/wgbh/amex/carnegie/sfeature/index.html>.
- Andrew Carnegie, "The Gospel of Wealth," and Barry Karl, "Andrew Carnegie and His Gospel," in Dwight Burlingame, ed., *The Responsibilities of Wealth*. Indiana University Press, 1992, 1-50.
- Winnie Hu, "Decades Later, Carnegie Still Invests in Knowledge," *New York Times*, 8/26/99, A18.

- "Looking for Andrew Carnegie," *Worth*, 11/96, 69-78.
- Martin Morse Wooster, "A Philanthropist at Work: The Letters of Andrew Carnegie," *Philanthropy*, May/June 2001, 24-28.
- Amanda Ripley and Amanda Bower, "From Riches to Rags," *Time*, 12/26/05, 72.
- Julia Green, "Is N.Y. Mayor Anonymous Carnegie Donor?" *Chronicle of Philanthropy*, 6/10/04.
- Landon Thomas Jr., "A New Breed of Billionaire," *New York Times*, 12/14/07.
- "The Most Elite Club in the World," *Business Week*, 11/26/07.
- Scott Kirsner, "Nonprofit Motive," *Wired*, 9/99, 110-17.
- Staff, "The Gospel of Wealth," *The Economist*, 5/30/98, 19-21.
- Grant Williams, "Report Says Donors Could Give Billions More," *The Chronicle of Philanthropy*, 5/17/01, 38.
- Nicole Wallace, "Making Weddings Into Charitable Events," *The Chronicle of Philanthropy*, 5/31/01, 37.
- Karl Schoenberger, "How to Hatch a Foundation Without a Gold Nest Egg," *New York Times*, 10/14/01, B8.
- Myron Magnet, "Old Money, Old Virtues," *Forbes*, 10/8/01, 97-98.
- Kent Allen, "NEH Seeking a Boost from Private Funds," *Washington Post*, 3/21/00, A23.
- Daniel Gross, "Philanthropy Smackdown," *Slate Magazine*, 9/18/2006.
- Michael D. Lemonick, "The Next Nobel?" *Time*, 8/2/07.
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IV. WEDNESDAY, FEBRUARY 6, 2008 – INDIVIDUAL GIVERS AND JOINERS: HUMAN AND SOCIAL IMPULSES TO CHARITY, PHILANTHROPY AND VOLUNTEERISM

Study Questions:

1. What does "philanthropy" mean?
2. What does the public response to the September 11 terrorism say about philanthropic motivation?
3. Why do we become involved in the lives of others, in mutual help activities, in altruistic community undertakings?
4. How do giving and volunteering vary with respect to racial, religious, ethnic and socioeconomic status? How might you account for the differences?
5. Why do people give money or donate time? Why do they say that they give? Why should they give? What justifications do non-givers use, and how persuasive are they? What do religion, philosophy, and psychology have to say about these questions?
6. How do different classes, races, ethnic and religious groups benefit differentially from different sub-sectors of the not-for-profit sector?
7. Consider how life events such as one's illness or the illness of a loved one attract individuals to give or raise money for various causes (e.g., disease research). Similarly, consider the notion of "give back," which attracts alumni to give to their institutions. What other such circumstances are particularly powerful incentives to give and raise money? Why?
8. What instinctive and learned motivations exist for giving? From where do these motivations come? To what extent, if any, can such activities reasonably be regarded as self-interested?
9. How much should someone give -- a minimum percentage of income or of accumulated wealth, or only as the spirit moves them?
10. What is your framework for thinking about whether or not to give to beggars who approach you on the street?

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FIRG Seminar, Wednesday, February 6, 4:30 p.m.: Deborah Leff, President, Public Welfare Foundation

V. WEDNESDAY, FEBRUARY 13, 2008 – GOVERNANCE STANDARDS, PERFORMANCE SHORTCOMINGS, AND SCANDALS IN THE NOT-FOR-PROFIT SECTOR

GUEST SPEAKER: BILL SHORE, CO-FOUNDER AND EXECUTIVE DIRECTOR, SHARE OUR STRENGTH

Study Questions:

1. Against the background of the aspirations of the not-for-profit sector observed in the previous two weeks, we also need to face the fact that the not-for-profit sector has significant recurrent shortcomings in performance. How can we best understand the reasons for these shortcomings and formulate effective policies and penalties to diminish those shortcomings?
1. Is the way not-for-profit organizations have responded to the September 11 events a "scandal"?
2. Is it a scandal for the American Red Cross to decide to use for purposes other than victim relief some of the funds donated to the Liberty Fund?
3. Do recent scandals or abuses by not-for-profit organizations (e.g., Adelphi University, Bishop Estate, Minnesota Public Radio, The Common Fund, and New Era Philanthropy) reveal anything inherent in the nature or structure of the not-for-profit sector, or are such phenomena totally incidental to the nature of the sector?
4. Does the inherent nature or structure of not-for-profit organizations make abuses more or less likely?
5. Are the scandals the result of "human nature" (i.e., particular individual's inordinate desire for gain or personal power in any sector)? Are there organizational or governance aspects of the not-for-profit sector which make that sector especially vulnerable to the schemes of such individuals?
6. Who is responsible for preventing scandals and abuses in the not-for-profit sector?
7. What are the relevant comparisons in determining whether compensation paid to executives of not-for-profit organizations are excessive? What reasonable limits, if any, should exist for such compensation?
8. Can regulatory or legislative frameworks prevent scandals and abuses without undermining the desirable autonomy of the not-for-profit sector? Would any such frameworks be desirable?
9. In the absence of heavy-handed regulation, how can not-for-profit organizations be kept accountable? To whom should they be accountable?
10. What have the courts held to be the differing standards of directors' responsibility?
11. By what criteria should foundation expenditures be measured so as to ensure some reasonable accountability to the law and best principles of stewardship?
12. What legal safeguards, if any, should be enacted to protect the not-for-profit sector from being abused for terrorist or improper political purposes?
13. Is it a "scandal" for foundations, universities and art museums to allow their endowments to grow without limits?

* Use the Internet to find as many instances of not-for-profit improprieties as you can. Start with *Lexis*.

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- Brian Bakst, "Minnesota Attorney General Sues over Sharing of Public Radio Donor Lists with DNC, Others," *Associated Press Newswires*, 12/28/99, Reprint, 1-2.

Questionable Fundraising Techniques:

- Rebecca Winters, "Backlash Against Charity Sweating," *Time*, 3/25/02.
- David Segal, "Chain Letter Windfall for Charity," *Washington Post*, 4/8/99, A1, A16.
- Judith Miller, "Preaching to the Converted," *New York Times Book Review*, 3/10/98, 39.
- Matthew Mosk, "No Good Deed Goes Unpunished. Just Ask Stan," *Washington Post*, 9/5/01, B1.

Tainted Donations

- Wire Report, "Charity Sends Back Lotto Player's Gift," *News & Observer*, 2/2/03, 3A.
- Alex Berenson, "A Gift Raises Questions on Computer Associates," *New York Times*, 12/3/02, C1, C12.
- Ariana Eunjung Cha, "Corporate Scandals Tainting Donations," *Washington Post*, 9/15/02, A1, A8.
- Sheridan Prasso, "Seton Hall's Hall of Shame," *Business Week*, 9/30/02, 14.

Other

- Paul C. Light, "Trust in Charitable Organizations," *Policy Brief Reform Watch #6*, Brookings Institution, 1-8.
- Paul C. Light, "To Give or Not to Give: The Crisis of Confidence in Charities," *Policy Brief Reform Watch #7*, Brookings Institution, 1-8.
- Avram Goldstein, "What Price Salary at a Nonprofit?" *Washington Post*, 4/14/03, E1, (5 pages).
- John Boudreau, "Foundation's CEO Resigns," *San Jose Mercury News*, 4/15/03, (2 pages).
- Michael Cronk, "Is Swim Coach Worth \$353,518?" *San Jose Mercury News*, 4/14/03, (3 pages).
- Mike Allen, "Law on Disclosure May Apply to PACs," *Washington Post*, 7/20/00, A4.
- Evelyn Brody, "A Taxing Time for Bishop Estate: What Is The I.R.S. Role in Charity Governance?" 21 *University of Hawaii Law Review* 537-591 (1999).
- C.J. Chivers and Sarah Kershaw, "A Hand in the Collection Plate," *New York Times*, 10/6/00, B1, B4.
- Debra Blum, "Probe Threatens Charity Status of Olympic Group," *Chronicle of Philanthropy*, 1/14/99, 45.
- Debra Blum, "Fla. Jury Finds Church Leader Guilty of Misusing Donations," *Chronicle of Philanthropy*, 3/11/99, 38.
- Robert Pear, "Nonprofit Groups Accused of Bilking Lunch Programs," *New York Times*, 10/3/99, A1, A27.
- Suzanne Daley, "Anti-Apartheid Cleric Is Guilty of Stealing Money from Charity," *New York Times*, 3/18/99, A9.
- Evelyn Brody, "The Limits of Charity Fiduciary Law," 57 *Maryland Law Review* 1415-1501 (1998).

- Lisa Belkin, "Charity Begins at . . . The Marketing Meeting, The Gala Event, The Product Tie-In," *New York Times Magazine*, 12/22/96, 41-56.
- Jacqueline Leifer and Michael Glomb, The Legal Obligations of Nonprofit Boards. National Center for Nonprofit Boards, 1997.
- James Bennett and Thomas DiLorenzo, Unhealthy Charities. Basic Books, 1994.
- Gilbert Gaul and Neill Borowski, Free Ride: The Tax-Exempt Economy. Andrews and McMeel, 1993.
- James Bennett and Thomas DiLorenzo, Unfair Competition: The Profits of Nonprofits. Hamilton Press, 1989.

Miscellaneous Questionable Decisions

Fannie Mae

- *A Report to the Special Review Committee of the Board of Directors of Fannie Mae: Executive Summary*, Paul, Weiss, Rifkind, Wharton & Garrison, LLP, 2/23/2006, 1-31.

Getty Trust

- Randy Kennedy, "Chairman of Getty Trust Resigns, Citing Workload," *New York Times*, 8/5/2006, B9.
- Harvy Limpan, "California Reprimands J. Paul Getty Trust and Appoints an Independent Monitor," *Chronicle of Philanthropy*, 10/12/2006, 27.
- Vicky Ward, "The Getty's Blue Period," *Vanity Fair*, March 2006, 218-35.

Baptist Foundation

- "Baptist Foundation Leader Pleads Guilty," *New York Times*, 9/6/2006.

Topic for Paper Due on Sunday, February 10, 4:00 p.m.: Discuss the major cases included in the assigned casebook readings (*Fitzgerald v. NRA*, *Pepperdine*, *Lynch v. John M. Redfield Foundation*, *Stern v. Lucy Webb Hayes*, *Nixon v. Lichtenstein*, *Adelphi v. Diamandopoulos*, *Northeast Harbor Golf Club, Inc. v. Nancy Harris*, and *Herzog Foundation v. University of Bridgeport*), and synthesize their holdings.

FIRG Seminar, Tuesday, February 12, 4:30 p.m.: Billy Shore, Executive Director, Share Our Strength

All students are invited to attend buffet dinner in honor of Billy Shore to follow on February 12 at 6:30 PM at home of Professor Fleishman in Chapel Hill.

VI. WEDNESDAY, FEBRUARY 20, 2008 –RATIONALES FOR TAX EXEMPTION OF FOUNDATIONS AND VOLUNTARY ORGANIZATIONS; GOVERNMENT EXACTIONS IN EXCHANGE FOR TAX EXEMPTION

Study Questions:

1. What are the policy objectives of legislation establishing tax-exemption of organizations and the deductibility of gifts to them?
2. How persuasive are these policy objectives?
3. What burdens, if any, ought government to be reasonably able to impose by way of reporting requirements, taxes, financial pay-out requirements, restrictions on lobbying, or other burdens?
4. Should the tax exemption for religious activities extend to organizations which advocate discrimination on the basis of race, anti-Semitism, anti-Islam, or other widely disfavored positions? Where should society draw the line?

Required Readings:

- Fishman/Schwarz, 319-356, 400-427.
- John Simon, et. al., "The Federal Tax Treatment of Charitable Organizations," chapter in *The Nonprofit Sector: A Research Handbook*, 2d ed., Walter W. Powell and Richard Steinberg, eds., New Haven: Yale University Press, 2006, 267-99. (authors have granted explicit permission to copy)
- Stephanie Strom, "Big Tax Break Often Bypasses Idea of Charity," *New York Times*, 4/25/05.
- Stephanie Strom, "What Is Charity," *New York Times*, 11/14/05, F1.
- Robert Reich, "Philanthropy and its Uneasy Relation to Equality," *Beyond Good Intentions: Learning to Do Good, Not Harm, in Philanthropy*. William Damon and Susan Verducci (eds.), Indiana University Press, 1-40.
- Carol Kino, "Welcome to the Museum of My Stuff," *New York Times*, 2/18/07.
- Erica Noonan, "Should Nonprofits Chip In?" *Boston Globe*, 10/18/07.

Private Benefit

- Robert O'Harrow Jr., "A Contractor, Charity and Magnet for Federal Earmarks," *Washington Post*, 11/2/07.

Recent IRS Reforms

- "IRS Releases 'Extreme Makeover' of Form 990 Return for Exempt Organizations" *Press Release: McDermott Will & Emery*, 6/14/07.
- Stephanie Strom, "IRS Seeks More Charity Transparency," *New York Times*, 6/15/07.

Exemption of Particular Organization Types

Hospital Tax Exemption:

- "Senate Finance Committee Hears Testimony on Standards for Hospital Tax Exemption," *McDermott Will & Emory*, 9/15/2006, 1-3.
- Robert Pear, "Nonprofit Hospitals Face Scrutiny over Practices," *New York Times*, 3/19/2006, A18.
- Richard Winton, "Delgadillo to Sue Hospitals that Dump Patients on Skid Row," *Los Angeles Times*, 11/8/2006, B1.
- Elizabeth Schwinn, "Illinois Hospital Appeals Property-Tax Decision," *Chronicle of Philanthropy*, 11/9/2006, 31.
- Jill R. Horwitz, "Making Profits and Providing Care: Comparing Nonprofit, For-Profit, and Government Hospitals," *Health Affairs*, Vol. 24, No. 3 (May/June 2005), 790-801.
- Jill Horwitz, "Nonprofit Ownership, Private Property, and Public Accountability," *Health Affairs Web Exclusive*, 6/20/2006, W308-11.

Exemption for the NCAA:

- Pete Thamel, "Brand Defends NCAA Tax Status," *New York Times*, 10/31/2006, D1.

Exemption of Political Organizations:

- Janet Novack, "The Democrats' Little Tax Secret," *Forbes*, 10/2/2006, 48.

Exemption of Credit-Counseling Organizations

- John Leland, "Nonprofit Payday Loans? Yes, to Mixed Reviews," *New York Times*, 8/28/07.
- Amit R. Paley, "Nonprofit Student Lenders Scrutinized," *Washington Post*, 7/19/07.

For Further Reading:

- "FY 2007 Exempt Organizations (EO) Implementing Guidelines," US Government, Department of the Treasury, Internal Revenue Service, 11/7/06.

- Jill R. Horwitz and Marion R. Fremont-Smith, "The Common Law Power of the Legislature: Insurer Conversions and Charitable Funds," *Milbank Quarterly*, Vol. 83, No. 2 (2005), 225-46.
- Boris Bittker and George Rahdert, "The Exemption of Nonprofit Organizations from Federal Income Taxation," 85 *Yale Law Journal* 299-358 (1976).
- "Incentives for Nonitemizers to Give More: An Analysis," *PriceWaterhouseCoopers* study prepared for Independent Sector, Jan. 2001, 1-10 and addenda.
- Evelyn Brody, "Of Sovereignty and Subsidy: Conceptualizing The Charity Tax Exemption," 23 *Journal of Corporation Law* 585-629 (1998).
- Evelyn Brody, "A Legal Scholar's Perspective," *NVSQ*, 6/99, 218-226.
- Tammy Reiss, "The Web for Free? Not So Fast," *Business Week*, 8/17/98, 6.
- Staff, "University Medical Center Loses Its Tax Break," *AGB*, 5-6/98, 33.
- Thomas Billitteri, Stephen Greene, Jennifer Moore, and Grant Williams, "Bowling Organization Loses Charity Status," *Chronicle of Philanthropy*, 4/22/99, 71.
- Monica Langley, "The SO Trend: How to Succeed in Charity Without Really Giving," *Wall Street Journal*, 5/29/98, A1.
- Independent Sector, "The Charitable Giving Tax Relief Act," Memo to Members, 11/19/99, 1-2.
- David Schulman, "More to Get Tax Break for Contributions in N.C.," *News & Observer*, 10/16/98, 3B.
- Susan Gray, "Hartford Imposes Strict Zoning Rules on Charity Expansion and Operation," *Chronicle of Philanthropy*, 9/5/96, 43.
- Grant Williams, "A Holy War Against Tax Exemptions," *Chronicle of Philanthropy*, 8/8/96, 1.
- John Murawski, Tracy Sisser and Grant Williams, "Tax Watch: Pennsylvania Senate Passes Bill Setting Tax Guidelines," *Chronicle of Philanthropy*, 8/10/95, 38.
- Charles Clotfelter, "The Effects of Tax Reform Proposals on Charitable Giving and the Nonprofit Sector," Testimony Before the House Ways and Means Committee, 5/1/96, 1-5.
- Dennis Zimmerman, "Nonprofit Organizations, Social Benefits, and Tax Policy," *National Tax Journal*, 9/91, 341-349.
- Alan L. Feld & Evelyn Brody, reporters, Principles of the Law of Nonprofit Organizations: Council Draft No. 1, American Law Institute, 10/2/03, 1-191.
- "Memorandum: Year 2003 in Review," *Ropes & Gray Exemption Organization Practice Group*, 2/12/04.
- Thomas Troyer, "The 1969 Private Foundation Law: Historical Perspective on Its Origins and Underpinnings," Council on Foundations, 2000, 1-29.
- Evelyn Brody, "Charities in Tax Reform: Threats to Subsidies Overt and Covert," 66 *Tennessee Law Review* 687-763 (1999).
- Rob Atkinson, "Theories of the Federal Income Tax Exemption for Charities: Thesis, Antithesis and Syntheses," 27 *Stetson Law Review* 395-431 (1997).
- Charles Clotfelter, ed., Who Benefits from the Nonprofit Sector, University of Chicago Press, 1992.
- Charles Clotfelter, "The Impact of Tax Reform on Charitable Giving: A 1989 Perspective," Paper from the Center for the Study of Philanthropy and Voluntarism at Duke University, 12/1/89, 1-36.
- Stephen Diamond, "Of Budgets and Benevolence: Philanthropic Tax Exemptions in Nineteenth Century America." Paper from 1991 Conference on "Rationales for Federal Income Tax Exemption" at New York University, 10/10-11/90, 1-40.
- Evelyn Brody, "Legal Theories of Tax Exemption: Sovereignty Quasi and Real," June 2001, 1-33.
- Evelyn Brody, "Property Tax Exemption For Charities Mapping the Battlefield," June 2001, 1-23.

Topic for Paper Due on Sunday, February 17, 4:00 p.m.: Analyze the required readings in Fishman/Schwarz. In particular, consider the theories that justify tax exemption and how those theories apply to hospitals, institutions of higher education, the National Collegiate Athletic Association, Bob Jones University, and other organizations. Should "charity" be construed more narrowly to aid to the poor or, alternatively, should organizations aiding the poor enjoy more favorable tax treatment?

VII. WEDNESDAY, FEBRUARY 27, 2008 – THE NITTY GRITTY OF TAX EXEMPTIONS AND DEDUCTIBILITY; EFFECTIVENESS OF TAX POLICY IN INCREASING/DECREASING DONATIONS

Study Questions:

1. How would you restructure tax preferences to provide incentives for greater charitable giving without unduly benefiting the wealthy at the expense of the less-well-off?
2. How should we view tax-reduction-motivated charitable schemes proposed by financial advisors and salesmen?
3. What role should the needs of prospective recipients play in allocating charitable resources, as opposed to the goals of the donors?
4. Absent tax preferences, would foundations exist? Would individuals donate? To what extent should Congress stipulate a maximum term of years for the life of a foundation? Are there reasons a foundation should be limited in life while all other charitable organizations are permitted to exist in perpetuity?
5. When and why did the United States, either in federal legislation or in laws enacted by state governments, institute tax deductibility for charitable gifts?
6. It has been argued that both tax-exemption and tax-deductibility are forms of public subsidy. Do you agree? What are the arguments for and against such tax incentives for socially beneficial activities? What are the arguments for and against offering citizens leverage over the resources of others as an incentive to them to give their own resources to those purposes that serve the public interest?
7. How valid is the argument that, absent such an offer of leverage, individuals would not contribute private money to the same extent and thereby make society poorer by augmenting expenditures of tax revenues for the same purposes? What empirical data are relevant?
8. Is the true effect of tax deductions for charitable gifts to force some Americans to pay slightly higher taxes in order to subsidize the charitable giving of others? Why let some individuals determine how to spend the money of other individuals?
9. Would America be better off if citizens could not take tax deductions for charitable giving, preventing Congress from spending the tax savings on whatever it regards as the most pressing ills? Which kinds of institutions would suffer most from such a change?
10. What are the policy purposes of the estate tax? Should it be permanently repealed, and if not, why?

Required Readings:

- Fishman/Schwarz 874-962; 476-500.
- Stephanie Strom, "In Hurricane Tax Package, a Boon for Wealthy Donors," *New York Times*, 10/27/05, A23.
- Joseph Weber, "Deductibles: A Faith-Based Alternative to Tuition," *Business Week*, 8/1/05, 10.
- Ashlea Ebeling, "Stupid Tax Tricks," *Forbes*, 11/1/04, 86-87.
- Elizabeth Schwinn, "IRS Gives Approval for New Kind of Gift," *Chronicle of Philanthropy*, 10/14/04.
- Diana Aviv and Robert Greenstein, "A Compromise on the Estate Tax," *Chronicle of Philanthropy*, 11/11/04.
- Harvey Lipman, "Tax Data Show Utah Donors Are Most Generous to Charitable Groups," *Chronicle of Philanthropy*, 8/8/02, 11.
- "Gift of Violins Strikes a Sour Note," *News and Observer*, 5/2/04.
- David Barstow and Diana B. Henriques, "I.R.S. Makes an Exception on Terror Aid," *New York Times*, 11/17/01, B1.
- Diana B. Henriques and Leslie Eaton, "Once and Future Issue: Subtracting Donations From Damage Awards," *New York Times*, 11/18/01, A33.
- Sharon Reier, "When Establishing Charities, a Warm Heart Calls for a Cool Head," *The Herald International Tribune*, 5/26/01, 15.
- Evelyn Brody and Joseph Cordes, "The Unrelated Business Income Tax: All Bark and No Bite?," Urban Institute, 4/20/01.
- "IRS Releases Study on Charitable Trusts," *Chronicle of Philanthropy*, 5/3/01.
- Daniel Altman, "If the I.R.S. Gets Less, Does Charity Get More?" *New York Times*, 5/8/05, B6.
- Joseph Cordes, et. al., "Extending the Charitable Deduction to Nonitemizers: Policy Issues and Options," Urban Institute: Charting Civil Society, May 2000, 1-7.
- Diana Aviv, Memorandum Re: Congressional Reform, 11/18/05.
- Stephanie Strom, "Charities Are Silent on Loss of Estate Tax," *New York Times*, 4/24/05.
- Deborah L. Jacobs, "Donations that Suit the Taxman," *Business Week*, 2/20/2006, 92.
- Mary Engel, Hospital's Charity Work Hard to Assess," *Los Angeles Times*, 12/14/07.
- Anne Tergesen, "Tapping a School's Investment Savvy," *Business Week*, 7/23/07.
- Dominic Kennedy, "Scientologists Set to Cash in on Tax Break," *Times UK*, 6/23/07.

Private Benefit

- "Philanthropy, Fannie Mae Style," *Business Week*, 4/2/07.
- Andrew Taylor, "Rep. Mollohan's Pet Projects Rejected," *Associated Press*, 4/2/07.

Pension Protection Act of 2006

- "The Pension Protection Act of 2006: Detailed Summary of Charitable Provisions," U.S. House Committee on Ways and Means, 7/28/2006, 1-4.
- Ashlea Ebeling, "The New Rules of Giving," *Forbes*, 12/11/2006, 218-20.

Perpetuity

- David Bank, "Giving While Living: Maverick Charities Boost Donations to Attack Ills Now," *Wall Street Journal*, 9/10/02.
- Rebecca Gardyn, "A Seasoned Perspective on Giving: Veteran Philanthropist Outlines Ways to Spur Change," *Chronicle of Philanthropy*, 6/10/04.
- Deanne Stone, "Alternatives to Perpetuity: A Conversation Every Foundation Should Have," National Center for Family Philanthropy, 2005, 1-12.
- Mitch Nauffts, "Conversation with Vincent McGee: Spending Out as a Philanthropic Strategy," Foundation Center, 1/10/2007.
- Jonathan Bays, et. al., "A Nonprofit Goes for Broke," *McKinsey Quarterly--Web Exclusive*, September 2006, 1-7.
- Jason DeParle, "Goals Reached, Donor on Right Closes Up Shop," *New York Times*, 5/29/2005, A1.
- Sally Beatty, "Giving Back: Soros Extends Life of Foundation," *Wall Street Journal*, 6/23/2006, W2.
- Steve Forbes, "Term Limits for Foundations," *Forbes*, 7/24/2006, 27.
- John J. Miller, "Open the FloodGates," *Wall Street Journal*, 7/7/2006, W11.
- Sally Beatty, "Gates Foundation Sets Time to Spend Assets," *Wall Street Journal*, 12/1/2006, A10.
- Tony Proscio, In Other Words: A Plea for Plain Speaking in Foundations, Edna McConnell Clark Foundation, 2000.

For Further Reading:

Current Legislative Activity

- Peter Panepento, "Foundations Press Congress to Change Tax Rules for Endowments," *The Chronicle of Philanthropy*, 9/6/07.
- Jonathan D. Glater, "New Ties Found to Link Lenders and Colleges," *New York Times*, 9/5/07.
- Daniel J. Wakin, "Chairman's Kin Hired as Architect for Carnegie," *New York Times*, 10/11/07.
- *Provisions of Interest to Charitable Organizations and their Donors in H.R. 4, the Pension Protection Act of 2006*, Simpson Thatcher & Bartlett, LLP, 8/9/2006, 1-16.
- *New Charitable Giving Incentives and Exempt Organization Reforms: Pension Protection Act of 2006*, Ropes & Gray, 8/14/2006, 1-8.
- "Commentary on Current Philanthropic Issues," *NCRP Bulletin*, May 2003, (5 pages).
- Jacqueline L. Salmon, "Foundations Anxious Over Bill on Giving," *Washington Post*, 7/8/03, A3 (3 pages).
- Steve Levin, "Foundations Contend Proposal to Increase Giving is too Costly," *Pittsburgh Post-Gazette*, 6/9/03, (4 pages).
- Stephanie Strom, "Foundations Roiled by Measure to Spur Increase in Charity," *New York Times*, 6/19/03, (3 pages).
- Editorial Staff, "How Expensive Should Philanthropy Be?" *San Jose Mercury News*, 6/2/03, (2 pages).
- Editorial Staff, "The Life and Death of Foundations," *New York Times*, 6/8/03, (1 page).
- Memo to Members, *Independent Sector*, June 2002.
- Memo to Members, *Independent Sector*, December 2002.

Estate Tax Repeal

- "The Estate Tax and Charitable Giving," Congressional Budget Office, July 2004, 1-10.
- David Cay Johnston, "Coping With a Tax That Has Nine Lives," *New York Times*, 6/24/01, B1.
- Patrick Rooney and Eugene Tempel, "Repeal of the Estate Tax: Its Impact on Philanthropy," Draft Paper, 11/1/00, 2-15.
- Thomas Billitteri, "A Taxing Dilemma," *Chronicle of Philanthropy*, 7/27/00, 1, 17-19.
- David Joulfaian, "The Federal Estate and Gift Tax: Description, Profile of Taxpayers, and Economic Consequences," *U.S. Department of the Treasury OTA Paper 80*, 12/98, 25-27.
- Joseph Cordes and C. Eugene Steuerle, "Death Taxes and Charity," *Foundation News & Commentary*, 9-10/99, 36-40.

Gifts of Property (Including Stock) Rather Than Cash

- Pablo Eisenberg, "Congress Should End Special Tax Breaks for Art Gifts," *Chronicle of Philanthropy*, 10/12/2006, 35.
- Evelyn Brody, ed., Property-Tax Exemption for Charities, Urban Institute Press, 2002.

- Carrie Coolidge, "The Price Is Right," *Forbes*, 6/12/00, 402-404.
- Joan Oleck, "When Giving Means Getting Back," *Business Week*, 4/10/00, 232.
- Robert Barker, "Lending A Helping Hand—With Stocks," *Business Week*, 11/15/99, 292, 294.
- Council on Foundations, "170(e)(5) Is Permanent! (Finally!)," *Washington Update*, 10/23/98, 1-4.
- Daniel J. Wakin, "Chairman's Kin Hired as Architect for Carnegie," *New York Times*, 10/11/07

Charitable Deduction

- Charles Clotfelter, "The Economics of Giving," in The National Commission on Philanthropy and Civic Renewal, *Giving Better/Giving Smarter Working Papers*, 1997, 31-51.
- David Cay Johnson, "Tax Study: The Richer, the Stingier" *News and Observer*, 12/19/05, 5A.
- Carol J. De Vita and Eric C. Twombly, "Charitable Tax Credits: Boon or Bust for Nonprofits?" *Charting Civil Society*, July 2004.
- Elizabeth Schwinn, "Write-Offs," *Chronicle of Philanthropy*, 6/22/04.
- Adam Yarmolinsky, "The Charitable Deduction: Subsidy or Limitation?" *NVSQ*, 3/00, 173-178.
- C. Eugene Steuerle and Martin Sullivan, "Toward More Simple and Effective Giving: Reforming the Tax Rules for Charitable Contributions and Charitable Organizations," 12 *American Journal of Tax Policy* 399-447 (1995).
- Christopher Toppe, et. al., *Deducting Generosity: The Effect of Charitable Tax Incentives on Giving*, Washington: Independent Sector, 1-25.

Tax-Savvy Charitable Strategies and Proposals

- "SWRI Extended Report: 2003 Survey of Planned Giving Vehicles," *Wealth and the Commonwealth*, 7/10/03.
- "The Strategic Uses of Philanthropy," *The Bernstein Journal*, Spring 2004, 9-13.
- Ashlea Ebeling, "Designs for Giving," *Forbes*, 10/29/01, 66-68.
- Ashlea Ebeling, "The Charitable Split," *Forbes*, 11/24/03, 257-259.
- *2003 Survey of Planned Giving Vehicles*, Social Welfare Research Institute, June 2003.
- John J. Havens, et. al., *2003 Survey of Planned Giving Vehicles*, Social Welfare Research Institute, June 2003.
- "Bequests and Other Forms of Planned Giving," *Giving USA Update*, Issue 2, 2002.
- Jennifer Pellet, Randy Myers, and C.J. Prince, "It's Your Money," *Chief Executive*, 10/1/99, 68-75.
- Janet Novack, "The New Giving Game," *Forbes*, 9/20/99, 180-195.
- Council on Foundations, "IRA Rollover Survives," *Washington Update*, 8/13/99, 1-3.
- Brigid McMenamin, "Trust Me: The IRS Drops Its Hard Line On Trusts," *Forbes*, 12/27/99, 234.
- Jennifer Moore and Grant Williams, "North Carolina Beefs Up Charitable Tax Break," *Chronicle of Philanthropy*, 11/5/98, 75.
- Ashlea Ebeling, "Going, Going, Deducted!" *Forbes*, 9/7/98, 228-229.
- James Allen, Jr., "The Charitable Remainder Trust As An Executive Benefit Tool," *Journal of Financial Service Professionals*, 7/1/99, 34-50.
- Jonathan D. Glater, "New Ties Found to Link Lenders and Colleges," *New York Times*, 9/5/07.

Supporting Organizations

- Thomas H. Pollack and Jonathan D. Dunford, "The Scope and Activities of 501(c)(3) Supporting Organizations," Urban Institute: National Center for Charitable Statistics, 5/31/2005, 1-17.
- Alyssa A. DiRusso, "Supporting the Supporting Organization: The Potential and Exploitation of 509(a)(3) Charities," 39 *Indiana Law Review* (2006), 207-252.

IRS-Related Issues

- Elizabeth Schwinn, "IRS Approves Unusual Investment Option," *Chronicle of Philanthropy*, 11/9/2006, 31.
- William Claiborne, "Supremacist Group's Tax Status Due Review," *Washington Post*, 7/13/99, A8.
- Grant Williams, "A Legal Setback for IRS," *Chronicle of Philanthropy*, 2/25/99, 37, 39-40.
- "Qualifying for Public Charity Status: The Section 170(b)(1)(A)(vi) and 509(a)(1) Test and the Section 509(a)(2) Test," Silk, Adler & Colvin, 6/23/97, 1-12.

Other Tax-Related Issues

- Diana B. Henriques, "Religion-Based Tax Breaks: Housing to Paychecks to Books," *New York Times*, 10/11/2006, A1.
- "Memorandum: Disaster Tax Relief for Individuals and Charities," Ropes & Gray, 1/24/02.
- Gerald Auten, Charles Clotfelter, and Richard Schmalbeck, "Taxes and Philanthropy Among The Wealthy," in Joel Slemrod, ed., *Does Atlas Shrug? The Economic Consequences of Taxing The Rich*, Harvard University Press, 2000.

- Eleanor Brown, "Taxes and Charitable Giving: Is There a New Conventional Wisdom?" Urban Institute: Seminar on Emerging Issues in Philanthropy, 4/29/99, 153-158.
- Evelyn Brody, "Charities in Tax Reform: Threats To Subsidies Overt and Covert," Draft Paper, 9/22/98, 1-101.
- Evelyn Brody, "Hocking The Halo: Implications of the Charities' Winning Briefs in *Camps Newfound / Owatonna, Inc.*," 27 *Stetson Law Review* 433-456 (1997).

FIRG Seminar, Wednesday, February 20, 4:30 p.m.: Tony Proscio, Foundation consultant and author of In Other Words, Bad Words for Good, and When Words Fail. He is also the co-author, with Paul Grogan, of Comeback Cities.

Topic for Paper Due on Sunday, February 24, 4:00 p.m.: Analyze the required readings in Fishman/Schwarz, especially the major cases (*Hernandez, Skylar, Blake, Winokur, Church of Scientology*, and *United Cancer Council*).

VIII. WEDNESDAY, MARCH 5, 2008 –DEFINING THE NOT-FOR-PROFIT SECTOR: SIMILARITIES, DIFFERENCES, FUZZY BOUNDARIES AND COMPARATIVE ADVANTAGES AMONG THE SECTORS

GUEST SPEAKER: JOHN RICE, FOUNDER AND CEO, MANAGEMENT LEADERSHIP FOR TOMORROW

Study Questions:

1. Assess society's allocation of functional missions to one sector, another sector, or several sectors jointly. Give reasons for your views.
2. How do the component fields of the not-for-profit sector differ from one another in the social and individual needs they fill, in their forms of organization and governance, and in their means of support?
3. What characteristics define the separate sectors, and distinguish one from another?
4. To what extent is it possible to identify a form of activity which is peculiarly appropriate to one or another sector?
5. Can you develop a theory that explains why particular kinds of activity are better located in the not-for-profit sector as opposed to the public sector? The for-profit sector?
6. Do differential salary levels among the not-for-profit, for-profit and public sectors help to illuminate the appropriate boundaries among the sectors?

Required Readings:

- Jim Collins, Good to Great and the Social Sectors: A Monograph to Accompany Good to Great. Jim Collins, 2005. 1-35.
- Michael Novak, "An Essay on 'Public' and 'Private'," in Robert Payton et al., Philanthropy: Four Views, Transaction Books, 1988, 11-24.
- Laura D' Andrea Tyson, "Good Works—With A Business Plan," *Business Week*, 5/3/04. 32.
- William C. Symonds, "Leaving Harvard Greener," *Business Week*, 1/24/05. 44.
- John Markoff, "Mozilla Plans Faster Growth for its Browser," *New York Times*, 8/3/05. C5.

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FIRG Seminar, Wednesday, March 5, 4:30 p.m.: Stephen Heintz, President, Rockefeller Brothers Fund

All students are invited to attend buffet dinner in honor of John Rice and Stephen Heintz to follow at 7:00 PM at home of Professor Fleishman in Chapel Hill.

NO PAPER IS REQUIRED FOR THE MARCH 5TH CLASS SESSION

WEDNESDAY, MARCH 12, 2007 – SPRING VACATION: NO CLASS

Study Questions:

1. Consider the many different forms of giving philanthropy: individual giving; giving to institutions such as churches, universities, United Ways, establishing private foundations; establishing family foundations; establishing donor-advised funds at financial institutions such as Fidelity; corporate giving either directly or through corporate foundations; “corporate social investments,” which are profit-oriented but are aimed to solve social problems; and community foundations. How do community foundations differ from private foundations and from United Ways?
2. How does corporate philanthropy differ from individual and foundation philanthropy?
3. Should corporations be permitted to make charitable contributions with what is essentially stockholder’s money? Consider the differences, if any, between corporate foundations, philanthropic foundations, community foundations, and individual donors in this regard.
4. What are the arguments supporting and opposing the increase of foundation pay-out rates?
5. What right do unelectable, unaccountable foundations have to finance politically charged authors? What difference does it make whether or not foundations are accountable? Must foundations be accountable to justify supporting radical ideas of the political right- or left- wings?
6. Are there reasons why the Pew Charitable Trusts should not be permitted to transform itself from a group of charitable trusts, operating like a private foundation, into a public charity? What are the social consequences of its being permitted to do so?

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X. WEDNESDAY, MARCH 26, 2008 -- ACCOUNTABILITY: CHOICE-MAKING AND MANAGEMENT IN FOUNDATIONS AND NOT-FOR-PROFIT ORGANIZATIONS

Study Questions:

1. How well-founded is the charge that most not-for-profit organizations are not accountable to anyone?
2. Are there accountability differences among subsectors in the not-for-profit sector, as well as different kinds of organizations?
3. Are foundations more or less accountable than is the press? If so, to whom are they accountable?
4. What are the mechanisms that maintain accountability in the not-for-profit sector?
5. How effective are boards of directors of not-for-profit organizations in maintaining accountability?
6. What accountability mechanisms exist for decisions about where to focus not-for-profit resources and on grants awarded to particular grantees?
7. What criteria would you use to determine whether a decision to make a grant is wise or not? Suppose the decision is not wise: what would you do about it?
8. Should the government second-guess donor decisions as to whether tax-exempt funds are spent in accordance with some public interest or public purpose requirement?
9. What, if any, ought to be the role of government with respect to ensuring accountability?
10. What other conceivable accountability-enhancing mechanisms can be invented?
11. Which organization is more easily held accountable: "donor organizations" which give away money to other non-profits or "recipient organizations" which receive those moneys?
12. What role do trustees play in ensuring accountability in universities, art museums, hospitals, local dance companies, soup kitchens, church boards?
13. What motivates one to accept (seek?) a role as a trustee? What can one say about the best and worst kinds of motivations to such ends?
14. How do the accountability responsibilities of trustees and executives differ?
15. What are the differences between general accountability questions and major criticisms of foundation behavior (e.g., the allegedly "excessive" directors' fees of the Duke Endowment and the Keck Foundation, the use of foundations as instruments to control privately held corporations, the taxation of unrelated business income, and the use of tax-exempt funds for political purposes)?
16. Can we formulate any appropriate rules for establishing salary levels for not-for-profit executives?
17. What can be done to facilitate the combination of organizations trying to achieve the same purposes? Are there lessons to be learned from the for-profit sector with respect to the encouragement of mergers as well as the discouragement of continued operations of organizations which are inefficient, ineffective or have outlived their usefulness?

* Pick a not-for-profit organization. Use the Internet to find its 990 form and Guidestar page. Be prepared to discuss the differences and shortcomings of each.

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XI. WEDNESDAY, APRIL 2, 2008 – DONOR PROTECTION BY THE STATE: GUARDING THE WORTHINESS OF CAUSES AND THE EFFICIENCY WITH WHICH DONATIONS ARE USED

GUEST SPEAKER: MEG GARLINGHOUSE, MANAGER, COMMUNITY AFFAIRS, YAHOO! INC.

Study Questions:

1. What harm are the statutes and ordinances that regulate charitable solicitation designed to prevent? Fraud? Waste of charitable funds donated to legitimately licensed charities? Are there are important values to be served by such regulation?
2. How can the public be protected from those who would defraud them?
3. What values are threatened, at least potentially, by such regulation?
4. What alternative regulatory methods are available to local, state, federal governments for such purposes?
5. What are the analogous problems that occur in the private sector?
6. What methods are used or would be appropriate to deal with those problems in the charitable sector? Consider the role of the FTC, SEC, IRS, state attorneys general, and self-regulation by charities. Consider alternative strategies constitutionally available -- filing of informational returns, licensing for solicitation, mandatory point of solicitation disclosure by solicitors of administrative costs, state publication of comparative administrative costs, etc.
7. Re-consider each of the six questions above from the perspective of someone seeking to protect donors not from waste and fraud, but from unworthy street beggars.

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FIRG Seminar, Wednesday, April 2, 4:30 p.m.: Drew Altman, President and CEO, Henry J. Kaiser Family Foundation

All students are invited to attend buffet dinner in honor of Meg Garlinghouse on Tuesday, February 1st at 6:30 PM at home of Professor Fleishman in Chapel Hill.

XII. WEDNESDAY, APRIL 9, 2008 – STRATEGY, BENCHMARKING, EVALUATING, AND PUBLICIZING IMPACT OF FOUNDATION GRANTMAKING

Study Questions:

1. What are some of the arguments for a wider understanding of how foundations achieve beneficial impacts on society through their grantmaking strategies?
2. How can such an understanding of foundation effectiveness be achieved? What are some of the ways foundations can more effectively and more persuasively tell their stories?
3. Are there political implications for effectively measuring the impact of foundations and publicizing those impacts?
4. Does the measurement of foundation impact through grantmaking affect the relationships between foundations and grantees?
5. To what extent does a focus on measuring impact tend to give incentives to foundations to make grants only for those efforts that are easily measurable?
6. Consider the various strategies foundations can employ in achieving their decided-upon goals. Also consider the range of tactics they can use in pursuing their strategies.

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- Deanne Stone, "Alternatives to Perpetuity: A Conversation Every Foundation Should Have," National Center for Family Philanthropy, 2005.
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- Vincent McGee, "Spending Out as a Philanthropic Strategy," *Foundation Center*, 1/10/07.

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- Jay Greene & William C. Symonds, "Bill Gates Gets Schooled," *Business Week*, 6/26/2006, 64.
- Charles Piller and Doug Smith, "Unintended Victims of Gates Foundation Generosity," *Los Angeles Times*, 12/16/07.
- Marilyn Chase, "Gates AIDS Trial Failure Stirs Questions," *Wall Street Journal*, 7/13/07, B4.
- Celia Dugger, "Clinton Helps Broker Deal for medicine to Treat AIDS," *New York Times*, 12/1/06.
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- Michael H. Steinhardt, "Why We Need Measurement and Accountability," *Contact*, Summer 2004, 2-3.
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- David Bank, "Giving While Living – Charles Feeney," *Wall Street Journal*, 9/10/02.
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- Aspen Institute, "Foundation Spend-Down and Perpetuity: Working Bibliography Draft," 5/30/07.
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- Malcolm Ritter, "Foundation Honors Scientists," *Raleigh News & Observer*, 9/18/2005, 7A.
- Signe-Mary McKernan and Henry Chen, "Small Business and Microenterprise as an Opportunity- and Asset-Building Strategy," Urban Institute: Opportunity and Ownership Project, June 2005, 1-7.
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- Les Lenkowsky and James Piereson, "Education and the Conservative Foundations," chapter in Reconnecting Education & Foundations: Turning Good Intentions into Educational Capital, Ray Bacchetti and Thomas Ehrlich, eds., San Francisco: Jossey-Bass, 2007, 347-79.

XIII. WEDNESDAY, APRIL 16, 2008 (FINAL CLASS) – ATTAINING WIDER IMPACT ON SOCIETY THROUGH LOBBYING, ADVOCACY AND EDUCATION BY TAX-EXEMPT ORGANIZATIONS

Study Questions:

1. What is the rationale for limiting or barring lobbying and advocacy by tax-exempt organizations?
2. What are the similarities and differences between the treatment of lobbying expenses by organizations subject to taxes and that by tax-exempt organizations.
3. Is there a difference between advocacy by private foundations and public charities, between foundation and grant-receiving money, between donor institutions and recipient institutions?

Required Readings:

- Fishman/Schwarz 500-570.
- Robert Egger, "Charities Must Challenge Politicians," *Chronicle of Philanthropy*, 5/31/07.
- Donald B. Tobin, "Political Campaigning by Churches and Charities: Hazardous for 501(c)(3)s, Dangerous for Democracy," *Georgetown Law Journal*, Vol.95, 1313-1335.
- Gara LaMarche, "Report from the Heartland: Elections as Opportunities for Unheard Voices," *Atlantic Currents*, 12/3/07.
- Dan Morain, "Campaigns Raise Stakes on Nonprofits," *Los Angeles Times*, 11/13/07.
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- Rick Cohen, "State Officials Are Trying to Hinder Fund Raising by Advocacy Charities," *Chronicle of Philanthropy*, 6/24/04.
- Elizabeth Schwinn, "IRS Investigation of NAACP Prompts Criticism by Lawmakers, Legal Experts," *Chronicle of Philanthropy*, 11/11/04.
- Debra E. Blum, "White House Policies on Advocacy Rights Faulted," *Chronicle of Philanthropy*, 11/11/04.
- John Russell, "Focus on the...Election? James Dobson Makes a Big Step to Connect Religion and Partisan Politics," *Responsive Philanthropy*, Summer 2004, 1, 17-18.
- Elizabeth Heagy, "IRS Letter Clarifying Foundation Funding of Nonprofits That Lobby Provides New Flexibility for Grantmakers," Press Release, Charity Lobbying in the Public Interest, 1/25/05.
- Joseph J. Urban, Letter to Charity Lobbying in the Public Interest, 12/9/04.
- Gillian Flaccus, "IRS Ensnared in Politics of the Pulpit," *International Herald Tribune*, 10/5/2006,
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- Elizabeth J. Reid, ed., *In the States, Across the Nation, and Beyond*, Urban Institute, 2003, 1-89:
- Evelyn Brody, "Defining the Constitutional Bounds of the Right of Association"
- Mark Tushnet, "How the Constitution Shapes Civil Society's Contribution to Policymaking"

William A. Galston, "The Theory and Practice of Free Association in a Pluralist Liberal Democracy"

Delba Winthrop, "How to Profit from Nonprofits: Tocqueville on Associations"

Frances R. Hill, "Nonprofit Organizations and Democratic Theory: Toward a Theory of Continuing Mediated Consent"

- Edward Skloot, "Philanthropy: What's Love Got to Do With It?" Remarks, Center for Effective Philanthropy Conference, 10/10/03, 1-14.
- Timothy E. Wirth, "The Need for Philanthropic Advocacy," Remarks, Global Philanthropy Forum, 6/6/03, 1-5.

Lobbying

Direct Lobbying

- Mark Rosenman, "Why Social-Service Groups Must Mobilize," *Chronicle of Philanthropy*, 10/16/03, (6 pages).
- Bob Smucker, "Why Lobbying is a Duty," *Chronicle of Philanthropy*, 11/13/03, (1 page).
- Thomas A. Troyer, "U.S. House of Representatives Passes Charity Grassroots Lobbying Provision," *Charity Lobbying in the Public Interest*, 9/17/03.
- Bob Smucker, "Charity Grassroots Lobbying Rules Simplified by Senate Finance Committee," *Charity Lobbying in the Public Interest*, 6/18/02.
- David Arons, et. al., "The 2002 Workshop and Retreat for Nonprofit Advocates," *Charity Lobbying in the Public Interest*.
- Kent Allen, "A Million-Dollar Ceiling, In Need Of a Lift?" *Washington Post*, 3/7/00, A15.
- Leslie Lenkowsky, "Congress: Revise Rules on Advocacy by Charities," *Chronicle of Philanthropy*, 2/25/99, 49-50.
- Robert Boisture, "What Charities Need To Know To Comply With The Lobbying Disclosure Act of 1995," Paper from Independent Sector, 12/95, 1-20.
- Staff, "IRS Eases Charities' Worries About Audits for Lobbying," *Chronicle of Philanthropy*, 3/11/99, 43.

Indirect Lobbying

- "Civic Education Legislation Passed in North Carolina," *Charity Lobbying Success Stories*, October 2003, 1-2.
- Bob Smucker and David Arons, "Important Facts About Lobbying With Foundation Grant Funds" and "Opportunities For Charities Involved in Initiatives And Referenda," *Charity Lobbying in the Public Interest Newsletter*, 4/6/00, 1-4.

Electronic Lobbying

- Kent Allen, "The Foundations Of Expanded Giving," *Washington Post*, 4/4/00, A27.

Political Activity

- Jonathan Weisman, "Nonprofit Connects Murtha, Lobbyists," *Washington Post*, 12/25/2006, A1.
- Michael Slackman, "G.O.P. Leader Solicits Money for Charity Tied to Convention," *New York Times*, 11/14/03, (4 pages).
- Thomas B. Edsall, "Nonprofits Bound by Donation Rules," *Washington Post*, 6/17/03, A6.
- David Johnston, "Ruling May Open Finance Loophole," *New York Times*, 6/8/03, A37.
- William McCall, "Judge Closes Anti-Tax Activist's Loophole," *Kansas City Star*, 4/30/03, (2 pages).
- Joe Stephens and David B. Ottaway, "Charity Hiring Lawyers to Try to Prevent Hill Probe," *Washington Post*, 5/16/03, A27.
- Christopher Marquis, "Judge Eases Campaign Finance Rules for a Nonprofit Group," *New York Times*, 11/27/03, A17.
- Charles Lane, "High Court to Weigh Nonprofits' Political Contributions," *Washington Post*, 11/19/02, A13.
- Richard Morin and Claudia Deane, "Lobbyists Seen Lurking Behind Tank Funding," *Washington Post*, 11/19/02, A23.
- Staff, "Revocation of Exemption of Church That Ran Anti-Clinton Ads Upheld," *Tax Notes Today*, 5/22/00, 1-6.
- Larry Margasak and John Solomon, "Documents Show Tax-Exempt NEA's Political Side," *News & Observer*, 6/23/00, 6A.
- Peter Marks, "Special-Interest Groups Widening Political Attack Ads," *New York Times*, 5/14/00, 23.
- John Broder and Raymond Bonner, "A Political Voice, Without Strings," *New York Times*, 3/29/00, A1, A20.
- "John Solomon, "Private Wealth Finds New Path Into Politics," *News & Observer*, 11/4/00, 6A.
- Jeffrey Berry, "Revived, Yet Hardly Recognizable," *Washington Post*, 7/11/99, B3.
- National Center for Nonprofit Boards, "IRS Fines Christian Group for Tax Violation," *Board Member*, 4/98, 2.
- Ruth Marcus, "FEC Details Case Against Christian Coalition," *Washington Post*, 8/1/96, A10.
- Laurie Goodstein, "Church Leaders Express Concern Over Scrutiny of Political Activity," *Washington Post*, 5/19/96, A3.
- J. Andrew Curliss, "Political Announcement Puts Nonprofit at Risk," *The News and Observer*, 7/14/01, 6B.
- Donald B. Tobin, "Anonymous Speech and Section 527 of the Internal Revenue Code," 37 *Georgia Law Review* 611-695, Winter 2003.
- Evelyn Brody, "Entrance, Voice, and Exit: The Constitutional Bounds of the Right of Association," 35 *U.C. Davis Law*

Review 823-901, April 2002.

- Erik Ablin, "The Price of Not Rendering to Caesar: Restrictions on Church Participation in Political Campaigns," 13 *Notre Dame Journal of Law, Ethics & Public Policy* 541-588, 1999.
 - Independent Sector, "Basic Information about the 1976 Law Governing Lobbying by Charities," *Charity Lobbying in the Public Interest*, 9/4/98, 1-5.
 - Karen Paget, "Lessons of Right-Wing Philanthropy," *The American Prospect*, 9/1/98, Reprint, 1-11.
 - Bob Smucker, The Nonprofit Lobbying Guide. Independent Sector, 1999.
 - Sally Covington, Moving a Public Policy Agenda: The Strategic Philanthropy of Conservative Foundations. National Committee for Responsive Philanthropy, 1998.
 - Elizabeth Reid, ed., "Structuring the Inquiry into Advocacy," Urban Institute, 2001.
 - Elizabeth Reid and Maria Montilla, eds., "Exploring Organizations and Advocacy," Urban Institute, 2001.
 - Nonprofit Speech: Lobbying & Political Campaign Activities, The Program on Philanthropy and the Law, New York University School of Law, 10/13-14/94, 1-184:
- Burt Neuborne, "The First Amendment and Access to Congress: The Right of Nonprofit Organizations to Lobby"
- Laura Brown Chisolm, "Political Advocacy Meets the Internal Revenue Code: 'There's Got to be a Better Way'"
- Catherine Rudder, "Beyond the Tax Code: Federal Restrictions on Lobbying by Nonprofit Organizations"

FIRG Seminar, Wednesday, April 16, 4:30 p.m.: Gara Lamarche, President and CEO, The Atlantic Philanthropies

Undergraduates please note:

NO CLASS WEDNESDAY, APRIL 25

FINAL: MONDAY, APRIL 28, 2008 -- TERM PAPERS DUE NO LATER THAN 5:00 P.M. IN PROFESSOR FLEISHMAN'S OFFICE OR BY WORD ATTACHMENT TO EMAIL. SEE PAGES TWO AND THREE OF THE SYLLABUS FOR TERM PAPER INSTRUCTIONS.

Professor: Marion R. Fremont-Smith and Adelbert Spitzer

School: Harvard Law School

Course: Taxation and Regulation of Non-Profits

Materials

Fishman & Schwarz, *Nonprofit Organizations: Cases and Materials*, Third Edition, Foundation Press 2006

Fremont-Smith, *Governing Nonprofit Organizations: Federal and State Law and Regulation*, 2004

Various materials assigned

Overview

This course covers the treatment of charities, universities, hospitals, foundations and other nonprofit organizations, including state and federal requirements for their creation, qualification for tax and other benefits and administration. The course covers the history of federal and state regulation of nonprofits, as well as current legislative and regulatory initiatives to increase government supervision, particularly those centered on governance practices. The students, in pairs, are expected to lead brief discussions of assigned cases during seven of the sessions. The students also take a final exam to test their knowledge of the course material.

Order and Use of Text

The first two sessions provide an overview of the nonprofit sector with readings assigned from the Fremont-Smith text and various supplemental materials. The next five sessions utilize readings from the Fremont-Smith book and Fishman & Schwarz textbook to continue to provide an introduction to the nonprofit sector and to cover state laws and regulations relating to charities. The next sixteen sessions of the course primarily assign readings from the Fishman & Schwarz casebook that, for the most part, follows the order of the contents of the text. The course does not assign the last two chapters of the Fishman & Schwarz casebook that cover the topics of special problems of private membership associations and antitrust and nonprofits, respectively. The last session of the course discusses articles authored by Fremont-Smith that cover the topics of scandals and nonprofit practice.

**Harvard Law School
Taxation and Regulation of Nonprofits
Fall, 2008**

Marion Fremont-Smith
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5-2321

Adelbert L. (Lorry) Spitzer
lorry.spitzer@ropesgray.com
617-951-7251

Assistant: Marilyn Uzuner
6-1760

This seminar will be meeting in P202 on Thursday and Friday mornings from 10:00 to 11:30
The textbooks are Fishman & Schwarz, Nonprofit Organizations and Fremont-Smith, Governing Nonprofit Organizations.

Office Hours: We are generally available on both Thursday and Friday after class, or feel free to call either of us at the numbers indicated above to arrange another time.

The assignments for September 4 - October 2 are as follows:

September 4: Introduction. Overview of Nonprofit Sector including recent developments of national interest.

1. Fremont-Smith, Chapter 1 – "The Nonprofit Sector in the Twenty-First Century"
2. Handouts (attached)
 - a. Excerpts from the Nonprofit Almanac 2008
 - b. Letter from E. Brody and M. Fremont-Smith regarding Draft Model Nonprofit Corporation Act
 - c. Press Releases from Senator Grassley regarding University Endowments
 - d. Speech by Steven Miller, IRS Commissioner, Tax Exempt and Government Entities
 - e. Press Release by Giving USA regarding U.S. Charitable Giving

September 5: Overview Continued; History of the Law of Charities

1. Fremont-Smith, Chapter 2 – "A Brief History of the Law of Charities," pp. 19-43

September 11: History of the Law of Charities Continued

1. Fremont-Smith, Chapter 2 – pp. 43-115

September 11 Addendum – Please skim Fishman & Schwarz, Statutes and Materials – pp. 1-46, 62-90 and 948-66

September 12, 18: State Law Requirements for Formation and Termination of Charities: What Purposes are Charitable; Changes of Purpose; Trusts vs Corporations; Nonprofit Corporation Acts; Articles, bylaws, meetings, votes, registration, "How do you build and drive this car? Fremont-Smith - pp. 116-133, 149-186, Fishman & Schwarz – pp. 107-120

September 19: State Law Governance Requirements: Duties of Care and Loyalty; Investment of Charitable Assets: Fremont-Smith: Chapter 4, pp. 187-233, Fishman & Schwarz – pp. 160-166, 185-201

September 25: State Regulation of Charities: Fremont-Smith - pp. 301-351, Fremont-Smith Fordham Law Review article, "The Search for Greater Accountability of Nonprofit Organizations" (attached) pp. 609-622.

September 26: Federal Law Requirements for Formation and Termination of Charities: The Organizational Test, What Purposes are Charitable; Form 1023, Application for Exemption; Life Cycle of a Charity: Fishman & Schwarz – pp. 349-376, 390-400; please also skim IRS Form 1023 and "Life Cycle of a Public Charity" (both found at www.irs.gov)

October 2: Public Policy Limitations; Educational Organizations:

1. Fishman & Schwarz – pp. 400-444

October 3: Private Benefit; Private Inurement:

1. Fishman & Schwarz – pp. 276-282, 476-487

October 9: Intermediate Sanctions:

1. Fishman & Schwarz – pp. 487-497
2. *Caracci v. Commissioner*, 456 F. 3rd 444, 3rd Circuit, 2006 (attached)

October 9: PARTY PARTY PARTY! Dinner at Marion Fremont-Smith's home at 50 Concord Avenue, Cambridge; **7:15**. Spouses, friends and children welcome. Please let us know if you can make it and the number of guests.

October 10: Commercial Activities: UBTI:

1. Fishman & Schwarz – pp. 616-620, 628-630, 646-662, 668-670, 681-683, 685-693

October 16: Commercial Activities: UBTI:

1. Joint Ventures. Fishman & Schwarz – pp. 694-723, 733-738

October 17: Social Enterprises and Hybrid Organizations including L3Cs:

1. Article by Rob Wexler, "Social Enterprise: A Legal Context" (attached)

October 30: Lobbying and Political Activities:

1. Fishman & Schwarz – pp. 500-504, 514-532

October 31: Lobbying and Political Activities, continued:

1. Fishman & Schwarz – pp. 540-560
2. Rev. Proc. 2007-44 (attached)

November 6: Rationale for Tax Exemption; Guest: Professor Daniel Halperin

1. Fishman & Schwarz – pp. 43-54, 322-25
2. Halperin, "Does Tax Exemption for Charitable Endowments Subsidize Excessive Accumulation?" – pp. 1-31 (attached)

November 7: Public Charities and Private Foundations; Definitions

1. Fishman & Schwarz – pp. 775-777 (top), 791-806, 813-824

November 13: Private Foundations; Restrictions

1. Fishman & Schwarz – pp. 832-873
2. Fishman & Schwarz Supplement – pp. 42-44, 45-59 (attached) (skim)

November 14: Private Foundations, Cont'd; State Regulation of Fundraising; Charitable Deductions

1. Fremont-Smith – pp. 370-76
2. Fishman & Schwarz – pp. 879-884

November 20: Charitable Deductions, Cont'd

1. Fishman & Schwarz – pp. 894-900, 907-915, 935-942, 944-968
2. 2008 F&S Supplement – pp. 60-65 (attached)

November 21: Planned Giving

1. Fishman & Schwarz – pp. 970-976

December 4: Noncharitable Nonprofits

1. Fishman & Schwarz – pp. 980-991, 997-1030 (exclude problems, skim cases)

December 5: Scandals; Nonprofit Practice; Exam Review

1. Fremont-Smith – “Pillaging: Embezzlement and Fraud” (attached)
2. Fremont-Smith – “Wrongdoing by Officers and Directors of Charities: A Survey of Press Reports 1995-2002” (attached)

Professor: Miriam Galston

School: George Washington University Law School

Course: Nonprofit Organizations: Law and Taxation

Materials

Fishman & Schwarz, *Nonprofit Organizations: Cases and Materials*, Third Edition, Foundation Press 2006

Fishman & Schwarz, *Nonprofit Organizations: Statutes, Regulations and Forms*, Foundation Press 2006

Overview

This course studies nonprofit organizations under both state and federal law. The first few classes discuss state regulation of nonprofit organizations, and the assigned readings include relevant statutes from both California and New York. The later classes focus on federal law and the tax status of different types of nonprofits, and the readings for this section include selected sections of the Internal Revenue Code and the Treasury Regulations.

Order and Use of Text

The Fishman and Schwarz casebook and supplementary materials are used exclusively in this course, and the course topics track, with few exceptions, the order of the materials in the casebook. Chapter 8, Basic Principles of Charitable Contributions, is taught before Chapter 7, the Federal Law of Private Foundations. Chapter 9 is omitted and the course concludes with Chapter 10.

Law 314-10
Monday 1:40-3:40
Room E312
Fall 2007

Ms. Galston
Stuart 319
202-994-6781
mgalston@law.gwu.edu

NONPROFIT ORGANIZATIONS: LAW AND TAXATION

This course examines nonprofit organizations from the perspective of both state and federal law. The nonprofit universe includes not only charities, but many other types of organizations, such as labor groups, trade associations, veterans groups, advocacy organizations, and certain kinds of social clubs. We will look at the advantages that nonprofit status affords as well as the special responsibilities that nonprofits are expected to assume in exchange for these advantages.

We will examine various types of state law regulation of nonprofits, in particular, limitations on the purposes for which nonprofits can be established under state law, regulation of charitable solicitations, fiduciary standards for directors and officers of nonprofits, and constitutional and other limitations on the practices of private associations.

On the federal side, we will examine the tax status of different types of nonprofits, what role they are permitted to play in politics and legislative matters, what types of commercial activities they can engage in, and the ways in which the discrimination laws and first amendment rights are altered in the context of the nonprofits.

The course will meet two hours a week and classes will be conducted primarily as discussions. Your grade will be based upon the exam except that you may receive a step-up for voluntary and thoughtful class participation. You may also receive a step down for repeated absences from class.

My office hours are Tuesdays and Wednesdays from 3:30 A.M. to 5:00 P.M. If my office hours are inconvenient for you, please get in touch with me so we can arrange a convenient time for you to come by. (Office, e-mail, and phone are above.) I am in my office almost constantly, and I welcome visits from students.

The exam will be take home. The exam is scheduled for Wednesday, December 12, at 9:30, so the take-home will probably be Tuesday, December 11 at 9:00 AM until Wednesday, December 12 at 1:00 PM.

ABBREVIATIONS

CB	Fishman and Schwarz, <u>Nonprofit Organizations: Cases and Materials</u> (3rd ed. 2006)
SS	2006 Statutory Supplement to Fishman and Schwarz, <u>Nonprofit Organizations: Cases and Materials</u> (3rd ed. 2006)
Model	Revised Model Nonprofit Corporation Act, SS 91-173 and also available at http://www.muridae.com/nporegulation/documents/model_npo_corp_act.html
Cal	California Corporations Code, SS 1-46 and also available at http://www.paralegal-plus.com/ca-codes.htm or http://caselaw.lp.findlaw.com/cacodes/corp.html and then click on the sections you are seeking
NY	New York Not-for-Profit Corporate Law, SS 62-90 and also available at http://caselaw.lp.findlaw.com/nycodes/c76.html and click on the article with the same number as the code section you are seeking
IRC	Internal Revenue Code, SS 221 et seq. and also available on Lexis, Westlaw, and http://www.irs.gov/taxpros/article/0,,id=98137,00.html and enter section number in box

ASSIGNMENTS

CLASS No. 1: INTRODUCTION TO THE NONPROFIT SECTOR

A. Introduction: What Is a Nonprofit and Should We Have a Nonprofit Sector?

Model 13.01, 13.02

Cal **5110**, 5111, 5410, 5420, 7111, 7411, 9111, 9610 (the last two are attached)

CB 2-17

B. Dimensions of the Nonprofit Sector

CB 17-29, 32-33 (omit ¶ 2), 62 (Table 1.4)

C. Development of Nonprofit Law in the U.S.

CB 39-43 (omit middle ¶)

D. Rationales for the Nonprofit Sector

CB 43-54 (omit ¶¶ 3, 4), 54-60

CLASS No. 2: STATE LAW TREATMENT OF NONPROFITS

A. Statutory Approaches to Nonprofit Corporations

Model 3.01

NY 201, 204, 205, 515

Cal 5059, 5060, 5061, 5111, 5130

CB 69-72, 74-77

B. Purposes and Powers in General

CB 78-87

C. Charitable Purposes

CB 87-89 (middle), 92-93 (skip ##2-3), 94-101 (middle)

D. Dissolution and Cy Pres

CB 101-03 (omit ¶ 3), 106-111 (omit ¶ 5)

CLASS No. 2 (con't): OPERATION AND GOVERNANCE

A. Introduction

CB 140-41

B. Board of Directors and Trustees

Model 8.01

Cal 5210

CB 141-43 (up to Fitzgerald case), 148-49

C. Fiduciary Responsibilities

1. Duty of Care.

Model 8.30, 8.33, 8.41-.42

Cal 5230(a), 5231

NY 719

CB 149-52 (up to Pepperdine case), 157 (notes)-66, 168 (¶ 4)-72

CLASS No. 3: OPERATION AND GOVERNANCE (continued)

2. Immunity and Indemnification.

Model 2.02(b)(5) (SS p. 108)

Model 8.51, 8.52, 8.54, 8.55

Cal 5047.5, 5230(a), 5239

CB 173-76 (omit ¶ 5)

3. Duty of Loyalty.

Model 8.31, 8.32

Cal 5227, 5230(a), 5233, 5235, 5236, 5237

CB 185-205, 214-216

4. Executive Compensation.

Model 8.12, 8.13

CB 236-42(top)

CLASS No. 4: ENFORCEMENT OF FIDUCIARY STANDARDS

A. Recordkeeping and Filing Requirements

Model 16.01
NY 519, 520, 521, 621(a)
CB 242-46

B. Role of the Attorney General

CB 246-51

C. Enforcement by Trustees/Directors

NY 720(b), (c)
CB 251-52

D. Enforcement by Donors

CB 252-62

E. Rights of Members

Model 16.01-16.05
NY 519, 521, 621(a)-(g), 623 (attached), 720(a), (b)(3)
CB 263-65

F. Beneficiaries and Special Interests

CB 264-65

G. Problems

CB 265-68

CLASS No. 5: CHARITABLE SOLICITATIONS

A. Introduction

CB 269-70, 276-85

B. Constitutional Restrictions

CB 285-301 (omit ¶ 3), 305-11

C. Solicitation on the Internet

CB 311-15

D. Reform: Federal Regulation of Charitable Solicitations

CB 316-18

CLASS No. 6: FEDERAL TAX LAW: PUBLIC CHARITIES

A. Introduction

CB 320-27, 353-57

B. Rationales

CB 327-49

C. Organizational and Operational Test

IRC § 501(c)(3)

IRC § 508(a)-(c)

Treas. Reg. § 1.501(c)(3)-1(a),
-1(b)(1)-(5),
-1(c)(1)-(2),
-1(d)(1)-(2)

CB 349-51

C. Public Policy Limitation

CB 400-26

CLASS No. 7: FEDERAL TAX LAW: PUBLIC CHARITIES (con't)

D. Educational Organizations

Treas. Reg. § 1.501(c)(3)-1(d)(3)
CB 427-43 (omit ¶ 5)

E. Religious Organizations

CB 444-46, 452-60

F. Social Welfare Organizations

IRC § 501(c)(4)
Treas. Reg. § 1.501(c)(4)-1
CB 990

G. Inurement and Private Benefit

Treas. Reg. § 1.501(c)(3)-1(c)(2)
CB 476-87 (We already read the UCC case; review the discussion of private inurement and private benefit)

H. Intermediate Sanctions

IRC § 4958, 6033(b)(11), (12)
Treas. Reg. § 53.4958-1 to -3(e)
CB 487-97 (only prepare question 1(a))

CLASS No. 8: ADVOCACY ACTIVITIES: LOBBYING

A. Background

CB 500-02

B. Lobbying Limitation: The No Substantial Part Test

IRC 501(c)(3), 504, 4912
Treas. Reg. § 1.501(c)(3)-1(b)(3), -1(c)(3)
CB 502-14 (skip # 7)

C. Constitutional Issues

CB 514-23 (skip # 4)

D. The 501(h) Election

IRC §§ 501(h), 4911(a)-(e)(3)
CB 523-24, 526-32

E. The 501(c)(4) Alternative

CB 553-55

CLASS No. 9: ADVOCACY ACTIVITIES: POLITICAL CAMPAIGN INTERVENTION

A. Political Campaign Activity Limitation

IRC § 4955(a)-(e)
Rev. Rul. 2007-41, 2007-25 IRB 1421 (June 18, 2007) (Handout)
CB 540-52

B. Using the Internet

CB 552-53

C. Policy Issues: Partisan Political Activities

CB 564-67, 570 (#3)

**CLASS No. 10: FEDERAL TAX LAW: COMMERCIALITY DOCTRINE AND
UNRELATED BUSINESS INCOME TAX (UBIT)**

A. Introduction

Treas. Reg. § 1.501(c)(3)-1(b)(1)(I), -1(c)(1), -1(e)
CB 593-94, 596-98

B. The Commerciality Doctrine

CB 598-612

C. Commensurate-in-Scope Doctrine

CB 612-614

D. Introduction to UBIT

CB 616, 621 (middle two ¶¶), 626-28

E. Nature of an Unrelated Trade or Business

IRC §§ 511(a), 512(a)(1), 512(b)(1)-(4), 513(a), (c), (f), (h), (i)
CB 628-39

CLASS No. 11 (first half):

UBIT (continued)

CB 646-63 (omit # 5)

F. Proposals for UBIT Reform

CB744-749 (omit last ¶ on page 749)

CLASS No. 11 (second half) **CHARITABLE CONTRIBUTIONS:**

IRC § 170(a)(1), (b)(1)(A)-(B), (F)
IRC § 170(b)(2)
IRC § 170(c)
Treas. Reg. § 1.170A-1(h)
CB 907-27, 934-5 (only ¶ 1)

CLASS 12: FEDERAL TAX LAW: PRIVATE FOUNDATIONS

A. Overview

IRC § 509(a), (d)
IRC § 4946(a)(1)-(2), (d)
Treas. Reg. § 1.170A-9(e)(6)-(7)
CB 751-52, 781 (up to Edie excerpt), 794-800

B. Excise Taxes

CB 832 (bottom half), 836-47

C. Private Foundation Alternatives

Community foundations CB 771-75

Donor advised funds CB 775-77

Supporting organizations CB 780 (last ¶), 803-13, 818 (bottom)-820 (up to “e”)

CLASS No. 13: PRIVATE MEMBERSHIP ASSOCIATIONS

A. Introduction

CB 1031-32

B. Judicial Intervention into Private Association Affairs

CB 1032-34

C. Expulsion of Members

Model § 6.21

Cal § 7341

CB 1038-49

D. Constitutional Dimensions of Freedom of Association

CB 1058-81

CALIFORNIA CORPORATIONS CODE

§ 9110. This part shall be known and may be cited as the Nonprofit Religious Corporation Law.

§ 9111. Subject to any other provision of law of this state applying to the particular class of corporation or line of activity, a corporation may be formed under this part primarily or exclusively for any religious purposes.

§ 9610. (a) The provisions of Chapter 4 (commencing with Section 5410) of Part 2 [no distributions permitted] apply to religious corporations except for subdivision (b) of Section 5420 [who can sue to recover distributions].

(b) Suit may be brought in the name of the corporation by a creditor, a director, or the authorized number of members. In any such action in addition to the remedy provided in subdivision (a) of Section 5420, the court may award punitive damages for the benefit of the corporation against any director, officer, member or other person who with intent to defraud the corporation caused, received or aided and abetted in the making of any distribution.

NEW YORK NPCL

§ 623. Members' derivative action brought in the right of the corporation to procure a judgment in its favor

(a) An action may be brought in the right of a domestic or foreign corporation to procure a judgment in its favor by five percent or more of any class of members or by such percentage of the holders of capital certificates or of the owners of a beneficial interest in the capital certificates of such corporation. (b) In any such action, it shall be made to appear that each plaintiff is such a member, holder or owner at the time of bringing the action. (c) In any such action, the complaint shall set forth with particularity the efforts of the plaintiff or plaintiffs to secure the initiation of such action by the board of the reason for not making such effort. (d) Such action shall not be discontinued, compromised or settled without the approval of the court having jurisdiction of the action. If the court shall determine that the interests of the members or of any class or classes thereof will be substantially affected by such discontinuance, compromise or settlement, the court, in its discretion, may direct that notice, by publication or otherwise, shall be given to the members or class or classes thereof whose interests it determines will be so affected; if notice is so directed to be given, the court may determine which one or more of the parties to the action shall bear the expense of giving the same, in such amount as the court shall determine and find to be reasonable in the circumstances, and the amount of such expense shall be awarded as special costs of the action and recoverable in the same manner as statutory taxable costs. (e) If the action on behalf of the corporation was successful, in whole or in part, or if anything was received by the plaintiff or plaintiffs or a claimant or claimants as the result of a judgment, compromise or settlement of an action or claim, the court may award the plaintiff or plaintiffs, claimant or claimants, reasonable expenses, including reasonable attorney's fees, and shall direct him or them to account to the corporation for the remainder of the proceeds so received by him or them. This paragraph shall not apply to any judgment rendered for the benefit of injured members or non-record owners only and limited to a recovery of the loss or damage sustained by them.

Professor: Susan Gary
School: University of Oregon School of Law
Course: Nonprofit Organizations

Materials

Fishman & Schwarz, *Nonprofit Organizations: Cases and Materials*, Third Edition, Foundation Press 2006
Oregon Nonprofit Corporation Act
Materials handed out in class

Overview

This course covers the corporate governance and tax issues that affect nonprofit organizations. The major topics discussed in this course include organization, state regulation, obtaining tax-exempt status, restrictions of lobbying and political activity, private foundations, tax on unrelated business income of tax-exempt organizations, and charitable deduction rules. Half of the course grade is determined by a group project in which students, working in pairs, create a nonprofit organization. The remainder of the grade is determined by a final exam, preparing a memo and presenting on a current legal issue affecting nonprofits, and classroom participation.

Order and Use of Text

This course covers most of the contents of the Fishman & Schwarz casebook in the order presented in the book. Readings from the Oregon Nonprofit Corporation Act are assigned in the first half of the course along with the chapters in the casebook that cover a general overview of the nonprofit sector and organization and operation of nonprofit organizations from the state perspective. The topics omitted from the casebook are the sections on religious organizations and procedural issues of tax exemption for charitable organizations, as well as the topics of computation of the UBTI, unrelated debt-financed income, complex structures, and proposals for reform from the chapter on commercial activities and unrelated business income. The course covers the rationale for tax exemption of mutual benefit and other noncharitable organizations and the section on social welfare organizations is assigned, but the sections on labor, agricultural and horticultural organizations, trade associations, social clubs, etc. are not assigned in the course. The last two chapters of the book, "Special Problems of Private Membership Associations" and "Antitrust and Nonprofits" also are not assigned in the course readings.

Nonprofit Organizations
Susan N. Gary
Fall 2008

Required Materials

Fishman & Schwartz, NONPROFIT ORGANIZATIONS (3rd ed. Foundation Press 2006)

Oregon Nonprofit Corporation Act (handed out in class)

Materials handed out in class

Useful Materials

Cumfer & Sohl, THE OREGON NONPROFIT CORPORATION HANDBOOK (Technical Assistance for Community Services) (4d ed. 2005) (on reserve in library)

www.nyu.edu/ncpl (National Center on Philanthropy and the Law)

irs.gov (forms and instructions)

GuideStar.org (990 forms for many nonprofits, lots of info about nonprofits)

Charitygovernance.blogs.com (blog run by Jack Siegel)

Nonprofit Law Prof Blog (lawprofessors.typepad.com/nonprofit/)

Office Hours

I have scheduled office hours on Tuesday 9:30-12:00, but I encourage you to stop by my office any time, send questions by email, or make an appointment by email. My email is sgary@law.uoregon.edu. Scheduling an appointment is always fine (and probably wise).

Course Requirements:

The work for this class satisfies the Skills Requirement.

(50%) – Creating a Nonprofit Organization – Group Project

You will draft Bylaws and Articles for a hypothetical organization, and you will prepare portions of Form 1023 for the organization (I will indicate which portions you will prepare). You will prepare a procedure manual for one aspect of the organization's management, and you will also prepare a memo analyzing issues raised by the client and your recommendations. This project will best be accomplished by working as a group of two to three people. We will discuss details of the project at the beginning of the course and then throughout the course.

The best resource for this project is the Cumfer & Sohl, Oregon Nonprofit Corporation Handbook. This is an excellent resource for anyone who plans to practice in Oregon. Several copies are available in the library.

Pieces of the project will be due at different times during the semester. I will mark corrections and suggestions on each piece, and then the group will make revisions and submit the entire project at the end of the semester. The project will be submitted under a group number, assigned by the Administration office.

(10%) – Participation

Discussion of problems in the book and of problems provided in class will be an important part of the course.

(10%) – Nonprofits in the News

Each student will prepare a short (1-2 pages) description of a legal issue affecting nonprofit law or a nonprofit currently and give a short (5 min. or less) presentation to the class about the issue. The issue can be a conflict within a nonprofit, a challenge by an attorney general, proposed legislation, or anything else going on that relates to the legal rules that apply to nonprofits.

(30%) – Final Exam

The Exam will take the form of questions posed by hypothetical clients. The questions will require short answer or short essay responses. About half of the exam will focus on state law issues and half on tax issues.

Due dates

Nonprofits in the News

Sign up

Group Project

Articles and Bylaws:	Sept. 10
Research Questions:	Oct. 1
Form 1023:	Oct. 21
Procedure Manual:	Nov. 5
Redraft of entire project:	last day of class

Reading Assignments:

- Aug. 18 Overview of the Nonprofit Sector, 1 - 63
- Aug. 20 Organization of a Nonprofit, Public Policy, 66 – 81
ORS 65.001, 65.004, 65.044- 65.064
- Aug. 25 Commercial Purposes, Charitable Purposes, 78 – 101
ORS 65.074, 65.077
- Aug. 27 Dissolution of a Nonprofit, Cy Pres, Deviation, 101 – 120
ORS 65.621-65.674 (skim)
- Sept. 3 Dissolution, Distribution of Assets, Conversion to a For-Profit Entity, 120 - 139
- Sept. 8 Board Powers, Fiduciary Duties - Duty of Care, 140 -173
ORS 65.301, 65.357
- Sept. 10 **Speaker:** David Atkin (lawyer who runs Nonprofit Support Services)
- Sept. 15 Directors' Liability, Fiduciary Duties - Duty of Loyalty, 173 – 204
ORS 65.357, 65.361
- Sept. 17 KSBE, Corporate Opportunity Doctrine, Proposals for Reform, 204 - 219
- Sept. 22 Fiduciary Duties – Obedience, Investment Responsibility, Compensation, 219 – 242
UPMIFA (handout)
- Sept. 24 Enforcement of Fiduciary Obligations, 242 – 266
ORS 65.040
- Sept. 29 Regulation of Charitable Solicitation, 269 - 305, 311 – 318
- Oct. 1 Charitable Solicitation: Problems and Proposals for Reform
Bill to regulate solicitation, proposed for the 2009 Oregon Legislature
Speaker: Susan Miller, Asst. Attorney General, Charities Division
- Oct. 6 Tax Exempt Status - Rationales and Theories, 320 - 349
- Oct. 8 Basic Requirements for Charitable Tax Exemption, Hospitals and Health Care
Organizations, 349 - 377
- Oct. 13 Public Interest Law Firms, Community Development, 377 - 390
- Oct. 15 Protection of the Environment, Disaster Relief, 390 - 399
- Oct. 20 Public Policy Limitation, 400 – 427

Oct. 22	Speaker: Lee Kersten (lawyer who advises nonprofit as part of a tax practice)
Oct. 27	Educational Organizations, State and Local Tax Exemptions, 427 - 444, 470 – 476
Oct. 29	Private Inurement and Intermediate Sanctions, 476 – 500
Nov. 3	Limitations on Lobbying, 500 – 532, p. 568-9 (problem 1)
Nov. 5	Limitations on Political Campaign Activities, 501(c)(4) Organizations, 532 - 570
Nov. 10	Commercial Activities, 593- 616
Nov. 12	Unrelated Business Income Tax, 616 - 639, 646 - 666
Nov. 17	Unrelated Business Income Tax, 666 - 685
Nov. 19	Private Foundations and Alternatives to PF Status, 751 – 759, 771 -780
Nov. 24	Federal Tax Treatment of PFs, Excise Taxes, 781 – 791

Due dates

Nonprofits in the News

Sign up

Group Project

Articles and Bylaws:	Sept. 10
Research Questions:	Oct. 1
Form 1023:	Oct. 21
Procedure Manual:	Nov. 5
Redraft of entire project:	last day of class

Professor: Harvey Goldschmid and Peter Swords
School: Columbia Law School
Course: Seminar in Nonprofit Institutions

Materials

Fishman & Schwarz, *Nonprofit Organizations: Cases and Materials*, Third Edition, Foundation Press 2006

Fishman & Schwarz, *Nonprofit Organizations: Statutes, Regulations and Forms*, Third Edition, Foundation Press 2006

Additional materials

Nonprofit Coordinating Committee of New York Web site

Overview

This seminar broadly examines the function and rationale for nonprofit institutions in American society. Considerable attention is given to the taxation of nonprofit organizations, including a consideration of the rationale for charitable exemptions, the unrelated business income tax and the impact of the Tax Reform Acts. In addition, consideration is given to the use of the corporate form by nonprofit organizations and comparisons are made with commercial enterprises. The seminar also deals with the lawyer's role in forming, chartering, obtaining a tax exemption for, and providing counseling to nonprofit organizations. An examination is made of the ways nonprofit organizations are misused and of the various methods used by the government to regulate them. Policy issues that concern nonprofits in general are covered. Select problems from the Fishman & Schwarz textbook are assigned, as are problem sets provided by the professors. Corporate by-laws of a nonprofit organization are discussed in seminar.

Order and Use of Text

The readings for the seminar primarily are assigned from the Fishman & Schwarz casebook with a few readings from the Fishman & Schwarz's Statutes, Regulations and Forms book. Chapters 9 and 10 covering tax exemption of mutual benefit and other noncharitable organizations and special problems of private membership associations, respectively, are the only chapters not assigned. Aside from the introduction section of the Fishman & Schwarz casebook, the chapters are not assigned in the same order as laid out in the textbook. On the topic of private foundations, most of chapter 7 is assigned. Chapter 3, on operation and governance is assigned for the next session and omits enforcement of fiduciary obligations. All of chapter 4 is covered and most of chapter 11 is covered as well, except for the topic of healthcare. Chapter 8, which covers charitable contributions excludes the topic of non-cash contributions. Lobbying and procedural issues are the topics assigned in chapter 5 on tax exemption of charitable organizations. The basics and introduction sections are assigned in chapters 2 and 3 to discuss the formation and dissolution of nonprofits and the commercial activities and unrelated business income, respectively. Supplementary materials are assigned throughout the course.

SEMINAR IN NONPROFIT INSTITUTIONS – 2007

#1 – September 6	Introduction/Overview	
#2 – September 13	NP Eligibility/Intermediate Sanctions	
#3 – September 20	Private Foundation/Public Charity	
# 4 – September 27	Governance, Operation, and Regulation	
# 5 – October 4	Governance, Operation, and Regulation	
# 6 – October 11	Governance, Operation, and Regulation	
# 7 – October 18	170	
# 8 – October 25	UBIT	
# 9 – November 1	Lobbying	
# 10 – November 8	Charitable Trust	
# 11 – November 15	Antitrust, Solicitation, and Other Nonprofit Issues	
November 22 Thanksgiving		
# 12 – November 29	S. Finance Committee, Independent Sector, and other Reform Proposals	
#13 – December 6	Great Debate	

SEMINAR IN NONPROFIT INSTITUTIONS (L9132)

For our first seminar class on Thursday, September 6th, please read pages 1-63 (omit Introductory Problem, p. 63) in James Fishman & Stephen Schwarz, Cases and Materials on Nonprofit Organizations (Foundation Press, 3d ed. 2006).

August 21, 2007

Harvey J. Goldschmid
Peter Swords

September 2007

SEMINAR IN NONPROFIT INSTITUTIONS (L9132x)

Reading Assignment for Class 3
"Forming a Nonprofit Institution: Basic Tax Issues – Part II"

1. NONPROFIT ORGANIZATIONS (NO) -- pp. 751 - 756; 760 - 762; 771 - 779, 781 – 786, 787 – 790 & 791 – 806.
2. Arts Group Problem (Problem #1) – Handout
3. Outline: Private Foundation Status and How to Avoid It – Handout
4. Problem #2 – Handout
5. NO Statutes, Regulations and Forms (NO/SFR) IRC § 170(a), (b) & (c) [pp. 231 - 238]; § 507 [pp. 292 – 296]; § 508 (a) & (b) [pp. 296 - 297] and § 509 [pp. 298 - 301].

For the Brave Hearted

6. NO/SFR Treas. Reg. sections 1.170A-9(e) [pp. 487 – 507] & 1.509(a)-3 [pp. 581 – 601].

For the Extraordinarily Brave Hearted

7. NO/SFR Treas. Reg. section 1.509(a) – 4 [pp. 601 – 615].

Class #3

Outline: Private Foundation Status and How to Avoid It

1. What is a private foundation and what is a public charity?
 - a) Define.
 - b) Section 509(a) presumption that all section 501(c)(3) groups are private foundations.
 - (i) Importance of achieving section 501(c)(3) status.
 - c) Policy reasons for and history of the distinction.
2. What are the problems with being classified as a private foundation?
 - a) Other private foundations are less likely to make a grant to organizations so classified.
 - b) Individuals are less likely to contribute real property, tangible personal property and securities not listed on a public market.
 - c) Chapter 42 provisions apply to an organization so classified.
 - (i) Excise tax.
 - (ii) Rules on self-dealing. There is an absolute prohibition on self-dealing between the private foundation and any disqualified persons (which includes board directors). Even if the transaction is to the benefit of the private foundation (e.g., services are provided by a director at below market value), the transaction is considered to be an act of self-dealing and the disqualified person shall be subject to a 5% tax on the amount involved (i.e., the amount received by the disqualified person) and a 200% tax on the amount involved if the transaction is not corrected generally before the IRS comes after the transaction.
 - (iii) Rules on excess business holdings.
 - (iii) Rules on expenditure responsibility.

(iv) Virtual prohibition on lobbying activities.

3. How does an organization avoid being classified as a private foundation?

- a) 509(a)(1) per se organizations: schools, churches, and hospitals.
- b) 509(a)(1) organizations which normally receive a substantial part of their support from governmental agencies and contributions from the general public.
- c) 509(a)(2) organizations which normally receive a substantial part of their support from exempt function income, grants from governmental agencies and contributions from the public.
- d) 509(a)(3) organizations.

4. 509(a)(1) organizations

- a) The public support fraction.
- b) The mechanical test (i.e., 33 1/3% of public support) and the "facts and circumstances" test (i.e., 10% of public support plus certain other factors).
- c) What is excluded from both the numerator and the denominator?
 - (i) Exempt function income and capital gains.
- d) What is included in the numerator?
 - (i) Government grants, e.g., a grant from the National Endowment for the Arts.
 - (ii) Grants from community foundations, e.g., United Way grants.
 - (iii) Contributions from individuals, corporations or trusts to the extent that they do not exceed 2% of total support.
- e) What is included in the denominator?
 - (i) Everything but exempt function income and capital gains.
- f) "Facts and circumstances" test factors.

(i) Attraction of public support.

(ii) Representative governing body.

(iii) Availability of public facilities.

g) Exclusion of unusual grants.

5. 509(a)(2) organizations

a) Basic differences from 509(a)(1).

(i) Includes gross receipts from exempt function income in both the numerator and denominator. Note, however, that if any receipt exceeds \$5,000 or 1% of total support for the year, it will not be included in the numerator.

(ii) Public support fraction must equal at least 33 1/3%, i.e., no 10% "facts and circumstances" test.

(iii) Limit on the amount of investment income and unrelated business income¹ (i.e., cannot have more than 33 1/3% of support from such income).

(iv) Contributions from "disqualified persons" are not included in the numerator. Disqualified persons include directors and officers or family of such persons and "substantial contributors." A substantial contributor is anyone who has contributed an aggregate amount of more than \$5,000 if such amount is more than 2% of total contributions received by the organization before the close of its taxable year.² Note that for 509(a)(2) it is 2% of "contributions" whereas for 509(a)(1) it is 2% of "total support". Note also that it is 2%, etc., of all contributions³ ever received by the organization rather than 2% total of support received during the taxable year as is the case under 509(a)(1).

¹

² If total contributions are \$250,000 or less the contribution must be \$5,000 or more to be excluded from the numerator in working out the support fraction. If total contributions are in excess of \$250,000, any contribution in excess of 2% of such amount must be excluded and any amount less than 2% may be included in the numerator.

³ "Contributions" are defined to include gifts from individuals and grants from foundations and government agencies.

6. 509(a)(3) organizations.

7. What does "normally receives" mean?

a) Four year moving average.

(i) An organization will be considered as normally meeting the one-third support test or the "facts and circumstances" test for its current tax year and the tax year immediately succeeding its current year if, for the 4 tax years immediately preceding the current tax year, the organization meets the support tests.

b) Example:

1998 1999 2000 2001 **2002 2003**
 1999 2000 2001 2002 **2003⁴** 2004
 2000 2001 2002 2003⁵ **2004 2005**

c) Exception for material changes in sources of support.

(i) Computation period changes to a five-year period consisting of the year of substantial change and the 4 years immediately preceding that year.

(ii) Problem of grantor reliance on grantee's public charity status.

(iii) Rev. Procs. 81-6 & 81-7.

8. How does an organization receive a determination that it is a public charity if it has not yet begun operation or received any support?

a) Advance ruling.

9. By what time must an application for section 501(c)(3) and public charity status be made?

⁴ Even though the organization might have failed the test for the 4 tax years immediately preceding the current tax year (2003), because it had met the requirements for the 4 years preceding that sequence (viz., 1998-2001), it would still be classified as a public charity in 1989. However, 2004 would be threatened unless the organization met the requirements for the 4-year period of 2000-2003.

⁵ It is assumed that the organization met the requirements for the years 2000-2003. As a consequence it would be classified as a public charity for the years 2004 and 2005 even though for a while it looked like it might lose its public charity classification for 1990.

a) 15 months from the date of existence.⁶

Peter Swords

Class #3

PROBLEM # 2

Membership Dues	\$2,000	
Small Individual Contributions	\$3,000	
Ford Foundation Grant		\$50,000
State Arts Council Grant		\$5,000
Gross Receipts from Sale of Tickets	\$9,000	
United Way Grant	\$3,000	
Investment Receipts		
Dividends	\$20,000	
Capital Gains	\$5,000	

⁶ Relief from the 15-month filing requirement is granted automatically if the organization submits a completed Form 1023 within 12 months from the end of the 15-month period. To get this extension, an organization must add the following statement at the top of its application: "Filed Pursuant to Section 301.9100-2"

Class #3The Arts Group Problem (Problem #1)

You are consulted by three young painters who represent a current avant-garde New York group with a distinct and readily identifiable style. They regard themselves as a fresh, new force in the art world, of great importance although almost entirely unrecognized by the public. They want to form an organization that will bring their work and that of their colleagues to the public's attention. They have in mind opening an art gallery that would display their works and from which lectures describing and explaining their work could be given. They would operate a lecture bureau which would respond to requests from groups and schools throughout the metropolitan area. In addition they want to publish a magazine that would display their work and contain critical and explanatory articles.

One of the painter's father owns a loft which he would be willing to sell or rent to the group for very little if he could receive some tax benefits. The three also claim to have an angel who is connected with a foundation which they think they can persuade to contribute \$50,000 a year to the group for several years to get them started. Furthermore, one of the painter's brothers is willing to contribute stock with a current fair market value of \$10,000 which he has in a closely held corporation that is not traded on a public market. Moreover, they believe that there are between 500 and 750 artists in New York who paint in the new style and would probably be willing to become dues paying members of the new group.

They have come to you because their angel told them that a grant would be made by her foundation only if their new group was tax exempt. It was also mentioned that there was some urgency in their acquiring a tax exemption since the foundation's board was meeting in a month with an unusually short agenda and a rather large amount of money with which to make grants. Moreover, it appears the foundation would be more inclined to fund the group before it became well known.

The Tax Questions

1. Unless you are careful, the organization would be classified as a private foundation. Why is this?
2. What is wrong with being classified as a private foundation?
3. What are the characteristics of an organization that will qualify it for other than "private foundation" status?
4. As the organization's adviser, what advice would you give it as to the kinds of funds it ought to be raising?

Seminar In Nonprofit Institution (L9132)

For our seminar class on Thursday, September 27, please read Casebook, pp. 140-214.
Please focus on:

1. Stern v. Lucy Webb, pp. 160 and 185;
2. Adelpia, p. 194;
3. Fitzgerald, p. 143;
4. Problem, pp. 172-73

Also, please read the Smithsonian Report (distributed in class).

September 19, 2007

Harvey J. Goldschmid

Seminar In Nonprofit Institution (L9132)

For our seminar class on Thursday, October 4, please read Casebook, pp. 214-68. Please answer the problem on page 235.

Harvey J. Goldschmid

October 2007

Reading Assignment for Class 6

Below is the reading assignment for our seminar class on Thursday, October 11.th

Regulation of Charitable Solicitation

1. NONPROFIT ORGANIZATIONS (Casebook) -- pp. 269-275, 285-305, and 311-315
2. Summary of NY Rules – Access www.npccny.org and click on Information Databank, and then go to Financial Matters and then click on the article “Registration and Reporting Requirements for Nonprofits.”

Nonprofits and the Anti-trust Laws

3. Section 1 and 2 of the Sherman Act, Statutory Supplement, p. 190.
4. Casebook, pp. 1090-92, 1110-39.

October 4, 2007

Harvey J. Goldschmid

Reading Assignment for Class Seven -- Charitable Contribution Deduction

1. NONPROFIT ORGANIZATIONS (NO) -- pp. 874-876, 894-900, 907-915, 938-942, and 970-976.
2. NO Statutes, Regulations and Forms -- IRC section 170(a) – (e)(5), § 170(f)(8) and § 6115 -- pp. 231-244, 249- 250 and 432.
3. Problems -- attached.

Charitable Contribution Deduction Problems

- (1) Suppose a donor contributes stock to Columbia University that has a fair market value on the date of the gift of \$1,000 which the donor had purchased three years ago for \$200. What should be the amount of the allowable charitable contribution deduction? (Compare the tax situation of the same person who instead of contributing stock to Columbia used it to satisfy a \$1,000 debt.) What would be the amount of the allowable charitable contribution deduction if the gift were made to a private foundation (other than one described in section 170(b)(1)(A)(vii))? What might a donor do with stock that has a fair market value on the date of gift of \$1,000 which the donor purchased three years ago for \$2,000.
- (2) Suppose the donor contributes stock to Columbia for which has a fair market value on the date of gift of \$101,000 and she has a \$1,000 basis in the stock. Assume she has \$101,000 of earned income on which no tax has been paid and that the ordinary income and capital gains rates are 30%. How much spending power does she give up by giving the stock to Columbia and not selling the stock?
- (3) Suppose a donor contributes an antique to Columbia that was inherited from the donor's grandfather 20 years ago when it was included in his gross estate at \$10,000 and on the date of gift the antique had a fair market value of \$50,000. It was auctioned off at a charity ball. What would be the amount of the allowable charitable contribution deduction?
- (4) Suppose a donor gives a remainder interest to Columbia in a painting worth \$50,000, reserving a life-estate in the painting for himself. What would be the amount of the allowable charitable contribution deduction?
- (5) Suppose an artist gives one of her paintings to Columbia when similar ones in the series have recently sold for \$50,000. What would be the amount of the allowable charitable contribution deduction?
- (6) Suppose a donor had planned to give to Columbia \$2,500 out of available cash savings and had stock with a current fair market value of \$2,500 and a cost basis of \$1,000. What might she do to advantage her after-tax income?
- (7) Suppose the donor in problem (5) sells the stock to Columbia University for \$200. What would be the taxable gain, if any, realized upon the sale? What would be the amount, if any, of the allowable charitable contribution deduction?
- (8) Suppose a donor with a contribution base of \$50,000 in 2002 makes a charitable contribution in cash to a church of \$20,000 and a \$7,000 charitable contribution to a private foundation (other than once described in section 170(b)(1)(A)(vii)). What would be the amount of the allowable charitable

contribution deduction for 2002? Would any carryover of excess contributions be allowable for succeeding years?

- (9) (a) Suppose a donor with a contribution base of \$50,000 in 2001 and a contribution base of \$40,000 in 2002 makes in 2001 a charitable contribution in cash to a church of \$26,500 and \$1,000 to a private foundation (other than one described in section 170(b)(1)(A)(vii)) and in 2002 a charitable contribution in cash to the church of \$19,000 and \$600 to the private foundation. What would be the amounts of allowable charitable contribution deductions for 2001 and 2002? Would any carryover of excess contributions be allowable for succeeding years?
- (b) Suppose the same facts as in problem (8(a)) except that the donor has a contribution base of \$42,000 for 2002. What would be the amount of allowable charitable contribution deduction for 2002? Would any carryover of excess contributions be allowable for succeeding years?

Fall, 2006

October 2007

Reading Assignment for Class 8 Nonprofits and Political Activity

5. NONPROFIT ORGANIZATIONS (Casebook) -- pp. 500-504, 512-540, 549-551 (through note 5), 553-554, 555-560. [For the ambitious – 560-567.]
6. The section 501(h) Election – Access www.npccny.org and click on Information Databank and then right under Advocacy and Lobbying at the top on the articles “Lobbying and the 501(h) Election: an Introduction” and “The 501(h) Election” (members only). To access members only material, use “npccny” as your User Name and “M295” as your password.

BY-LAWS⁷ OF
ABC CORPORATION

ARTICLE I

NAME

This corporation is and shall be known as ABC Corporation (the “Corporation”).

ARTICLE II

MEMBERS

The Corporation shall have no members.⁸

ARTICLE III

BOARD OF DIRECTORS

Section 1. Powers and Number. The Corporation shall be managed by the Board of Directors (the “Board”).⁹ The number of Directors constituting the entire Board shall be determined by a vote of the majority of the entire Board from time to time and shall be at least three but no more than [___]/[fifteen].¹⁰

⁷ NY N-PCL § 602 provides guidance on adopting, amending and repealing by-laws. The initial by-laws must be adopted by the corporation’s incorporators at the organization meeting or by the Board. In addition, NY N-PCL § 202(a)(13) authorizes corporations to adopt, amend or repeal by-laws.

⁸ NY N-PCL § 601(a) indicates that Type B corporations (defined in NY N-PCL § 201(b) as those formed for the following purposes: charitable, educational, religious, scientific, literary, cultural or prevention of cruelty to children or animals) may choose not to have members. Provision for no members must be set forth in the certificate of incorporation or the by-laws.

⁹ NY N-PCL §§ 701(a). This is the default provision, unless the certificate of incorporation provides otherwise.

¹⁰ NY N-PCL §§ 702(a) requires the number of directors to be at least three. Subject to this minimum, the number may be fixed by the by-laws. However, NY N-PCL § 707 calculates the statutory minimum for a quorum of directors differently depending on whether the Board has more than fifteen directors. Thus, Sections 2 (Election and Term of Office) and 11 (Quorum and Voting) must be drafted to be compatible. Also see footnote 17. In any event, for practical reasons, it may be advisable to have a smaller Board, especially for a newly organized corporation. This will facilitate adoption of resolutions and other administrative matters.

Section 2. Election and Term of Office. The initial Directors shall be the persons named in the certificate of incorporation, and they shall serve until the first annual meeting of the Board.¹¹ At each annual meeting, the Board, by majority vote, shall elect Directors to hold office for a term of one year,¹² and each such Director shall continue in office for such term and until such Director's successor shall have been elected or qualified, or until such Director's death, resignation or removal.¹³

Section 3. Newly Created Directorships and Vacancies. Newly created Directorships and vacancies among the Directors for any reason may be filled by a majority vote of the Directors,¹⁴ and the Directors so elected shall serve until the next annual meeting of Directors.¹⁵

Section 4. Resignations. Any Director may resign from office at any time by delivering a resignation in writing to the President or Secretary, and the acceptance of such resignation, unless required by the terms thereof, shall not be necessary to make such resignation effective.

Section 5. Removal. Any Director may be removed at any time with cause by a majority vote of the entire Board,¹⁶ such removal to take effect immediately upon such vote.

Section 6. Meetings. Meetings of the Board may be held at any place within or without the State of New York¹⁷ as the Board may from time to time fix,¹⁸ or as shall be specified in the notice or waivers of notice thereof.

Section 7. Annual Meetings. The annual meeting of the Board for the election of Directors and officers of the Corporation and for the transaction of such other business as may properly come before the meeting, shall be held at such time and place as may be specified by the Board.¹⁹

Section 8. Other Regular Meetings. With respect to regular meetings other than the annual meeting, the Board shall meet at times and places to be specified by the Board.²⁰

Section 9. Special Meetings. Special meetings of the Board may be called at any time by the President [or Vice President]²¹ or upon written demand of not less than one-fifth of the entire Board.²²

¹¹ NY N-PCL § 405(a). The directors designated in the certificate of incorporation shall hold an organizational meeting at which directors will be elected to serve as provided in the certificate of incorporation or by-laws. However, under NY N-PCL § 405(b), an organizational meeting is not necessary if each director named in the certificate of incorporation signs an instrument electing the directors.

¹² NY N-PCL § 703(a). Corporations may choose whether directors will be elected at large and/or by districts/sections and/or by virtue of their position or office. NY N-PCL § 703(b) sets the maximum term for directors (except ex officio directors, permitted by § 713(d)) at five years. One year is the default if the term is not specified in the certificate of incorporation or by-laws.

¹³ NY N-PCL § 713(a).

¹⁴ NY N-PCL § 703(c).

¹⁵ NY N-PCL § 705(a). This is the default provision unless the certificate of incorporation or by-laws provide otherwise.

¹⁶ NY N-PCL § 705(c).

¹⁷ NY N-PCL § 706(a). Directors may be removed for cause by majority vote of the directors subject to the requirement that there be a quorum of not less than a majority of directors present for the vote.

¹⁸ NY N-PCL § 710(a).

¹⁹ NY N-PCL § 710(b).

²⁰ NY N-PCL § 710(a), (b). Meetings may be held at any place or time unless the certificate of incorporation or by-laws provide differently.

²¹ NY N-PCL § 710(a), (b).

²² NY N-PCL § 710(c). The president and any other officer specified by the by-laws or by the Board may call a special meeting.

Section 10. Notice of Meetings. Notice of the time and place of each meeting of the Board shall be mailed to each Director,²³ postage prepaid, addressed to such Director at such Director's residence or usual place of business (or at such other address as such Director may have designated in a written request filed with the Secretary), sent by electronic mail or other form of electronic communication or given personally or by telephone no less than [forty-eight hours] before the time at which such meeting is to be held.²⁴ Notice of a meeting need not be given to any Director who submits a signed waiver of notice whether before or after the meeting, or who attends the meeting without protesting prior thereto or at its commencement, the lack of notice to such Director.²⁵

Section 11. Chairperson. The Board may elect a Chairperson, to be present at and preside over all meetings of the Board.

Section 12. Quorum and Voting. Unless a greater proportion is required by law, [____]/[one-third] of the entire Board shall constitute a quorum for the transaction of business or of any specified item of business.²⁶ Except as otherwise provided by law or by these by-laws, the vote of a majority of the Directors present at the time of the vote, if a quorum is present at such time, shall be the act of the Board.²⁷

Section 13. Presence at Meeting by Telephone. Any one or more members of the Board or any committee thereof may participate in any meeting of the Board or of such committee by means of a conference telephone or similar equipment allowing all persons participating in such meeting to hear one another at the same time. Participation by such means shall constitute presence in person at the meeting.²⁸

Section 14. Action by Written Consent. Except as at the time otherwise required or permitted by law, any action required or permitted to be taken at any meeting of the Board or any committee thereof may be taken without a meeting if all members of the Board or of such committee consent in writing to the adoption of a resolution authorizing the action. The resolution and written consents thereto shall be filed with the minutes of the proceedings of the Board or of such committee.²⁹

²² NY N-PCL § 710(c).

²³ NY N-PCL § 711(a). Notice to the directors of special meetings is required.

²⁴ NY N-PCL § 711(b). The by-laws may prescribe what constitutes notice of a meeting, including the amount of time that must pass between the notice and the meeting. Of course, reasonable provisions calculated to reasonably notify Board members should be adopted.

²⁵ NY N-PCL § 711(c).

²⁶ NY N-PCL §§ 707 calculates the statutory minimum for a quorum of directors differently depending on whether the Board has more than fifteen directors. If a Board has fifteen members or less, the quorum must be at least one-third of the number of members. If a Board has more than fifteen members, the quorum must be at least five members plus one additional member for every ten members in excess of fifteen. Thus, Sections 2 (Election and Term of Office) and 11 (Quorum and Voting) must be drafted to be compatible. Also see footnote 4. In addition, note that if a corporation has only three directors, the provisions for a quorum of one-third of the Board effectively means that a single director could make decisions for the Board in certain circumstances. For small Boards, consider increasing to one-half.

²⁷ NY N-PCL § 708(d).

²⁸ NY N-PCL § 708(c). This is not a default; it must be specified in the certificate of incorporation or the by-laws.

²⁹ NY N-PCL § 708(b). This is the default and, if not desired, must

Section 15. Compensation. Any Director of the Corporation is authorized to receive a reasonable salary or other reasonable compensation for services rendered to the Corporation.³⁰

ARTICLE IV

OFFICERS, EMPLOYEES, AGENTS

Section 1. Number and Qualifications. The officers of the Corporation shall be a President, one or more Vice Presidents, a Secretary, a Treasurer and such other officers, if any, including Assistant Secretaries or Assistant Treasurers, as the Board may from time to time appoint.³¹ [The President shall be chosen from among the Directors.]³² The other officers of the Corporation may, but need not, be Directors. One person may hold two or more offices, except the offices of President and Secretary.³³ [No instrument required to be signed by more than one officer may be signed by one person in more than one capacity.]³⁴

Section 2. Election and Term of Office. The officers of the Corporation shall be elected by the Board³⁵ at the organizational meeting of the Board and at every annual meeting thereafter.³⁶ Vacancies may be filled or new offices created and filled at any meeting of the Board. Each officer shall hold office until the annual meeting of the Board following such officer's election or until a successor shall have been elected and shall have qualified,³⁷ or until such officer's earlier death, resignation or removal.

Section 3. Employees and Other Agents. The Board may appoint from time to time such employees and other agents as it shall deem necessary,³⁸ each of whom shall hold office at the pleasure of the Board, and shall have such authority and perform such duties and shall receive such reasonable

explicitly be made unavailable in the certificate of incorporation or by-laws.

³⁰ NY N-PCL § 515. A non-profit may pay reasonable compensation to its directors and officers. However, it may not pay dividends or distribute its profits.

³¹ NY N-PCL § 713(a) The Board may appoint officers of its choice or as provided in the by-laws. Note that alternative titles (e.g. "Chief Executive Officer" instead of "President") may be provided in the certificate of incorporation or by-laws.

³² This provision is optional and is neither prescribed nor mentioned by the NY N-PCL.

³³ NY N-PCL § 713(a).

³⁴ This is not required by the NY N-PCL but such a provision may be prudent.

³⁵ NY N-PCL § 713(a), (b). The certificate of incorporation may authorize the president to appoint officers, subject to the Board's approval.

³⁶ NY N-PCL § 713(c). All officers are to be elected annually unless the certificate of incorporation or by-laws specify otherwise.

³⁷ NY N-PCL § 713(c). The default term of appointment for officers is one year.

³⁸ NY N-PCL § 202(a)(12). The corporation is empowered to appoint officers, employees and other agents and to define their duties. Also, NY N-PCL § 602(f) provides that the by-laws may include any provisions relating to the conduct of its affairs and the rights and powers of its directors and officers.

compensation as the Board may from time to time determine.³⁹ To the full extent allowed by law and the certificate of incorporation of the Corporation, the Board may delegate to any employee or agent any powers possessed by the Board.

Section 4. Removal. Any officer, employee or agent of the Corporation may be removed with or without cause by a vote of the majority of the entire Board.⁴⁰

Section 5. Vacancies. In case of any vacancy in any office, a successor to fill the unexpired portion of the term may be elected by the Board.

Section 6. President: Powers and Duties.⁴¹ The President shall have general supervision of the affairs of the Corporation, and shall keep the Board fully informed about the activities of the Corporation. If the Board has not elected a Chairperson, the President shall serve as the Chairperson of the Board. The President has the power to sign alone, unless the Board shall specifically require an additional signature, in the name of the Corporation all contracts authorized either generally or specifically by the Board. The President shall perform such other duties as shall from time to time be assigned by the Board.

Section 7. Vice President: Powers and Duties.⁴² The Vice President shall have such powers and duties as may be assigned to him by the Board. In the absence of the President, the Vice President shall perform the duties of the President.

Section 8. Secretary: Powers and Duties.⁴³ The Secretary shall act as secretary of all meetings. The Secretary shall be responsible for the giving and serving of all notices of the Corporation and shall perform all the duties customarily incident to the office of the Secretary, subject to the control of the Board, and shall perform such other duties as shall from time to time be assigned by the Board.

Section 9. Treasurer: Powers and Duties.⁴⁴ The Treasurer shall keep or cause to be kept full and accurate accounts of receipts and disbursements of the Corporation, and shall deposit or cause to be deposited all moneys and other valuable effects of the Corporation in the name and to the credit of the Corporation in such banks or depositories as the Board may designate. At the annual meeting of the Board and whenever else required by the Board, the Treasurer shall render a statement of the Corporation's accounts.⁴⁵ The Treasurer shall at all reasonable times exhibit the Corporation's books

³⁹ NY N-PCL §715(f) provides that "[t]he fixing of salaries of officers, if not done in or pursuant to the by-laws, shall require the affirmative vote of a *majority of the entire board* unless a higher proportion is set by the certificate of incorporation or by-laws" (emphasis added). This standard may become burdensome for an organization with a large board, particularly if many of the directors are not active. It is therefore worth considering whether making specific provision in the by-laws for a compensation committee or other less cumbersome method of fixing compensation.

⁴⁰ NY N-PCL § 714(a).

⁴¹ NY N-PCL § 202(a)(12) empowers a corporation to elect or appoint officers and define their duties, and NY N-PCL § 602(f) permits the by-laws to contain provisions relating to the rights or powers of officers. NY N-PCL § 713(e) provides that officers shall have authority to perform their duties as provided in the by-laws and by the Board.

⁴² Id.

⁴³ Id.

⁴⁴ Id.

⁴⁵ NY N-PCL § 519. The president and treasurer are responsible for presenting an annual report to the Board.

and accounts to any officer or Director of the Corporation and shall perform all duties incident to the position of Treasurer subject to the control of the Board.

ARTICLE V

COMMITTEES

Section 1. Committees of the Board. The Board may, by resolution adopted by a majority of the entire Board, establish and appoint an executive and other standing committees.⁴⁶ The President shall appoint a chairperson of each committee. Each committee so appointed shall consist of three or more Directors⁴⁷ and, to the extent provided in the resolution establishing it, shall have all the authority of the Board except as to the following matters:

1. the filling of vacancies on the Board or on any committee;⁴⁸
2. the amendment or repeal of the by-laws or the adoption of new by-laws;⁴⁹
3. the amendment or repeal of any resolution of the Board which by its terms shall not be so amendable or repealable;⁵⁰
4. the fixing of compensation of the Directors for serving on the Board or any committee.⁵¹

At any meeting of such standing committee, the presence of a majority of its members then in office shall constitute a quorum for the transaction of business. Special committees may be appointed by the President with the consent of the Board and shall have only the powers specifically delegated to them by the Board, provided that no such committee shall have any powers not authorized for standing committees pursuant to this Section 1 of this Article V.⁵²

Section 2. Committees of the Corporation. The Board may create committees other than standing or special committees to be committees of the Corporation. Any such

⁴⁶ NY N-PCL § 712(a). The Board may adopt committees by this procedure only if the certificate of incorporation or by-laws so provide.

⁴⁷ NY N-PCL § 712(a). Committees of the Board are required by law to consist of at least three directors. Thus, this provision may not be especially relevant for a corporation with a small Board. Nonetheless, it may be prudent to retain it at the outset in order to avoid having to amend the by-laws in the future.

⁴⁸ NY N-PCL § 712(a)(2).

⁴⁹ NY N-PCL § 712(a)(4).

⁵⁰ NY N-PCL § 712(a)(5).

⁵¹ NY N-PCL § 712(a)(3). See footnote 33 regarding compensation of officers.

⁵² NY N-PCL § 712(c).

committees created by the Board shall be appointed by the President with the consent of the Board. Such committees may consist of Directors and others.⁵³

ARTICLE VI

CONTRACTS, CHECKS, BANK ACCOUNTS AND INVESTMENTS⁵⁴

Section 1. Checks, Notes and Contracts. The Board is authorized to select such depositories as it shall deem proper for the funds of the Corporation and shall determine who shall be authorized on the Corporation's behalf to sign bills, notes, receipts, acceptances, endorsements, checks, releases, contracts and other documents.

Section 2. Investments. The funds of the Corporation may be retained in whole or in part in cash or may be invested and reinvested from time to time in such property, real, personal or otherwise, including stocks, bonds or other securities, as the Board may deem desirable.⁵⁵

ARTICLE VII

OFFICE AND BOOKS

Section 1. Office. The office of the Corporation shall be located at such place within or without the State of New York as the Board may from time to time determine.⁵⁶

Section 2. Books. There shall be kept at the office of the Corporation correct books of account of the activities and transactions of the Corporation including a minute book, which shall contain a copy of the charter, a copy of these by-laws, and all minutes of meetings and written consents of the Board.⁵⁷

ARTICLE VIII

FISCAL YEAR

⁵³ NY N-PCL § 712(e). Committees of the corporation (those that are not standing or special committees of the Board) may be elected or appointed in the same manner as officers (see NY N-PCL § 713).

⁵⁴ NY N-PCL § 202(a) authorizes corporations to enter into contracts, leases, etc.

⁵⁵ Article 5 of the NY N-PCL governs corporate finance. NY N-PCL § 512 governs investments in particular.

⁵⁶ NY N-PCL § 202(a)(11).

⁵⁷ NY N-PCL § 621(a) requires the corporation to keep at its office correct and complete books and records of accounts and minutes of its proceedings. These records may be kept outside of the state.

The fiscal year of the Corporation shall be the [calendar year].⁵⁸

ARTICLE IX

INDEMNIFICATION⁵⁹

The Corporation shall, to the fullest extent now or hereafter permitted by law,⁶⁰ indemnify any person made, or threatened to be made, a party to any action or proceeding, whether civil or criminal, by reason of the fact that he, his testator or intestate is or was a Director, officer, employee or agent of the Corporation, against judgments, fines, amounts paid in settlement and reasonable expenses, including attorneys' fees and shall advance the expenses of such person in defending such an action or proceeding,⁶¹ except to the extent specifically prohibited by law.⁶² The Corporation may make provision with respect to such indemnification of or advancement of expenses⁶³ to officers and Directors by agreement or by resolution of the Board of Directors.⁶⁴

⁵⁸ Choice of fiscal year is left to the discretion of the corporation.

⁵⁹ NY N-PCL § 202(a)(2) empowers corporations to indemnify personnel.

⁶⁰ NY N-PCL §§ 717-726 govern indemnification of directors and officers.

⁶¹ NY N-PCL § 722(a) authorizes the corporation to indemnify officers and directors if the indemnified person acted in good faith for a purpose s/he reasonably believed to be lawful and in the best interests of the corporation. In addition to indemnification by the corporation, directors and officers serving without compensation may not be held liable for official conduct except in egregious cases (NY N-PCL § 720). Furthermore, any director or officer discharging his/her duties in accordance with NY N-PCL § 717(a) may not be held liable for official conduct undertaken in reliance on information and reports provided by officers, employees, attorneys, accountants or Board committees (NY N-PCL § 717(b)).

⁶² NY N-PCL § 721 prohibits a corporation from indemnifying an officer or director for acts committed in bad faith, with intentional dishonesty or for personal gain. NY N-PCL § 719 holds a director liable to creditors, members and other beneficiaries of the corporation's activities for voting for certain corporate actions (e.g. unauthorized distributions) unless s/he discharged his/her duty under NY N-PCL § 717. Also, NY N-PCL § 720 sets forth a cause of action against an officer or director on behalf of the corporation for certain prohibited conduct. However, NY N-PCL § 720-a states that, except for proceedings brought by the attorney general and the cause of action provided in NY N-PCL § 720, a director or officer serving without compensation may not be held liable for official conduct unless such conduct constituted gross negligence or was intended to cause harm.

⁶³ NY N-PCL § 723(c) authorizes the corporation to advance expenses if the director or officer executes an undertaking agreeing to re-pay the expenses if s/he is ultimately found not to be entitled to indemnification. Also see NY N-PCL § 725 for further provisions regarding the timing of indemnification payments.

⁶⁴ NY N-PCL § 726 empowers a corporation to purchase insurance to

ARTICLE X

AMENDMENTS⁶⁵

These by-laws may be amended by majority vote of the Board at any meeting of the Board, provided that notice of the proposed amendment has been included in the notice of the meeting.⁶⁶

indemnify directors even when the code otherwise forbids indemnification (in such a case, the insurance must provide for a retention amount and co-insurance). However, such indemnification insurance must be limited to the cost of defense if the insured person's deliberately dishonest actions are material to the cause of action or resulted in his/her advantage or financial gain.

⁶⁵ NY N-PCL § 202(a)(13) empowers a corporation to amend by-laws.

⁶⁶ NY N-PCL § 602(b).

**DEBEVOISE & PLIMPTON LLP
NOT-FOR-PROFIT PRACTICE GROUP
MODEL DOCUMENT**

Model Delaware Nonprofit Bylaws

This model document is for general guidance only in connection with the formation of a nonstock, nonprofit corporation.

Delaware law regarding nonprofits departs significantly from New York law in many respects. Please read the footnotes of this model carefully, as well as the relevant sections of the Delaware General Corporation Law, for information on the scope of these differences.

Please adapt this model to reflect the terms of your particular transaction.

BYLAWS OF
[NAME OF NONPROFIT]

Adopted on [_____, 200]

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BYLAWS⁶⁷ OF
[NAME OF NONPROFIT]⁶⁸

NAME

Name. *The name of this corporation is [_____] (the “Corporation”).*

MEMBERS⁶⁹

Members. *The only members of the Corporation shall be the persons who at the time of determination are directors of the Corporation. The initial members of the Corporation shall be the individuals named in the Corporation’s certificate of incorporation as the initial directors of the Corporation. Any person who accepts election as a director of the Corporation pursuant to these bylaws shall automatically, and without any further action or writing (a) become and remain a member of the Corporation for as long as he or she remains a director of the Corporation, and (b) cease to be a member of the Corporation at the time he or she ceases to be a director of the Corporation.*⁷⁰

Meetings of Members. *7. An annual meeting of members for the election of directors and for the transaction of such other business*

⁶⁷ This note and all footnotes labeled “Drafting Notes” should be removed prior to the adoption of any bylaws based on this model. Unlabeled notes (see, e.g., footnote 72) would remain in the operative bylaw document.

⁶⁸ Drafting Note: The DGCL uses “nonstock” and “nonprofit” without hyphens, and this document follows suit.

⁶⁹ Drafting Note: This form is designed for a nonprofit corporation in which the directors are the only members of the corporation. If there are to be members independent of the directors (e.g., “public” members or members representing the donor whose funds endow the corporation) changes will be required. Seek legal advice.

⁷⁰ Drafting Note: Delaware counsel have advised that there is no authority for Delaware nonstock corporations (unlike New York not-for-profit corporations) to dispense with members. The accepted Delaware solution (reflected in 0) for Delaware nonprofit corporations that do not wish to have broad-based membership is to provide that the only members of the corporation will be the members of its board of directors.

for which a vote of members is required by law⁷¹ shall be held each year either within or without the State of Delaware on such date and at such place and time as are designated by resolution of the Corporation's board of directors (the "Board").

A special meeting of the members for any purpose for which a vote of members is required by law may be called at any time by resolution of the Board, to be held either within or without the State of Delaware on such date and at such time and place as are designated in such resolution. [DGCL 211(a), (d)]⁷²

Each member shall have one vote at a meeting of members. The Secretary of the Corporation (the "Secretary") shall cause notice of each meeting of members including the annual meeting to be given to each member entitled to vote at such meeting in writing (i) by such electronic transmission or recognized overnight domestic courier⁷³ service as such member may have specified to the Corporation or (ii) if no such means for notice shall have been specified by a member, by first class mail postage prepaid to such member's postal address as shown on the records of the Corporation, not less than 10 days nor more than 60 days prior to the meeting except where a different notice period is required by law.⁷⁴ Such notice shall specify (i) the place, if any, date and time of such meeting, (ii) the means of remote communications, if any, by which members and proxy holders may be deemed to be present in person and vote at such meeting, (iii) in the case of a special meeting, the purpose or purposes for which such meeting is called, and (iv) such other information as may be required by law or as may be deemed appropriate by the Board. The quorum for a meeting of

⁷¹ Drafting Note: Article VII of the related model certificate of incorporation (#21974791) provides that the members may vote only to the extent a vote of members is required by law.

⁷² The citations (at the end of each section and in the footnotes), as well as the footnotes themselves, are inserted for reference and assistance in administration only, and do not constitute a part of the bylaws. **Statutory citations, including those within the text, and footnote descriptions of the requirements of the DGCL, refer to the DGCL as in effect on August 1, 2006 and may become inaccurate with the passage of time.**

⁷³ Drafting Note: A nonstock corporation with wide-spread membership would not want (for cost reasons) to permit members to designate a courier service for notice of meetings. These notice provisions are intended for a nonstock corporation in which the directors are the only members.

⁷⁴ The DGCL should be checked for different notice periods whenever the corporation contemplates an action changing its nature or structure (such as a merger).

members shall be that number of members equal to a majority of the total number of directors authorized at such time and unless otherwise required by law, the certificate of incorporation or these bylaws the members shall act by a vote of a majority of the members present at any meeting at which a quorum is present.⁷⁵ The Board may establish additional rules for conducting or adjourning a meeting of members to the extent consistent with the DGCL, the Corporation's certificate of incorporation and these bylaws.

The record date for determining members eligible to vote for any meeting of members shall be the close of business on the day prior to the sending of notice to members or, if all members waive notice, the date of such meeting. Each member entitled to vote at a meeting of members may authorize another person or persons to act for such member by proxy.⁷⁶ A member may revoke any proxy which is not by law irrevocable⁷⁷ by attending the meeting and voting in person or by filing with the Secretary either an instrument in writing revoking the proxy or another duly executed proxy bearing a later date.

A waiver of notice of meeting by a member provided to the Corporation in writing or by electronic transmission, whether given before or after the meeting time stated in such notice, is deemed equivalent to notice. Attendance of a member at a meeting is a waiver of notice of such meeting, except when the member attends a meeting for the express purpose of objecting at the beginning of the meeting to the transaction of any business at the meeting on the ground that the meeting is not lawfully called or convened. [DGCL 229]

⁷⁵ Because the members of the corporation are the same as the directors of the corporation, these bylaws require the same quorum for meetings of members as for meetings of directors. If vacancies on the Board make such a quorum impossible to attain, Section 3.14 of these bylaws provides for interim filling of vacancies on the Board by action of the Board.

⁷⁶ See DGCL 212(c), made applicable to nonstock corporations by DGCL 215(a), for a non-exclusive statement of how a proxy may be granted.

⁷⁷ DGCL 212(e) deals with irrevocable proxies for stock corporations. DGCL 215, dealing with voting and proxies of members of nonstock corporations, does not make DGCL 212(e) applicable to nonstock corporations, although it does make other provisions of DGCL 212 applicable to nonstock corporations. Accordingly these bylaws take no position as to whether a proxy by a member can be made irrevocable, and the question is therefore left to general Delaware law.

Pursuant to the Corporation's certificate of incorporation, action by the members without a meeting requires the unanimous consent of the members.⁷⁸ [DGCL 228(b)]

BOARD OF DIRECTORS

General Powers. *Except as may otherwise be provided by law or by its certificate of incorporation, the business and affairs of the Corporation shall be managed by or under the direction of the Board, which shall be, and shall possess all the powers of, the "governing body" of the Corporation under the DGCL. The directors shall act only as a Board, and the individual directors shall have no power as such. [DGCL 141(a)]*

Number of Directors. *There shall initially be the number of directors set forth in the Corporation's certificate of incorporation. The Board may from time to time authorize, by resolution adopted by the affirmative vote of directors constituting a majority of the total number of directors authorized at the time of such vote, a change in the number of members in the Board, but the number shall at all times be not less than three and not more than [nine].⁷⁹ Each of the directors shall be a natural person. [DGCL 141(b)]*

Election of Directors. *The initial directors of the Corporation shall be the persons named in its certificate of incorporation. The initial directors shall serve until the first annual meeting of members. Except as otherwise provided in 0 and 0 of these bylaws, the directors shall be elected at each annual meeting of members by the vote of a*

⁷⁸ Drafting Note: This clause and the corresponding provisions in Article VII of the related form of certificate of incorporation (#21974791) are not appropriate unless the only members of the Corporation are the directors. They exist for consistency with DGCL 141(f), which requires that action by the directors without a meeting be by unanimous consent.

⁷⁹ Drafting Note: There is no upper limit imposed by law. Keep in mind, however, that the granting of directorships to reward large contributors or attract the participation of persons who can help achieve the goals of a nonprofit corporation can lead to a Board that is so large as to be unwieldy, or to the potentially disruptive presence on the Board of individuals who in fact have little interest in fulfilling their fiduciary responsibilities as directors.

majority of the persons then constituting the members.⁸⁰ Each director shall hold office until the next annual meeting of members and until his or her successor has been duly elected and qualified, or until his or her earlier death, resignation or removal.

Annual and Regular Meetings. The annual meeting of the Board for the purpose of electing officers of the Corporation and for the transaction of such other business as may properly come before the meeting shall be held each year either within or without the State of Delaware on such date and at such time and place as are designated by resolution of the Board and in any event shall occur reasonably promptly after the annual meeting of members referred to in 7. Regular meetings of the Board shall be held on such dates, and at such times and places as are determined from time to time by resolution of the Board. [DGCL 141(g)]

Special Meetings. Special meetings of the Board shall be held whenever called by the Chair, the President or, in the event of the absence or disability of either of such persons, by any Vice President, or upon written demand of not less than one-third of the total authorized number of directors, at such place, date and time as may be specified in the respective notices of such meetings. Any business may be conducted at a special meeting.

Notice of Meetings; Waiver of Notice.

Notice of the annual meeting of the Board need not be given if it is held immediately after the annual meeting of members for the election of directors and all directors not present at such meeting of members are present at the meeting of the Board. Notice of regular meetings of the Board need not be given if notice of the resolution setting forth the date, time and place of regular meetings of the Board has been given in the manner contemplated by this Section. Notices of special meetings shall be given to each director, and notice of each resolution or other action affecting the date, time and place of one or more regular meetings shall be given to each director not present at the meeting adopting such resolution or other action (subject to 0 of these bylaws). Notices of meetings shall be

⁸⁰ **Drafting Note:** A corporation, including a nonprofit corporation, may choose to have a staggered board whereby, for example, one-third of the board would be elected each year. DGCL 141(d). But then other changes would be required in these bylaws. See, e.g., the second Drafting Note to 0.

given personally or by electronic transmission at least two days prior to the meeting, or by a writing delivered by a recognized overnight courier service dispatched at least three days prior to the meeting, or by regular mail (postage prepaid) dispatched at least six days prior to the meeting, directed to each director by such means of electronic transmission, or at such address, as the case may be, from time to time designated by such director to the Secretary.

A written waiver of notice of meeting signed by a director or a waiver by electronic transmission by a director, whether given before or after the meeting time stated in such notice, is deemed equivalent to notice.

Attendance of a director at a meeting is a waiver of notice of such meeting, except when the director attends a meeting for the express purpose of objecting at the beginning of the meeting to the transaction of any business at the meeting on the ground that the meeting is not lawfully called or convened. [DGCL 229]

Quorum; Voting. *At all meetings of the Board, the presence of a majority of the total number of directors authorized at the time of such vote shall constitute a quorum for the transaction of business.⁸¹ Except as otherwise required by law, the Corporation's certificate of incorporation or these bylaws, the vote of a majority of the directors present at any meeting at which a quorum is present shall be the act of the Board. An interested director may be counted in determining the presence of a quorum at a meeting of the Board that discusses, or authorizes as provided in 0, a contract or transaction in which such director is interested.*

Presence by Telephonic Communications. *Members of the Board may participate in any meeting of the Board by means of a conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other at the same time, and participation in a meeting by such means shall constitute presence in person at such meeting. [DGCL 141(c)]*

⁸¹ Drafting Note: DGCL 141(j) provides that the quorum for a meeting of directors of a nonstock corporation may be set by the bylaws to be as low as 1/3 of the members of the board if so provided in the certificate of incorporation. DGCL 141(j) also states that the certificate of incorporation of a nonstock corporation may provide for other deviations from the general requirements of DGCL 141. This is not recommended except with legal advice and a special reason for doing so.

Adjournment. A majority of the directors present may adjourn any meeting of the Board to another date, time or place, whether or not a quorum is present. No notice need be given of any adjourned meeting unless (a) the date, time and place of the adjourned meeting are not announced at the time of adjournment, in which case notice conforming to the requirements of 0 of these bylaws applicable to special meetings shall be given to each director, or (b) the meeting is adjourned for more than 24 hours, in which case the notice referred to in clause (a) shall be given to those directors not present at the announcement of the date, time and place of the adjourned meeting. At any adjourned meeting, the directors may transact any business that might have been transacted at the original meeting.

Action Without a Meeting. Any action required or permitted to be taken at any meeting of the Board may be taken without a meeting if all members of the Board consent thereto in writing or by electronic transmission and such writing or writings or electronic transmissions are filed with the minutes of proceedings of the Board. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form. [DGCL 141(f)]

Regulations. To the extent consistent with applicable law, the Corporation's certificate of incorporation and these bylaws, the Board may adopt such rules and regulations for the conduct of meetings of the Board and for the management of the affairs and business of the Corporation as the Board may deem appropriate. The Board may elect a chairperson (the "Chair") and one or more vice-chairpersons to preside over meetings and to perform such other duties as may be designated by the Board.⁸²

Resignations of Directors. Any director may resign at any time by delivering a written notice of resignation signed by such director or by submitting an electronic transmission, to the President or the Secretary. Unless otherwise specified therein, such resignation shall take effect upon delivery. [DGCL 141(b)]

⁸² **Drafting Note:** A nonprofit corporation may wish to consider imposing term limits on directors, or on directors who are not also officers, to facilitate turn-over on the Board without actively refusing to reappoint a stale director who will not voluntarily step down.

Removal of Directors. Any director may be removed at any time, either for or without cause, upon the affirmative vote of a majority of the total authorized number of members, acting at a meeting of members or by written consent in accordance with the DGCL and these bylaws, and such removal shall take effect immediately upon such vote. Any vacancy in the Board caused by any such removal may be filled at such meeting (or in the written instrument effecting such removal, if the removal was effected by written consent without a meeting) or in accordance with 0 of these bylaws. [DGCL 141(k), 223]

Conflicts of Interest. Any contract or transaction in which a director is interested must be approved by the Board acting in good faith through the affirmative vote of a majority of the disinterested directors then members of the Board (being not less than two directors) [or by a committee made up of at least [three] disinterested directors]⁸³ after disclosure to the Board of all material facts as to the director's relationship to or interest in the contract or transaction and as to the nature of the contract or transaction, and the fact that an interested director participated in meetings discussing or approving any such contract or transaction shall not make the approval void or voidable.⁸⁴

Vacancies and Newly Created Directorships. If any vacancies shall occur in the Board, by reason of death, resignation, removal or otherwise, or if the authorized number of directors shall be increased, the directors then in office shall continue to act. Any such vacancies

⁸³ Drafting Note: The option of forming a committee to review a conflict is intended primarily for nonprofits with large boards (i.e., with significantly more than nine directors).

⁸⁴ Drafting Note: This Section prevents the Board from approving a transaction in which a director has an interest unless there are at least two disinterested directors. This is believed to be appropriate for all charitable and most nonprofit corporations. No provision for member approval of interested transactions is provided. In this case, the members are the directors, so that it would add nothing and in fact complicate matters because of the need to exclude interested members. And because there is no real parallel between the shareholders of a for profit corporation and the members of a charitable nonprofit corporation, a member approval provision would in most cases not be appropriate even if membership was not limited to members of the Board.

or newly created directorships may be filled only by a majority of the directors then in office, although less than a quorum, or by a sole remaining director.⁸⁵ A director elected to fill a vacancy or a newly created directorship shall hold office until the next annual meeting of members and until his or her successor has been duly elected and qualified, or until his or her earlier death, resignation or removal.⁸⁶ [DGCL 223]

Compensation.⁸⁷ [The Board may by resolution determine the compensation, if any, of directors for their services as such and] OR [The directors will not be compensated for their services as such but the Board may by resolution determine] the expenses in the performance of such services for which a director is entitled to reimbursement. [DGCL 141(h)] [DGCL 141(b)]

Reliance on Accounts and Reports, etc. In the performance of his or her duties, a director shall be fully protected in relying in good faith upon the records of the Corporation and upon information, opinions, reports or statements presented to the Corporation by any of its officers or employees or by any other person as to the matters the director reasonably believes are within such other person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Corporation. [DGCL 141(e)]

OFFICERS

Officers. The officers of the Corporation shall include a President and a Secretary. The Board may also elect a Treasurer, one or more Vice Presidents, Assistant Secretaries or Assistant Treasurers, and such

⁸⁵ Drafting Note: This sentence ensures that the provisions of these bylaws that require action by an affirmative vote of directors constituting a majority of the number of authorized directors do not frustrate action entirely if there are suddenly a number of vacant Board positions.

⁸⁶ Drafting Note: Pursuant to DGCL 223, if a corporation has a staggered Board different rules must be applied, both here and in the 0 removal provision.

⁸⁷ Drafting Note: Most nonprofits do not compensate their board members. Even in the case of private foundations, compensation of directors is not the norm. The second alternative is thus the preferred alternative. Note, however, that because these bylaws can be amended by the directors, provisions in these bylaws restricting director action are to some extent hortatory.

other officers and agents as the Board may determine. In addition, the Board from time to time may by a vote of a majority of the total authorized number of directors delegate to any officer the power to appoint subordinate officers or agents and to prescribe their respective rights, terms of office, authorities and duties.⁸⁸ Any number of offices may be held by the same person, except that one person may not hold both the office of President and the office of Secretary.⁸⁹ No officer need be, but any officer may be, a director of the Corporation. [DGCL 142(a), (b)]

Election of Officers. Unless otherwise determined by the Board, the officers of the Corporation shall be elected by the Board at the annual meeting of the Board and shall hold office until the next succeeding annual meeting of the Board. If officers are not elected at such annual meeting, officers may be elected at any regular or special meeting of the Board. Officers and agents appointed pursuant to delegated authority as provided in 0 (or, in the case of agents, as provided in 0) shall hold their offices for such terms and shall exercise such powers and perform such duties as may be determined from time to time by the appointing officer. Each officer shall hold office until his or her successor shall have been elected or appointed and qualified, or until such officer's earlier death, resignation or removal. [DGCL 142(b)]

Removal and Resignation of Officers; Vacancies. Any officer or agent, however appointed, may be removed for or without cause at any time by the Board. Any officer granted the power to appoint subordinate officers and agents as provided in 0 may remove any subordinate officer or agent appointed by such officer, for or without cause. Any officer may resign at any time by delivering notice of resignation, either in writing signed by such officer or by electronic

⁸⁸ Drafting Note: A small or start-up nonprofit organization might want to limit or eliminate this authority to ensure that all such appointments are made by the Board. If this sentence is not included, delete also the third sentence of 0, the second sentence of 0 and the phrase "or by the officers formerly holding such office" at the end of 0.

⁸⁹ Drafting Note: The DGCL does not seem to require that a nonstock corporation have more than one officer, or that one person may not be both President and Secretary of a nonstock corporation but it is considered better practice to provide for two officers.

transmission, to the Board or the President. Unless otherwise specified therein, such resignation shall take effect upon delivery. Any vacancy occurring in any office of the Corporation by death, resignation, removal or otherwise, shall be filled by the Board or by the officer, if any, who appointed the person formerly holding such office. [DGCL 142(b), (e)]

Compensation of Officers.⁹⁰ The salaries and other compensation of all officers and agents of the Corporation (acting in such capacities)⁹¹ shall be decided by the Board or a committee of the Board. The Board or such committee may delegate to the President and/or other senior officers of the Corporation on such terms as it shall see fit the power to set the salaries and other compensation of subordinate officers and agents of the Corporation. Compensation decisions made by the Board or a committee of the Board require the affirmative vote of a majority of the disinterested directors then members of the Board or such committee. For the purposes of this 0, an “interested” director is a director who is an officer of the Corporation, or who during the past 12 months received any compensation from or otherwise engaged in a business transaction with the Corporation (other than for service in his or her capacity as a director or in reimbursement of expenses incurred as a director), or who at any time during the past 12 months was an officer or director of, or had a significant ownership interest in, an entity which transacted business with the Corporation during such period.

Authority and Duties of Officers; Conflicts of Interest. The officers of the Corporation shall have such authority and shall exercise such powers and perform such duties as may be specified in these bylaws, and in any event each officer shall exercise such powers and perform such duties as may be required by law. Any contract or transaction in which an officer has an interest must be approved by a majority of disinterested directors then members of the Board [or by a committee

⁹⁰ Drafting Note: This Section is structured to require compensation decisions to be approved by disinterested directors. For conflicts of interest, more generally, See Sections 0 and 0.

⁹¹ When considering compensation of personnel see section 4958 of the Code regarding “excess benefit transactions.” While this section does not technically apply to private foundations, it is informative of best practices. (See also section 4941 of the Code regarding reasonable compensation with respect to private foundations).

made up of at least [three] disinterested directors] after disclosure to the Board of all material facts as to the officer's relationship to or interest in the contract or transaction and as to the nature of the contract or transaction. [DGCL 142(a)]

President. The President shall be the chief executive officer of the Corporation, have general control and supervision of the affairs and operations of the Corporation, keep the Board fully informed about the activities of the Corporation and see that all orders and resolutions of the Board are carried into effect.⁹² He or she shall manage and administer the Corporation's business and affairs and shall also perform all duties and exercise all powers usually pertaining to the office of a chief executive officer of a corporation. He or she shall have the authority to sign, in the name and on behalf of the Corporation, checks, orders, contracts, leases, notes, drafts and all other documents and instruments in connection with the business of the Corporation. He or she shall have the authority to cause the employment or appointment of such employees or agents of the Corporation as the conduct of the business of the Corporation may require, to fix their compensation, and to remove or suspend any employee or any agent employed or appointed by any officer or to suspend any agent appointed by the Board. The President shall have the duties and powers of the Treasurer if no Treasurer is elected and shall have such other duties and powers as the Board may from time to time prescribe.

Vice Presidents. If one or more Vice-Presidents have been designated, each Vice-President shall perform such duties and exercise such powers as may be assigned to him or her from time to time by the Board or the President. In the absence of the President, the duties of the President shall be performed and his or her powers may be exercised by such Vice President as shall be designated by the President, or failing such designation, such duties shall be

⁹² Drafting Note: A large foundation may want to provide for a chief executive officer and a chief operating officer; special purpose roles of this type that do not easily fit in the statutory President-Vice President-Secretary-Treasurer structure probably should be authorized in the bylaws. If this option is exercised, provisions relating to Vice President and other subordinate officers should be reviewed for consistency.

performed and such powers may be exercised by each Vice President in the order of his or her earliest election to that office.

Secretary. *The Secretary shall:*

act as secretary of all meetings of the Board and shall keep a record of all meetings of the Board in books provided for that purpose;

cause all notices to be duly given in accordance with these bylaws and as required by law;

be the custodian of the records and of the seal of the Corporation and shall cause such seal (or a facsimile thereof) to be affixed to all documents and instruments that the Board or any officer of the Corporation has determined should be executed under its seal, may sign together with any other authorized officer of the Corporation any such document or instrument, and when the seal is so affixed may attest the same;

properly maintain and file all books, reports, statements and other documents and records of the Corporation required by law, the certificate of incorporation or these bylaws; and have all powers and perform all duties otherwise customarily incident to the office of secretary, subject to the control of the Board and, in addition, shall have such other powers and perform such other duties as may be specified in these bylaws or as may be assigned to him or her from time to time by the Board or the President.

Treasurer. *The Treasurer, if appointed, shall be the chief financial officer of the Corporation and shall:*

have charge and supervision over and be responsible for the moneys, securities, receipts and disbursements of the Corporation, and keep or cause to be kept full and accurate records of all receipts of the Corporation;

cause the moneys and other valuable effects of the Corporation to be deposited in the name and to the credit of the Corporation in such banks or trust companies or with such bankers or other depositaries as shall be determined by the Board or the President, and by such other officers of the Corporation as may be authorized by the Board or the President to make such determination;

cause the moneys of the Corporation to be disbursed by checks or drafts (signed by such officer or officers or such agent or agents of the Corporation,

and in such manner, as the Board or the President may determine from time to time) upon the authorized depositaries of the Corporation and cause to be taken and preserved proper vouchers for all moneys disbursed;

render to the Board or the President, whenever requested, a statement of the financial condition of the Corporation and of all his or her transactions as Treasurer, and render a full financial report at the annual meeting of the Board, if called upon to do so;

be empowered from time to time to require from all officers or agents of the Corporation reports or statements giving such information as he or she may desire with respect to any and all financial transactions of the Corporation; and

have all the powers and perform all duties otherwise customarily incident to the office of treasurer, subject to the control of the Board, and, in addition, shall have such other powers and perform such other duties as may be specified in these bylaws or as may be assigned to him or her from time to time by the Board or the President.

COMMITTEES

Designation of Committees. *The Board may designate one or more committees.⁹³ Each committee shall consist of such number of directors as from time to time may be fixed by the Board.⁹⁴ Each committee shall have and may exercise all the powers and authority of the Board in the management of the business and affairs of the Corporation to the extent permitted by law and delegated to such committee by resolution of the Board, provided that no committee shall have any power or authority in reference to the following matters:*

⁹³ If the Corporation was formed prior to July 1, 1996, see DGCL 141(c) before forming any committees.

⁹⁴ Drafting Note: Unlike New York, Delaware appears to have no statutory authorization for the inclusion on committees of the Board of persons who are not themselves members of the Board. There is no prohibition on appointment of committees of outsiders and Board members to advise the Board or on appointment of outsiders to advise a committee of the Board but there is no authority for delegation of the authority and powers of the Board to a "committee" the voting members of which include non-Board members.

amendments to the Corporation's certificate of incorporation or these bylaws;

filling of vacancies in the Board or in any committee;

amending or repealing any resolution of the Board that by its terms may not be so amended or repealed;

[fixing compensation of any directors for serving on the Board or on any committee];⁹⁵

delegating any of the power or authority of such committee to a subcommittee unless so authorized by the Board;

approval of any conflict of interest referred to in Section 3.14 or Section 4.05; or

any other matter that pursuant to the DGCL is excluded from the authority of a committee of the Board.⁹⁶

Committee Members. *The members of each committee shall be selected by the Board and shall serve at the pleasure of the Board. Each member of any committee (whether designated at an annual meeting of the Board or to fill a vacancy or otherwise) shall hold office only until the earliest of the next annual meeting of the Board, the time he or she shall cease to be a director, or his or her earlier death, resignation or removal.*

Committee Procedures. *At any meeting of any committee, the presence of a majority of its members then in office shall constitute a quorum for the transaction of business, unless (a) such committee has only one or two members, in which case a quorum shall be one member, or (b) a greater quorum is established by the Board. The vote of a majority of the committee members present at a meeting at which a quorum is present shall be the act of the committee. Each committee shall keep regular minutes of its meetings and report to the Board when required. The Board may adopt other rules and*

⁹⁵ See Section 3.16 and the related footnote 19. Once it is determined whether the directors are to be compensated, check that Section 3.16 and this Section 5.01(d) are consistent.

⁹⁶ The DGCL restrictions appear (as at 1/1/06) at the end of DGCL 141(c). Those not specifically named here generally relate to such matters as corporate mergers and reorganizations, significant asset transfers, and dissolution of the corporation.

regulations for the government of any committee not inconsistent with the provisions of these bylaws, and each committee may adopt its own rules and regulations of government, to the extent not inconsistent with these bylaws or rules and regulations adopted by the Board.

Meetings and Actions of Committees. Meetings and actions of each committee shall be governed by, and held and taken in accordance with, the provisions of the following sections of these bylaws, with such bylaws being deemed to refer to the committee and its members in lieu of the Board and its members:

0 (to the extent relating to place and time of regular meetings);

0 (relating to special meetings);

0 (relating to notice and waiver of notice);

the last sentence of **0** (relating to participation of interested directors);

0 and **0** (relating to telephonic communication and action without a meeting);
and

0 (relating to adjournment and notice of adjournment).

Special meetings of committees may also be called by resolution of the Board.

Resignations and Removals of Committee Members. Any member of any committee may resign from such position at any time by delivering a written notice of resignation, either in writing signed by such member or by electronic transmission, to the Board or the President. Unless otherwise specified therein, such resignation shall take effect upon delivery. Any member of any committee may be removed from such position at any time, either for or without cause, by resolution adopted by a majority of the total authorized number of directors acting at a meeting of the Board or by written consent in accordance with the DGCL and these bylaws.

Vacancies on Committees. If a vacancy occurs in any committee for any reason the remaining members may continue to act if a quorum is present. A committee vacancy may only be filled by a majority of the total authorized number of directors.

INDEMNIFICATION⁹⁷

Indemnification.

Subject to 00, the Corporation shall indemnify, to the fullest extent permitted by the DGCL or applicable law,⁹⁸ any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (each, a “proceeding”) by reason of the fact that such person is or was a director or officer⁹⁹ of the Corporation, or is or was serving at the request of the Corporation as a director or officer of another corporation, partnership, joint venture, trust or other enterprise,¹⁰⁰ or by

⁹⁷ Drafting Note: See Article VIII of the related form of certificate of incorporation and the footnote at the end of that Article regarding statutorily permitted exculpation of directors. Indemnification is a difficult and often controversial area, and there is a large body of case law interpreting the Delaware indemnification provisions (DGCL 145). A nonprofit corporation should normally consult counsel before making any decision to award (or deny) indemnification.

⁹⁸ Delaware law does not obligate the corporation to indemnify its officers and directors except in the circumstances described in 0. These bylaws are based on the premise that it is desirable to require the indemnification of officers and directors to the full extent permitted by Delaware law in order to ensure that qualified people are willing to serve on the Board or as officers of the corporation. (See, for example, the phrasing of the last sentence of 0.) A small nonprofit organization may not feel that it should have to expose the assets of the corporation to indemnification claims from its officers and directors, and if it believed that the absence of indemnification provisions would not handicap its recruiting of officers and directors, it could simply provide in Article 0 that the Corporation has the power to indemnify the officers and directors of the corporation to the full extent permitted by Delaware law. This would leave indemnification of expenses of a successful defense under DGCL 145(c) as the only mandatory indemnification.

⁹⁹ Drafting Note: As drafted, Article 0 requires the indemnification of officers and directors only. DGCL 145(a) and (b) permit a corporation to indemnify its employees and agents who are not directors or officers in the same manner and to the same extent as it indemnifies its directors and officers. This model leaves indemnification decisions concerning employees and agents that are not directors or officers entirely to the Board, and does not set forth in the bylaws any specific indemnification rights of employees or agents. For-profit corporations commonly have broader indemnification provisions. See 0 and the immediately following Drafting Note.

¹⁰⁰ Drafting Note: Note that an officer or director of the

reason of any action alleged to have been taken or omitted by such person in such capacity,¹⁰¹ and who satisfies the applicable standard of conduct set forth in section 145 of the DGCL and any other applicable law:¹⁰²

in a proceeding other than a proceeding by or in the right of the Corporation to procure a judgment in its favor, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person or on such person's behalf in connection with such proceeding and any appeal therefrom, or

in a proceeding by or in the right of the Corporation to procure a judgment in its favor, against expenses (including attorneys' fees but excluding judgments, fines and amounts paid in settlement) actually and reasonably incurred by such person or on such person's behalf in connection with the defense or settlement of such proceeding and any appeal therefrom (but if such person shall have been adjudged to be liable to the Corporation indemnification of expenses is permitted under this clause (ii) only upon a judicial determination in accordance with the requirements of section 145(b) of the DGCL as to such person's entitlement to indemnification).

Corporation serving as an employee or agent of another corporation at the request of the Corporation is not entitled to mandatory indemnification if he or she is made party to an action by reason of such service or by reason of any action he or she may have taken in his or her capacity as an employee or agent of another corporation.

¹⁰¹ Drafting Note: This clause does not appear in DGCL 145(a) or (b), but the concept of action in the capacity of an officer or director is implicit in the statute, which requires that a would-be indemnitee must have "acted in good faith and in a manner . . . reasonably believed to be in or not opposed to the best interests of the corporation." (Emphasis added.)

¹⁰² Given the complexity of standards of conduct and the volume of relevant case law, these bylaws do not spell out the applicable standards. In general, in a third party proceeding (not a derivative action) the individual is entitled to indemnification only if he or she has acted in good faith and in a manner reasonably believed to be in the best interests (or at least not opposed to the best interests) of the corporation, and in a criminal case, had no reasonable cause to believe that his or her conduct was unlawful.

To the extent that a present or former director or officer of the Corporation has been successful on the merits or otherwise in defense of any proceeding referred to in 0 or in defense of any claim, issue or matter therein, such person shall be indemnified by the Corporation against expenses (including attorneys' fees but excluding judgments, fines and amounts paid in settlement) actually and reasonably incurred by such person in connection therewith.¹⁰³ [DGCL 145(c)]

0 does not require the Corporation to indemnify a present or former director or officer of the Corporation in respect of a proceeding (or part thereof) instituted by such person on his or her own behalf, unless such proceeding (or part thereof) has been authorized by the Board or the indemnification requested is pursuant to the last sentence of 0 of these bylaws.

If the Corporation is a "private foundation" under the Internal Revenue Code of 1986 (as it may be amended, the "Code"), no indemnification shall be provided hereunder to the extent that such indemnification would result in a violation of section 4941 of the Code.

Advance of Expenses. *The Board may but need not¹⁰⁴ authorize the Corporation to advance, on such terms and conditions as the Board shall deem appropriate, some or all expenses (including reasonable attorneys' fees) incurred by a present or former director or officer in defending any proceeding prior to the final disposition of such proceeding upon written request of such person and delivery of an undertaking by such person to repay such amount if it shall ultimately be determined that such person is not entitled to be indemnified by*

¹⁰³ This Section differs from 0 insofar as it sets forth the statutory requirement that the corporation indemnify for expenses incurred if the officer or director is successful in his or her defense, without requiring that the individual have satisfied any particular standard of conduct.

¹⁰⁴ Drafting Note: We recommend that the advancement of expenses be at the discretion of the Board, at least for smaller, less well-funded nonprofit corporations. In the case of a for-profit corporation, advancement of expenses is more often than not mandatory, but this is justified by the risk of derivative litigation, and the risk that discretionary indemnification may be in the hands of a successor "unfriendly" Board. One can legitimately conclude that the risk of real disputes between the corporation and a director are considerably lower in the nonprofit environment, and that it is therefore appropriate, in the nonprofit context, to make advancement of expenses discretionary with the Board.

the Corporation under this Article or applicable law.¹⁰⁵ The Corporation may authorize any counsel for the Corporation to represent (subject to applicable conflict of interest considerations) such present or former director or officer in any proceeding, whether or not the Corporation is a party to such proceeding. [DGCL 145(e)]

Procedure for Indemnification. Any indemnification under 0 of these bylaws or any advance of expenses under 0 of these bylaws shall be made only against a written request therefor (together with supporting documentation) submitted by or on behalf of the person seeking indemnification or an advance of expenses. Indemnification may be sought by a person under 0 of these bylaws in respect of a proceeding only to the extent that both the liabilities for which indemnification is sought and all portions of the proceeding relevant to the determination of whether the person has satisfied any appropriate standard of conduct have become final. A person seeking indemnification may seek to enforce such person's rights to indemnification (as the case may be) in the Delaware Court of Chancery to the extent all or any portion of a requested indemnification has not been granted within 90 days of the submission of such request. All expenses (including reasonable attorneys' fees) incurred by such person in connection with successfully establishing such person's right to indemnification under this Article, in whole or in part, shall also be indemnified by the Corporation.

Burden of Proof. In any proceeding brought to enforce the right of a person to receive indemnification to which such person is entitled under 0 of these bylaws, the Corporation has the burden of demonstrating that the standard of conduct applicable under the DGCL or other applicable law was not met. A prior determination by the Corporation (including its Board or any committee thereof, or its independent legal counsel) that the claimant has not met such applicable standard of conduct does not itself constitute evidence that the claimant has not met the applicable standard of conduct.

¹⁰⁵ If the corporation maintains a directors' and officers' liability insurance policy (so-called "D & O Insurance"; see 0), the provisions of the policy applicable to the indemnification of expenses should be reviewed by counsel before any decision is made to advance expenses.

Contract Right; Non-Exclusivity; Survival.

The rights to indemnification provided by this Article 0 shall be deemed to be separate contract rights between the Corporation and each director and officer who serves in any such capacity at any time while these provisions as well as the relevant provisions of the DGCL are in effect, and no repeal or modification of any of these provisions or any relevant provisions of the DGCL shall adversely affect any right or obligation of such director or officer existing at the time of such repeal or modification with respect to any state of facts then or previously existing or any proceeding previously or thereafter brought or threatened based in whole or in part upon any such state of facts. Such “contract rights” may not be modified retroactively as to any present or former director or officer without the consent of such director or officer.

The rights to indemnification provided by this Article 0 shall not be deemed exclusive of any other indemnification to which a present or former director or officer of the Corporation may be entitled as to action in such person’s official capacity or as to action in another capacity while holding such office.

The rights to indemnification provided by this Article 0 to any present or former director or officer of the Corporation shall inure to the benefit of the heirs, executors and administrators of such person. [DGCL 145(f), (j)]

Insurance. *The Corporation may purchase and maintain insurance on behalf of any person who is or was or has agreed to become a director or officer of the Corporation, or is or was serving at the request of the Corporation as a director or officer of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against such person and incurred by such person or on such person’s behalf in any such capacity, or arising out of such person’s status as such, whether or not the Corporation would have the power to indemnify such person against such liability under the provisions of this Article 0. [DGCL 145(g)]*

Employees and Agents. *The Board may cause the Corporation to indemnify any present or former employee or agent of the Corporation in such manner and for such liabilities as the Board may determine, up to the fullest extent permitted by the DGCL and other applicable law.*

Interpretation; Severability. *Terms defined in sections 145(h) or (i) of the DGCL have the meanings set forth in such sections when used in this Article 0. If this Article or any portion hereof shall be invalidated on any ground by any court of competent jurisdiction, then the Corporation shall nevertheless indemnify each director or officer of the Corporation as to costs, charges and expenses (including attorneys' fees), judgments, fines and amounts paid in settlement with respect to any action, suit or proceeding, whether civil, criminal, administrative or investigative, including an action by or in the right of the Corporation, to the fullest extent permitted by any applicable portion of this Article that shall not have been invalidated and to the fullest extent permitted by applicable law.*

OFFICES

Registered Office. *The registered office of the Corporation in the State of Delaware shall be located at the location provided in Article II of the Corporation's certificate of incorporation.*¹⁰⁶

Other Offices. *The Corporation may maintain offices at such other locations within or without the State of Delaware as the Board may from time to time determine.*

GENERAL PROVISIONS

Conduct of Business. *The Corporation shall at all times conduct its business and affairs so as to qualify and remain qualified as exempt from federal income tax under section 501(c)(3) of the Code.*¹⁰⁷

¹⁰⁶ Drafting Note: Many bylaw forms include the name of the corporation's registered agent in the bylaws as well as in the articles. For these nonprofit bylaws, we elected to operate by cross-reference instead, to eliminate the need to amend the bylaws if it is necessary to change the registered agent. See also the footnote to Article II of the related form of Certificate of Incorporation.

¹⁰⁷ Drafting Note: If the Corporation will be a small foundation that may not consult counsel on a regular basis, consider including here (after consultation with a tax lawyer with nonprofit experience) the substance of any language in its certificate of incorporation (Cf. Article IV of document 22078871) specifying actions to be taken or avoided to maintain

Execution of Instruments. Except as otherwise required by law or the Corporation's certificate of incorporation, the Board or any officer of the Corporation authorized by the Board may authorize any other officer or agent of the Corporation to enter into any contract or to execute and deliver any instrument in the name and on behalf of the Corporation. Any such authorization must be in writing or by electronic transmission and may be general or limited to specific contracts or instruments.

Voting as Stockholder. Unless otherwise determined by resolution of the Board, the President or any Vice President shall have full power and authority on behalf of the Corporation to attend any meeting of stockholders of any corporation in which the Corporation may hold stock, and to act, vote (or execute proxies to vote) and exercise in person or by proxy all other rights, powers and privileges incident to the ownership of such stock at any such meeting, or through action without a meeting. The Board may by resolution from time to time confer such power and authority (in general or confined to specific instances) upon any other person or persons.

Fiscal Year. The fiscal year of the Corporation shall commence on the [first day of January of each year] (except for the Corporation's first fiscal year which shall commence on the date of incorporation) and shall terminate in each case on [December 31].

Seal. The seal of the Corporation shall be circular in form and shall contain the name of the Corporation, the year of its incorporation and the words "Corporate Seal" and "Delaware". The form of such seal shall be subject to alteration by the Board. The seal may be used by causing it or a facsimile thereof to be impressed, affixed or reproduced, or may be used in any other lawful manner.

Books and Records; Inspection. Except to the extent otherwise required by law, the books and records of the Corporation shall be kept at such place or places within or without the State of Delaware as may be determined from time to time by the Board.

Electronic Transmission. "Electronic transmission", as used in these bylaws, means any form of communication, not directly involving the

501(c)(3) qualification or to remain in compliance with the Code's private foundation rules.

physical transmission of paper, that creates a record that may be retained, retrieved and reviewed by a recipient thereof, and that may be directly reproduced in paper form by such a recipient through an automated process. [DGCL 232(c)]

AMENDMENT OF CERTIFICATE OF INCORPORATION
AND BYLAWS; CONSTRUCTION

Amendments. The Corporation's certificate of incorporation may be amended by a resolution adopted by the affirmative vote of directors constituting a majority of the total number of directors authorized under these bylaws at the time of such vote and the filing of a certificate of amendment in accordance with the requirements of the DGCL, and the approval of the members of the Corporation shall not be required for any such amendment. These bylaws may be amended, altered or repealed by resolution adopted by the affirmative vote of directors constituting a majority of the total number of directors authorized under these bylaws at the time of such vote. No amendment, alteration, change or repeal of the certificate of incorporation or these bylaws shall be effected which will result in the denial of tax-exempt status to the Corporation under section 501(c)(3) of the Code. [DGCL 242(b)(3); 109(a)]

Construction. In the event of any conflict between the provisions of these bylaws as in effect from time to time and the provisions of the Corporation's certificate of incorporation as in effect from time to time, the provisions of such certificate of incorporation shall be controlling.

November 2007

Reading Assignment for Class 9

What Board Members Should Do and Bylaws

During this class we will explore what it is board members should do to adequately fulfill their responsibilities as board members. How do they in fact exercise their duty of care obligations? What might be done to mitigate the possibility of duty of loyalty violations? As has become clear, much of our focus has been on nonprofits straying off the path in one way or another. (A robust debate between regulators and academics on the one side and parishioners on the other about how big a problem this is has been going on for years and continues.) It is widely accepted that the role of the board is absolutely crucial in making sure that nonprofits keep on the straight and narrow. What can be done to promote effective board performance?

We shall do this in large part by examining nonprofit bylaws and there are assigned and attached several model bylaws. We also attach some recent promulgations of principles of nonprofit governance. (You may want to look at the Delaware Corporation Law. This can be accessed through the State of Delaware's webpage.)

During the class we shall also examine nonprofit bylaws more generally.

8. NONPROFIT ORGANIZATIONS (Casebook) -- pp. 72-74, 140-143.
9. NO Statutes, Regulations and Forms -- pp. 950-955.
10. IRS – Good Governance Practices for 501(c)(3) Organizations – attached
11. Independent Sector - Principles for Good Governance and Ethical Practice: A Guide for Charities and Foundations – attached.
12. Bylaw samples - attached

November 2007

Reading Assignment for Class Eleven-- The Unrelated Business Income Tax

Our Arts Group friends have opened a small museum Greene Street. It has obtained its section 501(c)(3) tax exemption. On the ground floor of the museum it operates a restaurant. The restaurant is an enormous success and generates a great deal of income. Will this income be subject to the unrelated business income tax? If so, how much? Will the restaurant put the museum's tax exemption in jeopardy?

1. NONPROFIT ORGANIZATIONS (NO) -- pp. 593-594, 596-598, 611-614, 626-628, 668-670, 709-722.
2. NO Statutes, Regulations and Forms -- IRC sections 511-514 [pp. 310-330]
3. Arts Groups & UBIT -- Attached

Assume the unrelated business income tax has been repealed. Two identical businesses selling widgets are being conducted – one by a for-profit firm and one by a § 501(c)(3) nonprofit. The for-profit firm is subject to a 50% income tax on its net income. The § 501(c)(3) is tax-exempt. It costs \$8 to produce a widget. If a widget is priced at \$9, the businesses will sell 15. If it is priced at \$10, they will sell 10. If it is priced at \$11, they will sell 6. At what price will the for-profit firm sell its widgets? At what price will the § 501(c)(3) nonprofit sell its widgets?

Nonprofit Institutions: Assignment #12

This class will provide an overview of the major legal and regulatory issues currently faced by nonprofits, with particular regard to matters of governance. The objective, first, is to provide a sense of the surprisingly broad range of issues that (often under-funded) nonprofits face in carrying out their programs.

We will then review the Governance Principles you received as part of Assignment #9 and consider their potential value in achieving good governance. We will also seek to identify other mechanisms used to foster good governance and try to assess their relative effectiveness.

Please try to consider what you would do to try to foster effective nonprofits if you had plenary legislative and regulatory authority over the nonprofit sector, and a reasonable budget to

use in seeking this objective. Please consider in this regard how you would seek to promote public trust in nonprofits, in view of the fact that successful fundraising is so important for so many of them. As you ponder the use of your plenary powers, please try to place yourself in the role of the Executive Director of a nonprofit who is seeking to comply with the spirit and letter of the actions you have taken. How constructive are they relative to the costs (money and time) that they may impose?

[Attached is a set of the Governance Principles, without the accompanying text that is included in the document sent with Assignment #9. After you have read the Assignment #9 document, it may be helpful to have the Principles in this short form so that you can consider their collective utility as well as the message each conveys individually.]

Panel on the Nonprofit Sector
(www.nonprofitpanel.org)
Convened by Independent Sector
October 2007
Excerpted from:--

Principles for Good Governance and Ethical Practice A Guide for Charities and Foundations

Legal Compliance
and Public Disclosure (1-7)
Effective Governance (8-20)

Strong Financial Oversight (21-26)

Responsible Fundraising (27-33)

Legal Compliance and Public Disclosure

1 A charitable organization must comply with all applicable federal laws and regulations, as well as applicable laws and regulations of the states and the local jurisdictions in which it is based or operates. If the organization conducts programs outside the United States, it must also abide by applicable international laws, regulations and conventions that are legally binding on the United States.

2 A charitable organization should have a formally adopted, written code of ethics with which all of its directors or trustees, staff and volunteers are familiar and to which they adhere.

3 A charitable organization should adopt and implement policies and procedures to ensure that all conflicts of interest, or the appearance thereof, within the organization and the board are appropriately managed through disclosure, recusal, or other means.

4 A charitable organization should establish and implement policies and procedures that enable individuals to come forward with information on illegal practices or violations of organizational policies. This “whistleblower” policy should specify that the organization will not retaliate against, and will protect the confidentiality of, individuals who make good-faith reports.

5 A charitable organization should establish and implement policies and procedures to protect and preserve the organization’s important documents and business records.

6 A charitable organization’s board should ensure that the organization has adequate plans to protect its assets—its property, financial and human resources, programmatic content and material, and its integrity and reputation—against damage or loss. The board should review regularly the organization’s need for general liability and directors’ and officers’ liability insurance, as well as take other actions necessary to mitigate risks.

7 A charitable organization should make information about its operations, including its governance, finances, programs and activities, widely available to the public. Charitable organizations also should consider making information available on the methods they use to evaluate the outcomes of their work and sharing the results of those evaluations.

Effective Governance

8 A charitable organization must have a governing body that is responsible for reviewing and approving the organization's mission and strategic direction, annual budget and key financial transactions, compensation practices and policies, and fiscal and governance policies.

9 The board of a charitable organization should meet regularly enough to conduct its business and fulfill its duties.

10 The board of a charitable organization should establish its own size and structure and review these periodically. the board should have enough members to allow for full deliberation and diversity of thinking on governance and other organizational matters. except for very small organizations, this generally means that the board should have at least five members.

11 The board of a charitable organization should include members with the diverse background (including, but not limited to, ethnic, racial and gender perspectives), experience, and organizational and financial skills necessary to advance the organization's mission.

12 A substantial majority of the board of a public charity, usually meaning at least two-thirds of the members, should be independent. independent members should not: (1) be compensated by the organization as employees or independent contractors; (2) have their compensation determined by individuals who are compensated by the organization; (3) receive, directly or indirectly, material financial benefits from the organization except as a member of the charitable class served by the organization; or (4) be related to anyone described above (as a spouse, sibling, parent or child), or reside with any person so described.

13 The board should hire, oversee, and annually evaluate the performance of the chief executive officer of the organization, and should conduct such an evaluation prior to any change in that officer's compensation, unless there is a multi-year contract in force or the change consists solely of routine adjustments for inflation or cost of living.

14 The board of a charitable organization that has paid staff should ensure that the positions of chief staff officer, board chair, and board treasurer are held by separate individuals. Organizations without paid staff should ensure that the positions of board chair and treasurer are held by separate individuals.

15 The board should establish an effective, systematic process for educating and communicating with board members to ensure that they are aware of their legal and ethical responsibilities, are knowledgeable about the programs and activities of the organization, and can carry out their oversight functions effectively.

16 Board members should evaluate their performance as a group and as individuals no less frequently than every three years, and should have clear procedures for removing board members who are unable to fulfill their responsibilities.

17 The board should establish clear policies and procedures setting the length of terms and the number of consecutive terms a board member may serve.

18 The board should review organizational and governing instruments no less frequently than every five years.

19 The board should establish and review regularly the organization's mission and goals and should evaluate, no less frequently than every five years, the organization's programs, goals and activities to be sure they advance its mission and make prudent use of its resources.

20 Board members are generally expected to serve without compensation, other than reimbursement for expenses incurred to fulfill their board duties. A charitable organization that provides compensation to its board members should use appropriate comparability data to determine the amount to be paid, document the decision and provide full disclosure to anyone, upon request, of the amount and rationale for the compensation.

Strong Financial Oversight

21 A charitable organization must keep complete, current, and accurate financial records. Its board should receive and review timely reports of the organization's financial activities and should have a qualified, independent financial expert audit or review these statements annually in a manner appropriate to the organization's size and scale of operations.

22 The board of a charitable organization must institute policies and procedures to ensure that the organization (and, if applicable, its subsidiaries) manages and invests its funds responsibly, in accordance with all legal requirements. the full board should review and approve the organization's annual budget and should monitor actual performance against the budget.

23 A charitable organization should not provide loans (or the equivalent, such as loan guarantees, purchasing or transferring ownership of a residence or office, or relieving a debt or lease obligation) to directors, officers, or trustees.

24 A charitable organization should spend a significant percentage of its annual budget on programs that pursue its mission. the budget should also provide sufficient resources for effective administration of the organization, and, if it solicits contributions, for appropriate fundraising activities.

25 a charitable organization should establish clear, written policies for paying or reimbursing expenses incurred by anyone conducting business or traveling on behalf of the organization, including the types of expenses that can be paid for or reimbursed and the documentation required. such policies should require that travel on behalf of the organization is to be undertaken in a cost-effective manner.

26 A charitable organization should neither pay for nor reimburse travel expenditures for spouses, dependents or others who are accompanying someone conducting business for the organization unless they, too, are conducting such business.

Responsible Fundraising

27 Solicitation materials and other communications addressed to donors and the public must clearly identify the organization and be accurate and truthful.

28 Contributions must be used for purposes consistent with the donor's intent, whether as described in the relevant solicitation materials or as specifically directed by the donor.

29 A charitable organization must provide donors with specific acknowledgments of charitable contributions, in accordance with irs requirements, as well as information to facilitate the donors' compliance with tax law requirements.

30 A charitable organization should adopt clear policies, based on its specific exempt purpose, to determine whether accepting a gift would compromise its ethics, financial circumstances, program focus or other interests.

31 A charitable organization should provide appropriate training and supervision of the people soliciting funds on its behalf to ensure that they understand their responsibilities and applicable federal, state and local laws, and do not employ techniques that are coercive, intimidating, or intended to harass potential donors.

32 A charitable organization should not compensate internal or external fundraisers based on a commission or a percentage of the amount raised.

33 A charitable organization should respect the privacy of individual donors and, except where disclosure is required by law, should not sell or otherwise make available the names and contact information of its donors without providing them an opportunity at least once a year to opt out of the use of their names.

December 2007

Reading Assignment for Class Thirteen –The Theory of the Tax Exemption and Overview of the Law of Nonprofits

For our last class we will discuss the theory of the nonprofit tax exemption using the Gospel (attached) as the basis of our discussion. We will also discuss Dean Schizer's paper "Subsidizing Charitable Contributions" which raises some of the same issues and provides a nice way to review our semester's work.

I think we both agree that the time has gone too fast and that means in large part that you have been a great class.

1. The Theory of the Charitable Tax Exemption or the Gospel According to Peter –attached
2. Subsidizing Charitable Contributions: Incentives, Information and the Private Pursuit of Public Goals – handed out on November 29

December 2007

Reading Assignment for Class 13: The Theory of the Charitable Tax Exemption or the Gospel According to Peter

Some tax code provisions that give relief from taxation may be regarded as a means of defining the tax base.¹⁰⁸ It may be assumed that not everything is subject to tax. As Boris Bittker has said:

"There is no way to tax *everything*: a legislative body, no matter how avid for revenues, can do no more than pick out from the universe of people, entities and events over which it has

¹⁰⁸ Much of the analysis made in this section was first assayed in P. Swords, Charitable Real Property Tax Exemptions in New York State (1981) [hereinafter "Charitable Real Property Tax Exemptions"] .

jurisdiction those that, in its view, are appropriate objects of taxation. In specifying the ambit of any tax, the legislature cannot avoid 'exempting' those persons, events, activities or entities that are outside the territory of the proposed tax."¹⁰⁹

In contrast to tax code provisions that give relief from taxes for non-tax reasons, say to encourage industry¹¹⁰, tax base defining provisions usually are grounded in tax policy. Decisions are made not to tax something because, given the intrinsic logic of the tax system, it does not make sense to do so.

It is argued here that the charitable real property tax exemption is a tax base defining provision and not, for example, a provision introduced into the tax code for non-tax reasons

¹⁰⁹ Bittker, Churches, Taxes and the Constitution, 78 Yale L. J. 1285 (1968)

¹¹⁰ "Tax expenditure" provisions are examples of such provisions. Tax expenditures are said to be those exclusions and deductions from tax that operate like a subsidy given to persons or groups that engage in some activity or behavior that the government favors. Assume it becomes government policy to encourage appreciation of the music of Charlie Parker. Put simply the government might collect \$10 in tax from a taxpayer and then make her a grant of \$10 with which to buy Charlie Parker records. Or it might reduce her tax liability by \$10 on account of her purchases of Parker records. (This could be done by giving her a \$10 credit against her tax liability for \$10 worth of Parker records or, assuming an income tax rate of 30%, by giving her a deduction from her income of up to \$33.33 for purchases of Parker records.) To some degree it works out the same for both the government and the taxpayer. Either way the government is out \$10 and either way the taxpayer has been able to buy more Charlie Parker records with the help of a kind of government subsidy. Note that the tax expenditure approach assumes the particular exclusion or deduction was put into the tax code for non-tax reasons, in our example to encourage the appreciation of Charlie Parker. A significant difference between implementing government policy through a direct grant system on the one hand or using tax expenditures on the other is that under a direct grant system the government controls how much money it chooses to spend to implement its policy. Under the tax expenditure approach it is up to the taxpayers. Many or few taxpayers can choose to buy Charlie Parker records and each taxpayer can buy as many or as few as he or she wishes. In contrast, in a grant program, working through the normal legislative process, the government authorizes programs and appropriates monies to fund them. Each year it can review the need for the program and the level of funding it wants to provide. Those who regard charitable tax exemptions as tax expenditures usually argue these provisions were put into tax codes to encourage the provision of charitable goods and services. This is a reason that has little, if anything, to do with tax policy.

such as encouraging the provision of charitable services. We do not mean to tax all property and one type of property we never meant to tax is property held by charities and used for charitable purposes.

In deciding whether we have charitable exemptions for reasons of normative tax logic, we are lead back to the origins of tax policy. Why do we have taxes? Many accounts have been offered, but the simplest and most immediately urgent is that we have taxes to raise funds to support government activities and services. Very few, if any, like to pay taxes. They would rather keep the money and use it for their own purposes. They are willing to pay taxes because they recognize the need for government. If, however, manna regularly rained from heaven with funds specified solely for the support of government in amounts more than sufficient to finance all government activities, it is very unlikely that we would have any taxes.¹¹¹

The tax base explanation of the charitable exemption offered here is very simple. What we include in the tax base is money and wealth that we would otherwise use for ourselves. By taxing, we reduce private use of money and wealth to provide funds to support the government.¹¹² On the other hand, money and wealth that we have completely and forever lost the use of by turning it over to entities where it can be used only to benefit the public and not us individually (other than as we are members of the public), we choose not to tax.¹¹³ We do not mean to include such money or wealth in the tax base

¹¹¹ Those who believe that a function of taxes is to redistribute income and wealth in a more even fashion, might still want taxes to effect this redistribution. It seems highly unlikely, however, that today such a tax bill would ever be passed.

¹¹² In developing a similar tax base theory to justify the deduction from personal Federal income taxes for charitable contributions, William Andrews expresses the kernel of the argument being made when he observes: "Income should ultimately be defined and differentiated for personal taxes by its uses, not its sources. The intended primary effect of a direct personal tax is to curtail private consumption of economic resources needed for public use." Andrews, *Personal Deductions in an Ideal Income Tax*, 82 Harv. L. Rev. 309 at (1972).

¹¹³ In addition, such money and wealth cannot be used improperly to advance the private interests of individuals. Improperly advancing the private interest of individuals occurs when a nonprofit organization pays more money to an individual than the worth it receives back from the individual (so-to-speak) for the payment. An example would be the payment of an excessive salary (one that was far higher than salaries paid for comparable positions in the same geographic area) to an organization's executive director. Improperly transferring money or wealth of a nonprofit constitutes a violation of what has been called the nondistribution constraint, the heart of the definition of charity. Here is how the originator of the concept describes the nondistribution constraint: "As noted... nonprofit firms are not barred from earning profits. Indeed, many nonprofit firms

in the first place.¹¹⁴ Such entities are, of course, what we define as charities, public-serving nonprofits that are proscribed from advancing private interests improperly and established for the sole purpose of benefiting the community as a whole.¹¹⁵

Applying this general theory to the property tax, the argument is that property transferred completely and forever from private use in a manner where it can only be used to provide community-wide benefits (and not to benefit any individuals improperly) is not in the tax base. We only tax property that is used to benefit individuals in their private, individual capacity such as residences and industrial and commercial property (where individual owners are benefited privately as a result of the property's use).

The argument may be made more persuasive by focusing on the point that only people, not (inert) property, pay taxes. Colloquially put, it is out of the pocket books of property owners that property taxes are paid. Putting aside the fact

consistently show an annual accounting surplus. Rather, the critical characteristic of a nonprofit firm is that it is barred from distributing any profits it earns to persons who exercise control over the firm, such as members, officers, directors, or trustees. This does not mean that a nonprofit cannot pay reasonable compensation to anyone who supplies labor or capital to the organization; it is only that residual earnings cannot be distributed. All residual earnings must, instead, be retained and devoted to financing the services that the organization was formed to provide. As a result of this 'nondistribution constraint,' a nonprofit firm, by definition has no owners - that is no person who have a share in both control and residual earnings." H. Hansmann, *The Ownership of Enterprise* 228 (1996)

¹¹⁴ Notice that the theory we develop in this paragraph explains virtually all charitable exemptions. Charities are exempt from any entity income tax because any net income they might generate will be used exclusively for public purposes. As explained below, they are exempt from any property tax since the property they own is used exclusively for public purposes. They are exempt from sales taxes since the goods and services they purchase will be used exclusively for public purposes. Finally, this theory explains the charitable contribution deduction since the monies contributed by donors to charities have been forever given up for personal uses and irrevocably transferred for the use of the public. Private uses have been curtailed to make economic resources available for public use.

¹¹⁵ There is nothing in the legislative history of the charitable exemptions which provides any indication of whether the legislators who first enacted these provisions thought of them as refinements of the tax base or, for example, as tax expenditures. Thus, it is more or less open to us to decide which is the better way of viewing these provisions.

that in some sense charitable nonprofits do not have owners¹¹⁶, while somewhat of an oversimplification¹¹⁷, the persons who would pay a property tax imposed on charities in most cases would be those who have already contributed to their support. Such a tax would be similar to a sales tax on contributing to charities. Recalling the general tax base argument for charitable exemptions, we choose not to tax money that we have given up entirely for the public benefit, which money we cannot apply to our personal benefit.¹¹⁸

¹¹⁶ Charities are in effect held in trust by the directors of nonprofit corporations or trustees of charitable trusts for the equitable benefit of the entire public. See Note 6.

¹¹⁷ To expand the argument fully, it would need to be shown that we would not choose to have the incidence of the tax fall on the charities' beneficiaries or those who work for the charity and that in fact it would not fall on the charities' suppliers. Finally, it would be noted that most charities do not charge for their services and those that do (e.g., schools charging tuition or performing arts groups selling tickets) almost by definition choose not to charge prices equal to the cost of producing the goods consumed by the organizations' recipients. This last point has been well stated by William Baumol and William Bowen in explaining the economic nature of nonprofit organizations: "The concern of the typical nonprofit organization for the size and composition of its clientele often causes operating revenue to be lower than would be the case if services were priced to satisfy a simple profit-maximization goal. Since such a group normally considers itself to be a supplier of virtue, it is natural that it should seek to distribute its bounty as widely and as equitably as possible. The group is usually determined to prevent income and wealth alone from deciding who is to have priority in the consumption of its services. It wishes to offer its products to the needy and deserving - to students, to the impecunious, to those initially not interested in consuming them, and to a variety of others to whom high prices would serve as an effective deterrent to consumption." Baumol & Bowen, *On the Performing Arts: The Anatomy of their Economic Problems*, 55 A, *Econ. Rev.* 495, 499-500 (1965). Thus, when fully analyzed it results that in most cases it would be those who contribute to charities that would bear the brunt of the property tax if the exemption were removed.

¹¹⁸ Above it is suggested that charitable tax exemptions are best understood as a means of defining the tax base. This analysis, however, applies only to general taxes and not to taxes imposed to defray the costs of government services the costs of which have been increased on account of their provision to the exempt organizations. The distinction alluded to is between general government services like schooling or safety-net provision to which charities do not add

In developing the tax base argument for the charitable exemption, we have divided money and wealth into two categories: money and wealth used and available for private, personal ends and its contrary, money and wealth not used nor available for private, personal ends, i.e., money and wealth that is used solely for public ends. We have argued that the tax base comprises only the first category. Notice that if the tax base was expanded to include all or part of the second category¹¹⁹ and the amount needed to be collected in taxes for government support remained the same, presumably the tax rate could be reduced.¹²⁰ We have suggested that the decision of what we want in the tax base is grounded in tax policy. And further that the tax policy question asks what part of private wealth ought to be reduced by taxation to support the government. Do we believe that money and wealth available for private personal ends (category one) should not be reduced on account of exempting money and wealth turned over to charities to advance public ends (category two)?¹²¹ Or do we believe people should be taxed on the money or wealth they

to the cost of (indeed, in many case they operate to reduce the costs of these government services) and services like garbage pick-up or the supply of water the provision of which to charities adds to government costs that absent the charities would not be incurred. It has been found that in one state that about 70% of the revenue collected by the property tax is used to defray general government services. See Charitable Real Property Tax Exemptions 42-47.

¹¹⁹ It would likely only be part of the second category since the second category includes money and wealth held by the government and it would be illogical for the government to tax itself. Indeed, the part of the second category that would be included in the tax base would be money and wealth held by or contributed to charities.

¹²⁰ Assume that the jurisdiction in question has \$1,000 of first category assets and \$200 of non-government second category assets and a need of \$50 for government uses. If only the assets in the first category were in the tax base, the tax rate would need to be set at .05. If the assets in both the first and second category were included in the tax base the tax rate could be reduced to $.041 \frac{2}{3}$.

¹²¹ At this point in the analysis, tax policy merges to some degree with democratic theory. Some will argue that since the effect of charitable exemptions is to increase the taxes, this means that private individuals operating outside of the normal legislative process are making decisions about what public goods and services should be provided in addition to those public goods and

have transferred to charities and have consequently given up the ability to use for their own ends, in order to avoid reducing the tax burden on assets that would otherwise be used solely for private ends (category one)?¹²² There is no final answer to this question. Ultimately it is a matter of moral choice: upon whom and what is it fair to lay the burden of tax?

Does it make a difference whether the charitable exemption is treated as tax expenditure or as a way of defining the tax base? I believe that it does, but it is not obvious. My principal reason focuses on the ease with which the scope of the charitable exemption could be limited by changing the definition of the term “charitable” to exclude various purposes from its ambit. If the charitable exemption were thought of as a tax expenditure or as a type of government subsidy, the determination to no longer subsidize a particular activity, say the arts, would be a fairly ordinary legislative undertaking. In contrast if the charitable exemption is thought of as a means of refining the tax base, a decision to change the tax base, while also a legislative undertaking, strikes me as more fundamental and one that would rest on far weightier considerations than the conclusion that a particular activity no longer needs government support. Decisions about what is fair to tax and what is fair not to tax, that is decisions regarding fundamental beliefs about tax equity, I believe are of a more permanent nature than normal legislative initiatives and will only be made with great effort.

There is a second reason why it may be important that the charitable exemption is construed as a refinement of the tax base rather than as a tax expenditure. If it is interpreted as tax expenditure or government subsidy it gives rise to the possibility that the government may attach conditions to the conference of the “subsidy.” In *Regan v. Taxation with Representation of Washington*,¹²³ Taxation with Representation sought a declaratory judgment that it qualify for 501(c)(3) status despite the fact that it engaged in more than a substantial amount of lobbying. It argued in part that to deny it exemption

services provided by the government and thus to some extent forcing those who may not agree that the provision of such goods and services is a good thing to pay for them.

¹²² In considering this issue, it is perhaps relevant to take into account the amount of private wealth that is available for taxation. In a country with very little private wealth and therefore a very small tax base, it may make good sense not to narrow an already thin tax base by providing charitable exemptions. On the other hand in a country as rich as the United States with a huge tax base of private wealth, the very small increase in taxation on that base caused by charitable exemptions may seem entirely tolerable.

¹²³ *Regan v. Taxation with Representation of Washington*, 461 U.S. 540 (1983).

on the grounds that a substantial part of its activities consisted of lobbying constituted a violation of its First Amendment free speech rights. In rejecting this contention, the Court found that the section 501(c)(3) exemption and the section 170 charitable contribution deductions are government subsidies and that Congress' mere refusal to pay for lobbying out of public monies was not a violation of constitutional rights. Perhaps if the Court had construed the charitable exemption as a means of refining the tax base and not as a subsidy the result would have been different. Furthermore, if the base approach were adopted, the charitable exemption would not amount to a conferral of a government benefit. In this case there would be no warrant for the attachment of conditions or restrictions by the government to its "subsidy" that might not be welcomed by charities.

Peter Swords
Winter 2006

Professor: Daniel Halperin
School: Harvard Law School
Course: Taxation and Regulation of Non-Profits

Materials

Fishman & Schwarz, *Nonprofit Organizations: Cases and Materials*, Third Edition, Foundation Press 2006
Fishman & Schwarz, *Nonprofit Organizations: Statutes, Regulations and Forms*, Foundation Press 2006
Nonprofit Organizations Supplement
Additional materials, including a working paper authored by Halperin and Tax Law Review articles

Overview

This course focuses on the tax issues affecting nonprofits. The topics in the course are the: role of nonprofits; public benefit organizations; qualification as a charity; restrictions on behavior; commercial activities and UBIT; charitable contributions; and the similarities and differences of private foundations and public charities.

Order and Use of Text

The course covers the content included in the Fishman & Schwarz casebook rather closely, however it omits a few chapters and does not follow the order exactly in which the material is presented in the book. The course begins with an introduction, mostly selected pages from the first chapter of the Fishman & Schwarz textbook. The course then goes into tax issues of non-profits, and formation of non-profits. This course omits the topic of operation and governance of non-profits, or chapter 3 in Fishman & Schwarz. This course also omits chapters 10 and 11, which cover the special problems of private membership associations, and antitrust and nonprofits, respectively.

Taxation and Regulation of Non-Profits
Fall 2007
(Halperin)

The Casebook is Fishman and Schwarz, Cases and Materials on NonProfit Organizations (Third Edition). The Casebook comes with a Source book for Statutes, Regulations and Forms. References to this material is found in the casebook. Sometimes the cited material is more detailed than you might wish (need) to read.

In addition you will need the 2007 Supplement. I cannot put in online if it is available in the book store but if it is not I will feel free to do so.

Office Hours Wed 10-12 Hauser 316. I am in my office on most days and I would be happy to see you outside of office hours. Email halperin to arrange an appointment

Syllabus

I. Introduction–Role of Non-Profits

1-12, 17-19 (through Table)
43 (from D)-45
50 (from Pa. L.R. article)-56 (carryover ¶)
Supp. 2-3 C
60-63 (E) (Omit last sentence on page 63)
74-7 (Categories of NonProfit Organizations)
327(B)-329 (except last ¶)

You might skim 13-17 (through carryover ¶) and the related supplement 1-2 (through 1st full ¶)
For more background – you may want to skim 19-32, 35-39, and 56-60

Consider the meaning of the term nonprofit and the reasons for the existence of these organizations. What distinguishes nonprofits from other enterprises?

How are nonprofits regulated? Why is a special scheme needed?

What special benefits are available to nonprofit enterprises? Do all nonprofits get all these benefits? What determines eligibility?

Consider why so-called public benefit organizations should be subsidized

II. Public Benefit Organizations Evaluating the Nature of the Subsidy

The goal here is to consider whether the “rationale” for special treatment might depend on the exact nature of the subsidy or put another way whether the form of the special treatment is consistent with the rationale

Accordingly we will consider each of the following separately.

1. Exemption from income taxation:
 - a. Income from activities within the scope of the organization's purpose
 - b. Investment Income
 - c. Income from unrelated business (Chapter 6-assigned later)
2. Charitable Contribution Deduction
 - a. Income Tax
 - b. Estate Tax
3. State and Local Property (and Sales) Tax Exemption
4. Other benefits (page 327 middle ¶)
 - a. Ability to Issue Tax-exempt bonds
 - b. Preferred postal rates
 - c. Federal unemployment taxes

A. Charitable Deduction

874-6

Halperin, A Charitable Contribution of Appreciated Property Part II **only**

56 Tax L. R. 1 (2002) See course documents

890-1(Estate Tax) 893-4(5)

329-31 (Note 1), 331(3)

Andrews 879-82 last full ¶)

See Odendahl 884-87 ¹

B. Property Tax Exemption

348-9

Youngman, Universities and Local Taxes (See course documents)

If you wish more detail on current controversies see also 470-5, 83-7

C. Income Tax Exemption -Reinvested Profits

In the article beginning on page 332, Professor Bittker argues that is difficult to apply income tax principles to measure the income of non-profits. As suggested by the Questions on page 337, this argument is problematic.

But consider in what circumstances a non-profit hospital, for example, would have income from operating the hospital. Bittker identifies the circumstances in the carryover ¶ on pages 334-5 and continues the argument in the carryover ¶ on pages 335-6.

In an article at 59 Tax Law Review 133 (Income Taxation of Mutual Nonprofits), I argue that the exemption for amounts accumulated for future expenditures is not special but that the treatment of capital expenditures probably is. For those more mathematically inclined, the argument is that the exemption is equivalent to a deduction for what amounts to the present value of the future expenditure and thus properly measures income if the future expenditure would be deductible when made. See course documents (future expenditures) if you wish to pursue this further.

¹ The pages marked "See" can be read lightly or, if you must, skimmed.
The pages marked "See also" can be skimmed or skipped

Does Hansmann's Capital Subsidy Theory (337-41(through note 1)) (this follows Hansmann's earlier article excerpted at page 50) lend support to Bittker's rather vague arguments for special treatment of the charitable sector by what amounts to a deduction for capital expenditures.

D. Exemption for Investment Income-Endowments

Halperin, Is Income Tax Exemption for Charities Special? – The Issue is Investment Income (Draft) (See course documents)

III. Qualification as a Charity

A. Formation of a Charitable Organization

66-74 Omit(1) 67-8
See also 39(last 2 lines)-43
349-53
See also 571-3(F1)

B. Relief of Poor vs. Community Benefit

1. In General - Indefinite Class

Treas. Reg. 1.501(c)(3)-1(d)(2)
353-7(1st full ¶) 87-94
395-9 (f)
See also 461-2(7)

2. Health Care

357-64 (through note5) 372(2)-6 Supp. 10 (as to 373)
See also IHC Health Plans 365
(look more carefully from 3688(d.)to end of opinion)
Problems 376

3. Legal Services

377-83 Problems 383-4

4. Community Development

384-89 Problems 390

5. Protection of the Environment

390-4 Problems 395

6. Credit Counseling

Supp. 11-3

See also 449-50 (Other exempt purposes)

C. Educational and Religious and Activities

A. Education

pp. 427-43,

See p.98 (note 3)

See Treas. Reg. §1.501(c)(3)-1(d)(3), (5)

Why was §501(k) needed – see p. 443(4)

Problems page 443

You should focus on Rev. Proc. 86-43 (page 439) and look at Big Mama Rag (p. 431) and note 1 (p. 441) as background.

B. Religion

pp. 444-6, 439(begin with General Counsel Memorandum)-48

Under what circumstances would a religious organization fail to qualify as educational.

IV Restrictions on Behavior

A. Public Policy

pp.400-26 (Bob Jones) Problem 427

See Schedule B Form 1023 Page 1026 of Statute Book

See pp. 78-81, 99-100(note 6)

IRC §501(I)

I am looking for a way to reduce the reading assignment for this segment. Three questions seem implicated

1.Did the Supreme Court get it right.

2.What is the scope of the decision 423-26 (6,7)

3.Can and will the IRS enforce it 421-3 (3-5)

I think it would be most profitable if we focus on the second question

B. Change of Purpose and Dissolution

101, 103(2), 106-8(through note 3), 109-11(6,7)

111 (full ¶) Matter of Multiple Sclerosis Service Organization 121-6

C. Governance and Private Inurement

D. Lobbying

1. In General

pp.500-2 Handout Excise Taxes

2. Public Charities

a. No Substantial part

p.502-4, 512 -4(Notes and Questions)

See 552-3 (Use of Internet)

Christian Echoes (504)through Part I (particularly beginning with the 2nd full ¶ on p. 508)

See also In re United States Catholic Conference 578

- b. Section 501(h)
pp. 523-32 Problem 1 568-9
Skim 529 (Member Communications)-531 (end of d)
See Form 990, Schedule A Part III Q.1, Part VI A and B
Pages 996 and 999 of Form book
- c. §501 c(4) Alternative
pp. 553-5 (through note 1)
See also Blackmun's concurrence I Regan vs.TWR at 520
- d. Non-tax Regulation pp. 560-1 (through 4th ¶)
- 3. Private Foundations
pp. 863-4 (through 1st full ¶)
- 4. Trade Associations
See pp.1006-9, IRC §§170(f)(6), (9)

E Political Campaign Activities

We are dealing here with the complex rules relating to political activities of nonprofits under sections 501(c)(3), © (4), (c)(6) and 527. The tax law imposes varying restrictions on activities and varies in the treatment of contributions under the income and gift tax laws. Super imposed on the tax law is the Election Law rules relating to both permissible activities and disclosure.

1. Section 501c(3) Organizations- 550-1(5) §4955

- a. Voter Guide Candidate Forums and Issue Advocacy
Supp 16-28
564(10)-7.
See also Problem 570(3)
- b. The IRS Political Intervention Project
Branch Ministries 540-9
551-2(6)
- c. Voter Registration
549 (2) 565-6 (carryover ¶)
864 2nd and 3rd full ¶s

2. Comparison to Other Exempt entities Sections 501(c)(4) and 527

a. Tax Law

555(from note 2)-57

557-60(8) Section 527 Reporting and Disclosure

b Federal election laws

561(5th ¶)-64

V. Commercial Activities and UBIT

A. Introduction

593-6 (1st full ¶)

B. Commercial Activities as Exempt Activities

1. In General

603-12 Problems 615 a-d

Would all nonprofit book publishers(theaters) be educational?

2.. Whole Hospital Joint Ventures

711-4

St David's 723

(You can stop after the first sentence of the last ¶ on 728 or skim the rest)

1.St. David appears to argue that the court should examine the activities of the partnership to see if in fact they are in accordance with the requirements for exemption for a nonprofit hospital. Are the IRS and the court correct that this is irrelevant if St. David does not in fact have control over the partnership?

2. The IRS has expressed concerned that partnership activities may further the private, profit-seeking interests of the non-exempt partner. Is that true whenever a nonprofit participates in a partnership engaged in business?

C. Effect on Exemption of "Substantial" Commercial Activities

1. In General

596-8, 612-4, Problems 615-6 e-I

State Law See also pp. 81-83 (through end of opinion)

See Planning – Use of Controlled Subsidiaries pp. 709-10 (1)

See also 681-4 (5), Supp. 31

Suppose the Department Store described on page 613 had no profits (how many years?), or reinvested all profits in the business. Suppose additional contributions to the organization were used to expand the department store.

2. Ancillary Joint Venture

733-8

1. Suppose the nonprofit described in the GCM (supp. P. 613) instead of owning the department store outright had instead used all of its assets to purchase a 40% interest in a partnership that owned the department store. Would this place their exemption in greater jeopardy? If so, why?

2. How would you reconcile the IRS position in St. David's with Rev. Rul. 2004-51 (and the GCM concerning the department store)? In other words why wasn't the issue in St. David's whether UBIT applied?

D. Application of UBIT

1. Background and Policy

pp. 616-20 (end of 1st full ¶) 626-8

2. Substantially Related and Regularly Carried On

Statutory Outline

pp. 628(D-30

Substantially related-- Rev. Rul 80-296

646

73-105

657

Regularly Carried On- Skim NCAA

648

Problems 1 a-f, j 2b-d

666

3. Exceptions (Skim)

Exclusions

668-70

As suggested on p.669, organizations have sought to expand the royalty category, in particular to achieve exemption for sale of mailing lists and income from affinity credit cards. After a long battle the IRS has given up See 680(first full ¶). For a brief policy inquiry see 680(3)

Research

681

WWL

684

4. Advertising vs. Contribution

Corporate Sponsorship

659-62

Problems

668(f), 685©

5. Debt-Financed Income

694-6

See 742(2)

D. Tax Shelters

Under §4965 a tax-exempt entity which is a party to a prohibited tax shelter transaction would be subject to an excise tax equal to the highest corporate rate multiplied by the greater of 100% of its net income or 75% of the amount received for participation in the transaction. If the entity knew or should have known that it was a prohibited tax shelter transaction the excise tax equals the greater of 100% of its net income or 75% of the amount received for participation in the transaction.

VI. Charitable Contributions

A. Regulation of Charitable Solicitation

269-75 See note p. 311 as to Internet solicitation
 289 (Riley)- 304 (through note 7)
 316-8

B. Basic Principles

pp.894-900 (except last ¶),
 p. 906 (note 1)

This material primarily concerns the possibility of contributions to an eligible charity, which are “earmarked” for use by an ineligible organization. The question is how far can you go in making the “earmarking” “binding.”

C. What is a “charitable” gift

pp. 938(5) to 42, Supp 50
 907-15

See Problems pp.942-44

This material concerns the determination of the deductible amount if the charity provides goods or services in connection with the “contribution.” It also discusses the reporting requirements imposed on the charity. The question of distinguishing a contribution from a payment for services is further illustrated by the *Sklar* decision (927) where the court denied a deduction for religious school tuition.

D. Limits and Appreciated Property

892(3) 944-5(1) 949(2)-58 (skim Rev. Rul. 79-256 at 950)
 (Supplement 50-2 deletes or modifies substantial portions of the text)
 966-7(1)

Halperin, Charitable Deduction for Appreciated Property Parts III to V

See pp.935 (last ¶)-8 (You can skim the mind-numbing details)

See 964-8(7) (concerning valuation issues) Supp 53-4

Problems 1 and 2 p. 968-9

The Katrina Emergency Tax Relief Act suspended the limitations on charitable deductions for cash contributions to most public charities made between August 31, 2005 and the end of the year.

E. Qualified Conservation Contributions

962-4 Supp 53 See also Problem 499(h)

Questions:

1. Is there adequate assurance that the amount of the charitable deduction will be properly determined? Is the diminution in value to the donor the appropriate starting point or should the taxpayer be required to present evidence as to the value to the public?

2. Consider the following transaction as described in a series of articles in the Philadelphia Inquirer and the Washington Post.

Moneybags is interested in Blackacre that is on the market for \$10 million. A large home is situated on the property. The following transactions take place over a one-hour period with all the parties in the same room.

1. Moneybags contributes \$4 million of appreciated securities to Local Land Trust.
2. Land Trust sells the securities.
3. Land Trust purchases Blackacre for \$10 million.
4. Land Trust places a restriction against further development of Blackacre.
5. Landtrust sells Blackacre to Moneybags for \$6.2 million.

What do the parties hope to accomplish? See also Blake p. 945

What are the advantages of this transaction to a purchase of Blackacre by Moneybags for \$10 million followed by the creation of a development restriction in favor of Local Land Trust accompanied by a donation of \$200,000 in cash?

Suppose the transferor of the appreciated securities to Local Land trust is the grandmother of Moneybags. What is the additional advantage achieved by this modification of the transaction?

F. Planned Giving

958-9(5), 970-72 (end of carryover¶)

Problems 969(3) and 977(1)

Carolyn Osteen from Ropes & Gray will join us for this class and will most likely suggest additional reading.

VII. Private Foundations vs. Public Charities

A. History & Background

pp.752 (last 3 lines)-71(first full ¶),

You can read this material pretty quickly

B. Disadvantages of Foundation Status

pp. 751-2, 787-90(excise taxes), 852-5

See Supp p.34-5 (as to 790)

(If you want more detail see pp.832-62, not assigned)

C. Taxable Expenditures

pp. 862(6)-70

Handout Excise Taxes
Problems pp.870-71 omit a, d, e, f

D. Avoiding Foundation Status

1. Public Support

781-85 (through end of exception 2)

(If you want more detail see pp.794-802, not assigned)

2. Supporting Organizations

§509(a)(3) (as amended) Supp 74

Type I Controlled by– §509(a)(3)(B)(I)

Type II Controlled in Connection with--§509(a)(3)(B)(ii)

Type III Operated in Connection with– §509(a)(3)(B)(iii)

785-6 See pp.820-4 (ef)

(If you want more detail see pp.803-20, not assigned)

2006 Legislation See Supp 35-9

All §509(a)(3)

Self dealing No transactions with donor including compensation

§4958(c)(3)

Type III not functionally related (Some Type II) only

Business holdings as if private foundation §4943(f)

Distributions to organization not count 4942 (some Type I too) §4942(g)(4)

Also expenditure responsibility required 4945(d)(4)

2. Donor advised funds-Community Foundations

pp.771 –7 (through 1st full ¶)

2006 Legislation See Supp 32-4 (If you want more detail see 44-8)

Business holdings as if private foundation §4943(e)

Self dealing No transactions with donor including compensation

§4958(c)(2)

Limit on benefits to donor (e.g dinner at charitable event)

§4967

Distributions require expenditure responsibility unless public charity

§4966

E. Private Operating Foundations

pp.786-7 (827-9is repetitive but offers slightly more detail)

See Exempt Operating Foundations 835, 827(last full ¶)

F. Procedural Aspects

pp.829-32, 871-3 573-6(2)

Professor: Jill Horwitz
School: University of Michigan Law School
Course: Nonprofit Law and Policy

Materials

*All required readings are provided by the professor

Book Excerpts of:

Fishman & Schwarz, *Nonprofit Organizations: Cases and Materials*, Third Edition, Foundation Press 2006

Fremont-Smith, *Foundations and Government: Federal and State Law and Supervision*, Russell Sage Foundation 1965

Powell & Steinberg eds., *The Nonprofit Sector: A Research Handbook*, Second Edition, Yale University Press 2006

Overview

This seminar focuses on the legal aspects of nonprofit organizations, as well as the justifications for the special tax treatment given to nonprofit organizations. The focus of the course is primarily on domestic nonprofits. The grade of the seminar is based on class participation, which includes a submission of four short reflections on the material, a presentation, and a research paper.

Order and Use of Text

The assigned readings comprise excerpts from books; law review, academic journal and newspaper articles; statutes; cases; and Web sites. The main topics covered in the course are:

- Overview of the Nonprofit Sector
- Legal rule and benefits: incorporation and tax
- Donor intent, donations, deductions, credits and standing
- Governance: fiduciary duties
- Nonprofit scandals
- Distinctions between nonprofits, government, and for-profits
- Financial statements
- Accountability and questions about regulating nonprofits

SEMINAR: NONPROFIT LAW AND POLICY 846
UNIVERSITY OF MICHIGAN LAW SCHOOL
WINTER SEMESTER, 2008
PROF. JILL HORWITZ

CLASS MEETINGS

Tuesday 3:40-5:40, 951 Legal Research

CONTACT INFORMATION

Office: 922 Legal Research. Email: jrhorwit@umich.edu.
Administrative Assistant: Dorothy Kryskowski
Email: dkrys@umich.edu Phone: 763-6170

COURSE OVERVIEW

Over the past several decades, the nonprofit sector has grown dramatically in wealth, size, and prominence. So has controversy over whether the benefits provided by nonprofit organizations justify their special statutory, regulatory, and tax treatment. In this seminar we will look at the legal environment in which nonprofits operate to ask several questions: Who owns these organizations and their assets? Are they best characterized as public or private or both? How should they be governed? To whom are they accountable? Why have there been so many nonprofit scandals? In answering these questions we will look broadly at the sector and more specifically at industries in which nonprofits play a large role such as health, education, and religion. The course will focus almost exclusively on domestic nonprofits.

READINGS

All required reading will be provided in the course packets.

REQUIREMENTS

The class will be conducted as a discussion seminar. You will be expected to have read the material carefully and to participate actively in discussion. For four of the weeks (sessions 2, 3, 4, 5, 7, 8, 13), please submit short reflections (approximately one page) by Monday at 5:00 p.m. Student groups must meet with me and provide a reading list and presentation outline **at least 3 weeks before your presentation**. Evaluation will be based on class participation, including reading reflections (25%), a student presentation (15%), and a final research paper (60%).

It is important that you think about a research topic as soon as possible and clear it with me before beginning your research. You must email me with a proposed topic by **Thursday, February 31**. I encourage you to meet with me in person to discuss your topic. Possible topics include, but are in no way limited to: Political nonprofits (527's, 501(c)(4)'s); State and local property tax exemptions; Accountability and non-legal regulation (e.g. best practices, press coverage, self-regulation and ratings); Liability (e.g. charitable immunity); Nonprofit art organizations, Religious organizations, nonprofit education; Private giving (e.g. how much do people give? Why?); Profit-making activities and the Unrelated Business Income Tax; Foundations and Payout Rules; Volunteerism; Scandals; Accountability.

Session 1, January 15.

Introduction: *What is the Nonprofit Sector? Why Should We Care? Who owns it? Where does it come from? Who governs?*

Elizabeth Boris and C. Eugene Steurle, "Scope and Dimensions of the Nonprofit Sector," in Walter W. Powell and Richard Steinberg eds., The Nonprofit Sector: A Research Handbook 2d. Yale University Press (2006) pgs. 66-88.

Marion Fremont-Smith, Foundations and Government: State and Federal Law and Supervision, New York: Russell Sage Foundation (1965), pgs. 23-27.

"The 50 Largest U.S. Charities Ranked by Total Income," The Christian Science Monitor (2005).

Study Questions

- 1) What defines the nonprofit sector, independent sector, or third sector?
- 2) Does either the public v. private or profit-seeking v. nonprofit distinction capture the conception of the sector?
- 3) What roles do philanthropy and volunteerism play in the conception?
- 4) What are the most pressing challenges to nonprofits?
- 5) Which organizations are exempt? Which should be? Why?
- 6) What are the relevant standards of propriety for the amount of compensation to be given to nonprofit executives?

Session 2, January 22.

Legal Rules, Benefits, Nuts and Bolts: Incorporation and Tax

Evelyn Brody, in Walter W. Powell and Richard Steinberg eds., "The Legal Framework of Nonprofit Organizations," "The Legal Framework for Nonprofit Organizations" The Nonprofit Sector: A Research Handbook 2d., Yale University Press (2006) pgs. 243-266.

Skim. Nonprofit Incorporation Forms for Michigan and Massachusetts.
Association for the Preservation of Freedom of Choice v. Simon, 9 NY2d 376 (1961).

State ex Rel. Grant v. Brown, 39 Ohio St.2d 112 (1974).

Ian Urbina, "Boy Scouts Lose Philadelphia Lease in Gay-Rights Fight," New York Times, (December 4, 2007).

John Simon, Harvey Dale, and Laura Chisolm, "The Federal Tax Treatment of Charitable Organizations," in Walter W. Powell and Richard Steinberg eds., The Nonprofit Sector: A Research Handbook 2d. Yale University Press (2006), pgs. 267-306.

Internal Revenue Code §501(c)(3).

Form 990s: Girl Scouts of America Michigan, President and Fellows of Harvard University, Downtown Coaches Club.

Grant Williams, "The Holy War Against Tax Exemptions," The Chronicle of Philanthropy (August 8, 1996).

Study Questions

- 1) What are the purposes of tax-exemption? How well does the law track those purposes?
- 2) Evelyn Brody explains that nonprofit law does not tell managers how to “do” charity. Should it? Why?
- 3) Is the law of fiduciary duties adequate to regulated nonprofits?
- 4) Which types of organizations should be allowed to incorporate a state nonprofit? Which should qualify for 501(c)(3) status and related tax exemptions? Consider the following:
 - a. The Church of Scientology
 - b. King of Kings Lutheran Church, Ann Arbor.
 - c. The Nationalist Movement, a group that favors white Americans and skinheads
 - d. The Boy Scouts of America
 - e. The Detroit Symphony
 - f. Harvard University
 - g. Right to Life, Inc., a nonprofit educational group offering information on pregnancy choices other than abortion.
 - h. Operation Rescue, a loosely organized umbrella organization that stages protest at family planning and abortion clinics.
 - i. Family Planning Alternatives, an organization that provides education on family planning and operates family planning clinics that provide, among other services, abortions.
 - j. An organization seeking to develop communication channels between the living and the dead.

Session 3, January 29.

Where Does the Money Come From and Who Controls It? Donor Intent, Donations, Deductions, Credits, and Standing

Andrew Carnegie, “The Gospel of Wealth”

Excerpts from §170 of Tax Law of Charities and Other Exempt Organizations (2003).

Charitable Giving Charts (Tables 23.1, 23.2, 23.4, 23.5, and Figure 23.2) from John J. Havens, Mary A. O’Herlihy, Paul G. Schervish, “Charitable Giving: How Much, by Whom, to What, and How?” in Walter W. Powell and Richard Steinberg eds., “The Legal Framework of Nonprofit Organizations, “The Legal Framework for Nonprofit Organizations” The Nonprofit Sector: A Research Handbook 2d., Yale University Press (2006) pgs. 542-567.

John G. Simon, “American Philanthropy and the Buck Trust,” 21 University of San Francisco Law Review 641 (1987).

Greg Winter and Jonathan Cheng, “Givers and Colleges Clash on Spending,” New York Times (November 27, 2004).

Barnes Foundation excerpt.

Carol Vogel, “Judge Rules the Barnes can Move to Philadelphia”, New York Times, December 14, 2004.

Ben Gose, “Terms of Endowment,” *The Chronicle of Philanthropy*, pgs. 10-13, (November 15, 2007).

Victoria B. Bjorklund, “Robertson v. Princeton – Perspective and Context,” Mimeo 2008.

<http://www.robertsonvprinceton.org/index.php>

<http://www.princeton.edu/robertson/about/>

Optional:

Evelyn Brody, “Charitable Endowments and the Democratization of Dynasty,” 39 *Arizona Law Review* 873 (1997).

Naomi Feldman and Jim Hines, “Tax Credits and Charitable Contributions,” mimeo October 2003.

Study Questions

- 1) Why do people give money to charities? Are these good reasons? Are the reasons worthy of tax deductions or credits?
- 2) Should donors prefer tax deductions or tax credits? Should the government prefer one tool to the other? What conditions matter?
- 3) Is there a minimum percentage of income that people should give? How much?
- 4) What do you know/suspect about the percentage of giving by income group? What might be done to increase giving by the wealthier? Should we?
- 5) What are the pros and cons for extending income tax charitable deductions to non-itemizers?
- 6) Do tax deductions and credits make donations less laudable? Less valuable for the donor? Less valuable for the donee?
- 7) Is tax-deductibility a valid form of public subsidy?
- 8) As a wealthy parent, how should you think about how much to give to your children or to others? Should the law encourage you to give money to your family or to a charity?
- 9) What are the arguments for and against anonymous giving?
- 10) As the president of a university which is offered a large gift by someone known to have been convicted of price fixing, would you accept the gift? Does the donor’s motivation matter?
- 11) Would America be better off if citizens could not take tax deductions for charitable giving and the level of taxable income in the country were increased? Which kinds of institutions would be most likely to suffer?

Session 4, February 5.

Governance: Fiduciary Duties

The American Law Institute, *Principles of the Law of Nonprofit Organizations*, Tentative Draft No. 1 (February 24, 2007), Introductory Notes to Chapter 3 (Governance) pgs. 14-16, Fiduciary Duties §300 pgs. 20-32, Modification of Fiduciary Duties §305 pgs. 38-44, Duty of Loyalty §310 pg. 48-60, Duty of Care §315 pgs. 71-79.

James Fishman and Stephen Schwarz, Nonprofit Organizations: Cases and Materials 3d, Foundation Press (2000), pages 149-152, 160-179. (includes Stern v. Lucy Webb Hayes National Training School (the Sibley Hospital Case)).

Evelyn Brody, "The Board of Nonprofit Organizations: Puzzling through the Gaps Between Law and Practice," 76 Fordham L. Rev. 521-566 (2007).

Dana Brakman Reiser, "Enron.Org: Why Sarbanes-Oxley Will Not Ensure Comprehensive Nonprofit Accountability," 38 UC Davis Law Rev. 205 (2004).

Intermediate Sanctions on Excess Benefit Transactions, in James J. Fishman and Stephen Schwarz (2004 Supplement), pp. 64-74.

Session 5, NOTE CHANGE OF DAY, FRIDAY FEBRUARY 15 Scandals

Marion Fremont-Smith and Andras Kosaras, "Wrongdoing by Officers and Directors of Charities: A Survey of Press Reports 1995-2002," The Exempt Organization Tax Review, Vol. 42, No. 1, October 2003, pgs. 25-59.

Marion Fremont-Smith, "Pillaging of Charitable Assets: Embezzlement and Fraud," The Exempt Organization Tax Review, Vol. 46, No. 3, December 2004, pgs. 333-346.

Deborah Sontag, "Who Brought Bernadine Healy Down? The Red Cross: A Disaster Story without any Heroes," New York Times Magazine, December 23, 2001.

The American Law Institute, Principles of the Law of Nonprofit Organizations, Tentative Draft No. 1 (February 24, 2007), Introductory Note pgs. 238-243, Enforcement of Fiduciary Duties by Charity or Co-Fiduciary §350 pg. 244, Remedies and Sanctions for Breach §360 pgs. 275-283.

Spend some time paging through the following website, reading about scandals (<http://charitygovernance.blogs.com/> -- no "www")

ASSIGNMENT: PLEASE COME TO CLASS WITH AN EXAMPLE OF ANOTHER RECENT NONPROFIT SCANDAL.

Study Questions:

- 1) Should universities, foundations, and other endowed entities be permitted to increase their endowment with no limitations on size?
- 2) Is it a scandal for the Red Cross to use donations for purposes other than victim relief?
- 3) Do the scandals reveal anything about the nature or structure of the sector, or are they incident to it?
- 4) Who is responsible for preventing scandals in the sector, why?
- 5) Is it a scandal for foundations, universities, and art museums to allow their endowments to grow without limits?

Session 6. February 19.

Exploring the Boundaries: The Nonprofit v. Government Divide

Dennis R. Young, “Complementary, Supplementary, or Adversarial? A Theoretical and Historical Examination of Nonprofit-Government Relations in the United States,” in Elizabeth Boris & Eugene Steuerle eds, Nonprofits and Government: Collaboration and Conflict 2d (Washington, D.C.: The Urban Institute Press, 2006), pgs. 37-79.

Steven Rathgeb Smith, “Government Financing of Nonprofit Activity,” in Elizabeth Boris & Eugene Steuerle eds, Nonprofits and Government: Collaboration and Conflict 2d (Washington, D.C.: The Urban Institute Press, 2006), pgs. 219-256.

Peter Frumkin, *After Partnerships: Rethinking Public-Nonprofit Relations, in Who Will Provide? The Changing Role of Religion in American Social Welfare* (Mary Jo Bane et al. Eds. 2000).

Study Questions, NP v. Government:

- 1) Should nonprofit organizations take government funding?
- 2) What are the risks?
- 3) Does it matter which forms of government financing (e.g. fees, grants, contracts, tax-exempt bonds, regulations) the nonprofit accepts? Why?
- 4) Are nonprofits best described as “public institutions”?
- 5) When a nonprofit closes or becomes obsolete, who should get its assets? Why?

Session 7. March 4.

Financial Statements – Guest Speaker, Professor Elizabeth Keating

Elizabeth K. Keating and Peter Frumkin, “How to Assess Nonprofit Financial Performance,” manuscript (October 2001). *Pay particular attention to Sections IV and V.*

The Pilgrim Service Society – Case.

Session 8. March 11.

Exploring the Boundaries 2: Nonprofit v. For-Profit

Health Care:

Mark Schlesinger and Bradford Gray, “How Nonprofits Matter in American Medicine, And What To Do About It,” *Health Affairs*, July/August 2006; 25(4): w287-w303.

David Hyman and William Sage, “Subsidizing Health Care Providers Through the Tax Code: Status or Conduct?,” *Health Affairs*, July/August 2006; 25(4): w312-w315.

M. Gregg Bloche, “Tax Preferences for Nonprofits: From Per Se Exemption to Pay-For-Performance,” *Health Affairs*, July/August 2006; 25(4): w304-307.

Jill Horwitz, “Nonprofit Ownership, Private Property, and Public Accountability,” *Health Affairs*, July/August 2006; 25(4): w308-311.

James Fishman and Stephen Schwarz, *Nonprofit Organization*, 2nd Edition, 2000, p. 391.

John Colombo, “The Provena Tax Exemption Case: The Demise of Community Benefit?,” 55 Exempt Org. Tax Review. 175 (2007).

Written Statement of Mark Rukavina to the Nonprofit Organization Roundtable organized by Senator Grassley, “The Access Project,” (October 26, 2007).

Congress of the United States, Congressional Budget Office, “Nonprofit Hospitals and the Provision of Community Benefits,” December 2006.

Do We Need Nonprofits at all?

Eric Posner and Anup Malani, “The Case for For-Profit Charities,” University of Chicago Law & Economics, Olin Working Paper No. 304 (September 2006).

Study Questions, NP v. For-Profit.

- 1) Is there a difference between for-profits and nonprofits? How would you know?
- 2) What should be required of nonprofit hospitals? Why?
- 3) Imagine that a nonprofit hospital’s articles of incorporation read something to the effect of “we promise to do whatever is permitted by the Internal Revenue Code §501(c)(3),” rather than the promise “to provide high quality care to all.” Would that hospital be legally obligated to provide charity care? How much? Why? Would that hospital be *morally* obligated to provide free care? How much? Why?
- 4) Should health insurers be afforded nonprofit status? Why? Should they be tax exempt?
- 5) Should the local Illinois tax assessor remove exemption from the local hospitals? Should the state uphold the decision?
- 6) Is the for-profit form a better form for charities?

Session 9. Student Presentations

Session 10. Student Presentations

Session 11. Student Presentations

Session 12. Visitor, Marion Fremont-Smith

Session 13. Accountability: Should we regulate nonprofits? Who? How?

Steven T. Miller, “The IRS’s Role in an Evolving Charitable Sector,” Remarks before the Philanthropy Roundtable (November 10, 2007).

Marcus S. Owens, “Charity Oversight: An Alternative Approach,” Hauser Center for Nonprofit Organizations, Harvard University, Working Paper 33.4 (October 2006).

Marion Fremont-Smith, “The Search for Greater Accountability of Nonprofit Organizations: Recent Legal Developments and Proposals for Change,” 76 Fordham L. Rev. 609-646.

Catherine Wells, “Holding Charities Accountable: Some Thoughts from an Ex-Regulator,” Hauser Center for Nonprofit Organizations, Harvard University, Working Paper 33.1 (October 2006).

Professor: Garry W. Jenkins
School: Moritz College of Law at the Ohio State University
Course: Nonprofit Organizations

Materials

Fishman & Schwarz, *Nonprofit Organizations: Cases and Materials*, Third Edition, Foundation Press 2006

Fishman & Schwarz, *Nonprofit Organizations: Statutes, Regulations and Forms*, Foundation Press 2006

Overview

Jenkins divides his course into four parts:

1. The Introduction to the Nonprofit Sector and Nonprofit Theory
2. The Regulation of Nonprofit Purpose and Activities
3. Governance & Operations
4. Advanced Issues in Nonprofit Regulation

This course is taught exclusively from the Fishman and Schwarz book and the Statutory Supplement.

Order and Use of Text

This course assigns five to six assignments for each of its four parts.

The first part of the class starts with an introduction into the nonprofit sector and theory, skips to tax exemption and charitable organizations, and then moves onto tax treatment of charitable contributions. The second part of the class covers policy, educational and religious purposes, commercial activity, and dissolution. The third part of the class covers the duties of nonprofits, and tax regulation. The fourth part of the class covers issues such as charitable solicitation, political campaign activities, lobbying activities, UBIT, and private foundations.

This course omits the last three chapters on mutual benefit, private membership associations, and antitrust and nonprofits.

NONPROFIT ORGANIZATIONS
794 J
SYLLABUS

Professor Garry W. Jenkins
Winter 2008

<i>Course Overview</i>	This is a three-credit course for upperclass students. It will meet Tuesdays and Thursdays from 9:45 to 11:00 a.m. in Room 245.
<i>Course Materials</i>	<p>Casebook: James J. Fishman & Stephen Schwarz, NONPROFIT ORGANIZATIONS: CASES AND MATERIALS (3rd ed., 2006).</p> <p>Statutory Supplement: Fishman & Schwarz, NONPROFIT ORGANIZATIONS: STATUTES, REGULATIONS AND FORMS (3rd ed., 2006).</p>
<i>Attendance and Class Participation</i>	I expect students to prepare for class, attend, and actively participate. Classroom instruction will often rely on student discussion. I will understand if, on a <i>limited</i> number of occasions, a student asks prior to class to be excused from oral participation because of lack of preparation. Otherwise, I will assume that you are present, prepared, and eager to participate.
<i>Grading and Exams</i>	Grades will primarily be based on a final examination. I may adjust grades (both upwards and downward) based on class participation/attendance. The exam will consist of essay questions (and may also include objective questions as well). The exam may cover any of the assigned reading, classroom discussion, or additional material distributed in class.

Office Hours

I am in Room 210. My office hours will be Tuesdays from 11:10-12:00 and Thursdays from 3:30-4:15. If those hours do not work for you, call or e-mail me and I will try to set up an alternative time. My office phone number is 247-8338, and my e-mail address is jenkins.434@osu.edu.

Assignments

The following installments of the syllabus are intended to cover the reading assignments in the course. As we reach the end of each set of assignments, I will provide you with another installment.

Cancelled Class

Please note that class will not be held on Thursday, March 6.

Part I: Introduction to the Nonprofit Sector and Nonprofit Theory

Assignment 1	Scope and Nature of the Nonprofit Sector; Introduction to Nonprofit Theory	1-34, 43-54 Supplement: <ul style="list-style-type: none">• RMNCA §13.01• Cal. Corp. Code §5410
Assignment 2	Nonprofit Theory (con't)	54-78
Assignment 3	Exemption Theory	320-348
Assignment 4	Introduction to Organizational Issues; Other Nonprofit Tax Benefits	349-353, 348-349, 470-476 Supplement: <ul style="list-style-type: none">• IRC §501(c)(3)
Assignment 5	Tax Treatment of Charitable Contributions	874-895, 907-915, 935-938 Supplement: <ul style="list-style-type: none">• IRC §170(c)

PART II: THE REGULATION OF NONPROFIT PURPOSE AND ACTIVITIES

Assignment 6	Public Policy Limitation; Charitable Purposes	78-81, 400-420, 87-94, 353-372 Supplement: <ul style="list-style-type: none">• Treas. Reg. §1.501(c)(3)-1(d)(2)
Assignment 7	Educational and Religious Purposes	427-461 Supplement: <ul style="list-style-type: none">• Treas. Reg. §1.501(c)(3)-1(d)(3)
Assignment 8	Commercial Activity and its Limits	81-87, 593-603, 711-733 Supplement: <ul style="list-style-type: none">• Treas. Reg. §1.501(c)(3)-1(e)
Assignment 9	Dissolution I	94-97, 101-130

Assignment 10	Dissolution II	130-139 Supplement: • RMNCA Chps. 11-13 (skim)
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PART III: GOVERNANCE & OPERATIONS

Assignment 11	Introduction to Fiduciary Duty	140-149 Supplement: • RMNCA §§8.01, 8.40 • Cal. Corp Code §5210
Assignment 12	Duty of Care	149-176 Supplement: • RMNCA §§8.30, 8.41, 8.42 • N.Y. NPCL §§717, 719
Assignment 13	Duty of Loyalty	176-216 Supplement: • RMNCA §8.31 • Cal. Corp Code §5233 • N.Y. NPCL §715
Assignment 14	Advanced Issues: Duty of Obedience, Investment Responsibility, and Executive Compensation	219-242
Assignment 15	Enforcement of Fiduciary Duty	242-265
Assignment 16	Tax Regulation: Private Inurement and Private Benefit	476-486, 276-282, 486-500 Supplement: • IRC §4958

PART IV: ADVANCED ISSUES IN NONPROFIT REGULATION

Assignment 17	Charitable Solicitation	276-305, 311-318
Assignment 18	Political Campaign Activities	500-502, 532-540, 549-552 Supplement: <ul style="list-style-type: none">• Treas. Reg. §1.501(c)(3)-1(c)(3)
Assignment 19	Lobbying Activities	502-532, 553-557 Supplement: <ul style="list-style-type: none">• IRC §501(h)• Treas. Reg. §1.501(h)-1 to 1.501(h)-3
Assignment 20	Unrelated Business Income Tax: General Provisions	628-639, 646-666 Supplement: <ul style="list-style-type: none">• IRC §§511, 513
Assignment 21	Unrelated Business Income Tax: Exclusions & Proposals for Reform	668-685, 744-750 Supplement: <ul style="list-style-type: none">• IRC §512
Assignment 22	Private Foundations: Classifications	751-755, 781-786, 791-803
Assignment 23	Private Foundations: Excise Taxes and Alternatives	787-790, 832-840, 847-871, 769-780 Supplement: <ul style="list-style-type: none">• IRC §§4940-4946

Sources

Revised Model Nonprofit Corporation Act (RMNCA)

Internal Revenue Code (IRC)

Treasury Regulations (Treas. Reg.)

Professor: Jill Manny
School: New York University School of Law
Course: The Law of Nonprofit Organizations

Materials

Fishman & Schwarz, *Nonprofit Organizations: Cases and Materials*, Third Edition, Foundation Press 2006
Fishman & Schwarz, *Nonprofit Organizations: Statutes, Regulations and Forms*, Third Edition, Foundation Press 2006
Fishman & Schwarz Casebook Supplement
Various Web sites and newspaper articles

Overview

This is a standard course in nonprofit law, covering a wide array of topics including formation of a nonprofit, tax-exempt status and the various activities a nonprofit organization may undertake. The course meets twice per week, and for almost each class, students are asked to prepare answers to problems in the casebook for discussion. Toward the end of the semester, one class is devoted to a panel discussion of careers in nonprofit organizations, during which distinguished legal practitioners in the field of nonprofit law participate in the career panel.

Order and Use of Text

The course covers chapters 1-7 of the casebook and the vast majority of problems located within those chapters. Starting with the beginning of the casebook as an introduction, the course then covers the next few chapters out of order. Along with the selected readings from the casebook, the majority of classes also require readings from the statutory supplement. Additionally, a handful of classes have readings from ancillary sources, such as Web sites, articles, and drafts of proposed regulations.

THE LAW OF
NONPROFIT ORGANIZATIONS
Professor Jill Manny
Fall 2008

August 27—Introduction

Purchase the casebook entitled "Cases and Materials on Nonprofit Organizations, Third Edition," by James Fishman and Stephen Schwarz, along with 2008 Casebook Supplement and the Third Edition Statutory Supplement, at the N.Y.U. Bookstore.

1. In the Casebook, read:

pp. 2 – 29, 43 – 56. Prepare a written outline of your answer to the Introductory Problem on p. 63 for your own reference during class discussion. **Read all relevant pages in the Casebook Supplement.**

2. In the Statutory Supplement, read:

Code* § 501(a), (b), (c)(1) – (27) [§ 501(c)(8) – (27) 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. 1013 (skim to determine what the IRS is interested in discovering).

Check Casebook Supplement for amended Code sections.

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

www.metmuseum.org

www.komen.org

www.peta.org

www.fordfound.org

www.sierraclub.org

www.now.org

www.abanet.org

www.nfl.org

www.pewtrusts.org

* “Code” refers to the Internal Revenue Code. “Regulations” refers to the Treasury Regulations. The relevant Code and Regulations provisions can be found in the Statutory Supplement. Check the Casebook Supplement for changes to the assigned Code and Regulations provisions.

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 will 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 two articles posted on Blackboard:

Stephanie Strom, Big Gifts, Tax Breaks and a Debate on Charity, N.Y. Times, Sept. 6, 2007, at A1.

Robert B. Reich, Is Harvard a Charity?, L.A. Times, Oct. 2007, at A 13.

5. Read the excerpt from the Final Report of the Panel on the Nonprofit Sector available on Blackboard.

September 3 — Organization Under State Law

1. In the Casebook, read:

pp. 66 – 100. Prepare a written outline of your answers to the problems on p. 77 and problems (c), (e), and (f) on p. 101 for your own reference during class discussion.

2. In the Statutory Supplement, read:

Rev. Model Nonprofit Corp. Act: §§ 1.40(6), (10), (21), (23), (28), (30), 2.01 – 2.06, 3.01, 3.02, 4.

N.Y. Not-for-Profit Corp. Law: §§ 201, 202, 204, 205, 206, 404-406, 508, 515.

Cal. Corp. Code: §§ 5111, 5130, 5410.

Restatement of Trusts 2d: § 368.

Form of Articles of Organization, p. 948.

Form of By-Laws, p. 950 (skim).

Form of Charitable Trust, p. 956 (skim).

September 8 — Dissolution and Distribution of Assets

1. In the Casebook, read:

pp. 101 – 128. Prepare a written outline of your answers to problem 1 on

p. 105 and Problems 1 – 3 on p. 119 for your own reference during class discussion.

September 10— Tax-Exempt Status; Charitable Requirement

1. In the Casebook, read:

pp. 322 – 357, 395 – 426.
2. In the Statutory Supplement, read:

Code: § 501(c)(3) [again].
Regulations: §§ 1.501(c)(3)-1(a), (b), (c); 1.501(c)(3)-1(d)(1), (2).
3. Read the Letter from Rep. Thomas to Myles Brand, President of the NCAA, and the excerpt from the response from Mr. Brand, both posted on Blackboard.

September 15 and 17— Private Inurement, Private Benefit, and Excess Benefit Transactions

1. In the Casebook, read:

pp. 476 – 497, 276 – 282. Prepare a written outline of your answers to Problems 1(a)-(f) and 2 on pp. 497 – 500 for your own reference during class discussion.
2. In the Statutory Supplement, read:

Code: § 4958.
Regulations: §§ 1.501(c)(3)-1(c)(2).
3. Read the article posted on Blackboard:

Cornelia Dean, Wealthy Stake \$25 Million in a War With the Sea, N.Y. Times, July 8, 2007.

September 22—Educational Organizations

1. In the Casebook, read:

pp. 427 – 443. Prepare a written outline of your answers to the problems on pp. 443 – 444 for your own reference during class discussion.

2. In the Statutory Supplement, read:

Regulations: §§ 1.501(c)(3)-1(d)(3).

October 1— Religious Organizations and Health Care Organizations

1. In the Casebook, read:

pp. 444 – 461; 353 – 376. Prepare a written outline of your answers to problems (a) and (c) on p. 461 and to the problems on pp. 376 – 377 for your own reference during class discussion. We will also cover the material on Educational Organizations assigned for September 22, 2008.

October 6— Miscellaneous Organizations

1. In the Casebook, read:

pp. 377 – 390 and 461 - 470. Prepare a written outline of your answers to the problems on pp. 390 and problems (a) and (c) on p. 470 for your own reference during class discussion.

2. In the Statutory Supplement, read:

Code: § 501(j).

Regulations: §§ 1.501(c)(3)-1(d)(4), (5).

October 8 — Commercial Activities

1. In the Casebook, read:

pp. 593 – 615. Prepare a written outline of your answers to Problems (a), (b), and (e) – (i) on pp. 615 – 616.

2. In the Statutory Supplement, read:

Code: § 502.

Regulations: §§ 1.501(c)(3) - 1(c)(1) and -1(e).

October 13 and 15— Limitations on Lobbying and Political Campaign Activities

1. In the Casebook, read:

pp. 500 - 568. Prepare a written outline of your answers to Problems 1 and

2 on pp. 568 - 570 for your own reference during class discussion. Focus on lobbying activities for the first class and political campaign activities for the second class. **Be sure to read Revenue Ruling 2007-44, in the Casebook Supplement.**

2. In the Statutory Supplement, read:

Code: §§ 501(c)(3), (4); 501(h); 504; 4911; 4912; 4955; 6033(b)(8).

October 20—General Counsels Career Panel

Participants: Sharon Cott, Senior Vice President, Secretary and General Counsel of The Metropolitan Museum of Art

Karen Goldstein, Vice President and General Counsel of the Vera Institute for Justice

S. Andrew Schaffer, Deputy Commissioner for Legal Matters in the New York City Police Department, formerly Senior Vice President, General Counsel, and Secretary of New York University

Buzz Tenny, Executive Vice President, Secretary and General Counsel of the Ford Foundation

Jane Wilton, General Counsel, New York Community Trust

Bios posted on Blackboard.

October 22—Introduction to Private Foundations and their Alternatives

1. In the Casebook, read:

pp. 752 – 790 (excluding the discussion of “Pass-through Foundations and Pooled Common Funds” on pp. 779 – 780).

2. In the Statutory Supplement, read:

Code: §§ 4940; 4946; 507(d)(2); 509(a)(1) – (4); 509(d); 170(b)(1)(A)(i) - (vi).

October 27—Avoiding Private Foundation Status

1. In the Casebook, read:

pp. 791 – 806; 813 – 814; 818 – 825; 827 – 829. Prepare a written outline of your answers to problems 1(a), (b), and (f) on pp. 790 – 791 and the Problem on pp. 802 - 803 **using both relevant tests** (§§ 170(b)(1)(A)(vi) and 509(a)(2)) for your own reference during class discussion.
2. In the Statutory Supplement, re-read:

Code: §§ 4940; 4946; 507(d)(2); 509(a)(1) – (3); 509(d); 170(b)(1)(A)(i) - (vi). Also read § 4942(j).

October 29 and November 3 — Private Foundation Excise Taxes

1. In the Casebook, read:

pp. 832 – 873, ignoring all problem sets that are not specifically assigned. Prepare a written outline of your answers to the problems 1(a)-(g), (i) and (j) and 2 on pp. 847 – 849 and problems (a), (c), (d), (e), (g), (h), and (i), on pp. 870 - 871 for your own reference during class discussion.
2. In the Statutory Supplement, read or re-read:

Code: §§ 4941; 4945; 4946.

November 12—Nonprofit Operation and Governance

1. In the Casebook, read:

pp. 140 – 143, 149 – 172, 176- 179, 194- 206, 219- 224, 246 – 253, 260 – 265. Prepare a written outline of your answers to Problems (a) and (b) on p. 172 and Problem 1(except for 1(d)) on pp. 216 – 217.
2. In the Statutory Supplement, read:

Revised Model Act: 1.7, 3.04, 8.01, 8.30 – 8.33, 8.41, 8.42.
Cal. Corp. Code: §§ 5210, 5227, 5230, 5231, 5233-37; 7233; 7236.
N.Y. Not-for-Profit Corp. Law: §§ 715 – 717, 719.

November 17—Nonprofit Operation and Governance

1. Michael Klausner & Jonathan Small, *Failing to Govern? The Reality of Nonprofit Boards*, STAN. SOC. INNOVATION REV., Spring 2005, at 42. (Handout)
2. BOARDSOURCE, THE SOURCE - TWELVE PRINCIPLES OF GOVERNANCE THAT POWER EXCEPTIONAL BOARDS (2005). (Handout)
3. Form 990. Focus on Part VI, Governance, Management, and Disclosure, p. 6. (Handout)
4. INDEPENDENT SECTOR, PRINCIPLES FOR GOOD GOVERNANCE AND ETHICAL PRACTICE: A GUIDE FOR CHARITIES AND FOUNDATIONS (2007) at http://www.nonprofitpanel.org/report/principles/principles_guide.pdf
5. IRS, Good Governance Practices, at http://www.irs.gov/pub/irs-tege/governance_practices.pdf

November 19, 24, and 26—Unrelated Business Income Tax

1. In the Casebook, read:

pp. 616 – 666, 668 – 684. Prepare a written outline of your answers to the problems on pp. 666 – 668 (excluding problem 1(d) and (h)) and 684 – 685 for your own reference during class discussion. Focus on the first assignment and problem set for November 21 and 26 and on the remaining reading and problem set for December 3.
2. In the Statutory Supplement, read:

Code: §§ 511(a), (b); 512(a), (b)(1)-(5), (7) - (9), (13), (15); 513(a), (c), (f), (h), (i).
Regulations: § 1.513-4.
3. On the Web, visit www.metmuseum.org/store (or go to a Metropolitan Museum of Art shop). Think about sales of which items might generate unrelated business income.

Professor: Lloyd Mayer
School: University of Notre Dame Law School
Course: Not-for-Profit Organizations

Materials

Fishman & Schwarz, *Nonprofit Organizations: Cases and Materials*, Third Edition, Foundation Press 2006
Fishman & Schwarz, *Nonprofit Organizations: Statutes, Regulations and Forms*, Foundation Press 2006
Nonprofit Organizations Supplement
Additional materials posted on the course Web site

Overview

This course provides an overview of the laws that are most relevant to not-for-profit organizations in the United States. The course covers the scope and role of not-for-profit organizations (NPOs), the legal benefits that NPOs enjoy, the legal restrictions they face, the specific legal issues facing the most common types of NPOs, and the major trends in the NPO sector.

Order and Use of Text

This course uses the Fishman and Schwarz casebook and supplementary materials. However, the topics are rearranged in the syllabus, with the course divided into six parts and taught in the following order.

1. Introduction to the Not-for-Profit Sector
2. Legal Benefits
3. General Legal Restrictions
4. Legal Restrictions on Specific Activities
5. Specific Types of Not-for-Profit Organizations
6. Major Trends

NOT-FOR-PROFIT ORGANIZATIONS
Spring 2008 – Professor Lloyd Mayer

Tuesday, Thursday
9:25 a.m. – 10:40 a.m., Room 110
www.nd.edu/~lmayer/npo

Email: lmayer@nd.edu
Phone: 631-8057
Office: Room 312

Syllabus

Course Description

This course will provide an overview of the laws that are most relevant to not-for-profit organizations in the United States. More specifically, the class will cover: the scope and role of the not-for-profit organization or “NPO” sector; the legal benefits that NPOs enjoy; the legal restrictions most NPOs face; and the specific legal issues facing the most common types of NPOs. The class will end with a look at two major trends in the NPO sector that we will touch on throughout the term: the growth of partnerships between NPOs and other entities, including government agencies and businesses; and the globalization of NPOs through cross-border activities and the growth of indigenous non-governmental organizations or “NGOs” in many countries. By the end of this course you will be able to advise members of NPO boards about their legal responsibilities and ensure compliance of NPOs with the state and federal laws that generally apply to them. You will also have a greater knowledge of the scope of activities by NPOs and the important role they play both domestically and throughout the world.

Required Course Materials

- Fishman & Schwarz, *Nonprofit Organizations: Cases and Materials*, 3d ed. (Foundation Press)
- Fishman & Schwarz, 2007 Supplement
- Fishman & Schwarz, *Nonprofit Organizations: Cases & Materials: Statutes, Regulations, and Forms*, 3d ed. (Foundation Press)
- Additional materials that will be posted on the course website (listed above)

Class Meetings: TuTh, 9:25 a.m. – 10:40 a.m., Room 110

The only exception to this class schedule is that **classes will not be held the week of March 17th**. Assuming the two classes that week are the only classes that need to be cancelled during the term, no make-up classes will be scheduled. There will, however, be a review class scheduled at the end of the term.

Class Participation

All students are encouraged and expected to participate in class discussions throughout the term, and class participation can have a significant effect on your final grade (see the **Grading** section below). To facilitate class participation and also to allow students with particular interests to

explore those interests further, students will be asked to sign-up to take a major role in class discussions for a certain number of classes. The exact number of such classes for each student will depend on the final class enrollment, but will probably be four classes per student throughout the term with five to seven students serving in this role for each class.

Class Assignments

Class assignments will be made available in class and on the course website as they become available.

Final Examination & Grading

For grading, students will have two options: a substantial research paper or a take-home final examination.

Research Paper: The research paper must meet the requirements for the Upper-Level Writing Requirement (whether you want to use the paper to meet that requirement or not). This means that it should be at least 10,000 words (including text and footnotes), it should make appropriate and critical use of primary and secondary sources, and its citations should follow “Blue Book” form. Topics are subject to my approval, but any manageable topic related to the course should be acceptable.

There is one **hard deadline** with respect to the paper. The completed paper is due on **Monday, April 28th, at 5:00 p.m.** Failure to meet this deadline means you have opted to take the take-home final exam instead.

Given the required length of the paper, I strongly recommend that you run your topic by me by no later than **Thursday, February 14th**, which will be five weeks into the course. Once you have settled on your paper topic, we will meet briefly to set other, soft deadlines such as for an outline and a rough draft, but a failure to meet either the suggested topic deadline or any of these other soft deadlines will not affect your final grade (although it may increase your stress as the end of term approaches).

Take-Home Final Examination: Your other option is that you may choose to take an eight-hour take-home final examination. You will be able to take the exam at anytime during the examination period (Friday, May 2nd through Tuesday, May 13th) as long as the examination is turned in by 5:00 p.m. on Tuesday, May 13th.

Class Participation: Class participation may affect your grade either up or down **by up to two notches** (e.g., potentially changing a B+ final exam or paper grade to an A or a B-). For these purposes, quality of participation matters more than quantity of participation.

Contact Information

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

I am available to meet with students at any time that I am in the office (**Room 312**) and my door is open. These times will vary, but in general I expect to be in my office from 8:30 to noon and 1:00 to 2:45 on weekdays, except when I am teaching class. My teaching schedule is TuTh 9:25-10:40 and TuTh 2:00 – 3:15. If you would prefer to set a specific time to meet, please contact me.

NOT-FOR-PROFIT ORGANIZATIONS

Spring 2008 – Professor Lloyd Mayer

Tuesday, Thursday
9:25 a.m. – 10:40 a.m., Room 110
www.nd.edu/~lmayer/npo

Email: lmayer@nd.edu
Phone: 631-8057
Office: Room 312

Assignments

Supp.: If supplement pages are listed for an assignment, check the supplement before reading the assigned casebook pages. While most of the supplement changes are inserts, in a few instances the supplement replaces existing casebook text.

Skimming: When you are asked to “skim” a statute, regulation, form, or part of a form, please quickly read the material to gain a general understanding of its scope but you do not need to take in its details.

PART 1: INTRODUCTION TO THE NOT-FOR-PROFIT SECTOR

1. Scope of Sector

<i>Fishman & Schwarz:</i>	1-12 (end of page), 17-22 (thru Expenditures section), 29-31
<i>Statutes & Regs:</i>	RMNCA § 13.01 (p. 155) Illinois Act § 103.05(a) (pp. 55-56) New York Law § 201(b) (pp. 66-67)
<i>Website:</i>	Syllabus

2. Role of Sector

<i>Fishman & Schwarz:</i>	39-56, 60-63 (be prepared to discuss the problem on p. 63, except do not research Indiana nonprofit law)
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PART 2: LEGAL BENEFITS

1. Exemption – Federal Income Tax

<i>Fishman & Schwarz:</i>	320-326, 327-332, 337-348, 351-353, 980-989
<i>Supp.:</i>	10
<i>Statutes & Regs:</i>	IRC § 501(a) to (c)(10) (pp. 265-267) skim IRC § 501(c)(11) to (27), (d) to (f) (pp. 276-281)
<i>Website:</i>	Handout #1: IRS Form 1023 Handout #2: IRS Form 1024

2. Exemption – State & Local Taxes

Fishman & Schwarz: 83-87, 348-349, 470-476
Website: Handout #3a: Provena Relevant Statute
 Handout #3b: Provena Denial of Exemption
 Handout #3c: Provena Hospital Arguments
 Handout #3d: Provena Court Order & Judgment

3. Deductible Contributions & Other Legal Benefits for Charities

Fishman & Schwarz: 874-895 (to end of section a), 900 (section 2 only), 907-15
Supp.: 49 (first note only)
Statutes & Regs: IRC § 170(a)(1) (p. 231), (c) (pp. 236-238)
Website: Handout #4: IRS Letter re “Deputized Fundraising”
 Handout #5: Excerpt from CRS Report on Non-Tax Benefits
 for Charities (read introduction (pp. 1-2); skim pp. 2-10)

PART 3: GENERAL LEGAL RESTRICTIONS

1. Choice of Legal Form & The Nonprofit Corporation

Fishman & Schwarz: 65-83, 87 (problem only)
Statutes & Regs: RMNCA §§ 2.01 to 2.06 (pp. 106-109)
 New York Law § 402 (pp. 70-71)
 skim sample articles, bylaws & trust form (pp. 948-960)

2. Mergers, Conversions, and Dissolutions

Fishman & Schwarz: 101-119, 130-139
Statutes & Regs: RMNCA §§ 14.01 to 14.03 (pp. 155-157), 14.06 (159-160)
 Illinois Act § 112.16 (p. 60)
Website: Handout #6: For-Profit Conversion Example

3. Duty of Care

Fishman & Schwarz: 140-152, 160-172, 173-176
Supp.: 4-6
Statutes & Regs: RMNCA §§ 8.30 (pp. 134-135), 8.33 (p. 137)
 Illinois Act §§ 108.65, 108.70 (pp. 57-59)
 New York Law §§ 717, 719 (pp. 85-88)
Website: Handout #7: Smithsonian Institution Report Excerpt

4. Duty of Loyalty

Fishman & Schwarz: 176-179, 184-206, 213-219 (esp. problems (d), (e), (g) & (h))
Statutes & Regs: RMNCA §§ 8.31 to 8.32 (pp. 135-136)
 Illinois Act §§ 180.60, 108.80 (pp. 57, 59-60)
 New York Law §§ 715 to 716 (pp. 84-85)
 skim conflict of interest policy & statement (pp. 961-965)
Website: Handout #8: Bishop Estate Closing Agreement Excerpt

5. Duty of Obedience & Investment Responsibility

Fishman & Schwarz: 219-236 [**maybe drop investment responsibility next time; combine obedience with loyalty?**]
Supp.: 6-8
Statutes & Regs: UMIFA §§ 2, 4 to 6 (pp. 197-198)
 UPI §§ 2 to 3, 8 to 9 (pp. 200-203)

6. Private Inurement, Private Benefit, and Federal Regulation of Not-for-Profits

Fishman & Schwarz: 236-238, 240-242 (skip notes 3 to 5), 476-486, 276-282 (note 1 only), 486-500 (especially problems 1(c), (d), and (h)), 577-578
Supp.: 14-15
Statutes & Regs: IRC § 4958 (pp. 407-410)
 California Corporations Code § 5227 (pp. 10-11)
 RMNCA § 8.13 (pp. 130-131)
Website: Handout #9: IRS Good Governance Practices Draft (read the first page; skim the rest)
 Handout #10: New IRS Form 990 (read Parts VI & VII; skim the rest)
 Handout #11: Part I of Schedule J to New IRS Form 990

7. Fundraising Solicitation, Donor Intent, and State Regulation of Not-for-Profits

Fishman & Schwarz: 242-265, 269-270, 282-285, 289-305, 311-316 (prob. 1 only)
Statutes & Regs: RMNCA §§ 1.70, 3.04, 6.30 (pp. 106, 111-112, 116-117)
 New York Law § 112 (pp. 62-65)
Website: Handout #12: Panel on the Nonprofit Sector Principles for Good Governance and Ethical Practice (Executive Summary)

PART 4: LEGAL RESTRICTIONS ON SPECIFIC ACTIVITIES

1. Charitable Activities and the Public Policy Limitation

Fishman & Schwarz: 87-89, 92-94, 97 (start at note 2)-101, 349-351, 353-357, 400-427 (skip problems), 577-78
Supp.: 14
Statutes & Regs: reread IRC § 501(c)(3) (p. 266)
 Treas. Reg. § 1.501(c)(3)-1(d)(2) (p. 547)
Website: Handout #13: Schedule E (Schools) to New IRS Form 990

2. Advocacy & Lobbying

Fishman & Schwarz: 500-532, 552-555 (inc. note 1)
Statutes & Regs: reread IRC § 501(c)(3) (p. 266)
 IRC § 501(h)(1)-(2), 4911(a)-(d) (pp. 282, 361-363)

3. Electioneering

Fishman & Schwarz: 532, 540-552, 555 (note 2)-560, 569-570 (problem 2 only)
Supp.: 16-28
Statutes & Regs: skim IRC § 527 (pp. 332-343)
Website: Handout #14: Excerpt from NAACP Speech by Julian Bond
 Handout #15: All Saints Sermon by George Regas

4. “Commercial” Activities

Fishman & Schwarz: 593-621
Statutes & Regs: IRC §§ 502 (p. 291)

5. The Unrelated Business Income Tax

Fishman & Schwarz: 628-630, 646-656, 659-666, 668-670, 681-684
Statutes & Regs: IRC §§ 511(a), 512(a)(1) & (b)(1)-(3), 513(a) & (c)
 (pp. 301, 302, 306-307, 312-313)

6. Joint Ventures

Fishman & Schwarz: 711-739

PART 5: SPECIFIC TYPES OF NOT-FOR-PROFIT ORGANIZATIONS

1. Hospitals and Other Health Care Organizations

Fishman & Schwarz: 357-377
Supp.: 10-11
Website: Handout #16: St. Joseph Regional Medical Center – South Bend Campus IRS Form 990 (read Attachment F; skim rest)
 skim Handout #17: Excerpt from IRS Hospital Report

2. Schools and Other Educational Organizations

Fishman & Schwarz: 427-444
Statutes & Regs: Treas. Reg. § 1.501(c)(3)-1(d)(3) (pp. 547)
Website: skim Handout #18: University of Notre Dame IRS Form 990
 Handout #19: CRS University Endowments Memo

3. “Churches” and Other Religious Organizations

Fishman & Schwarz: 444-461
Website: Handout #20: IRS Tax Guide for Religious Organizations (read pages 1-2 (contents and introduction); skim the rest)
 Handout #21: Zuni Mountain Sanctuary Protest Letter to IRS (read pp. 2-6 (facts section); skim the rest)

4. Other Charitable Organizations

Fishman & Schwarz: 377-383, 384-389, 390-395, 395-399, 461-470 (skip problems throughout)
Supp.: 11-13
Website: Handout #22: Memphis Chicks Application Statement (read pp. 1-7 (factual background); skim the rest)

5. Private Foundations – Overview & Definition

Fishman & Schwarz: 751-752, 759-769, 771-791
Supp.: 32-35
Statutes & Regs: IRC §§ 509(a), 170(b)(1)(A) (pp. 298-300, 232-233)

6. Private Foundations – Special Rules

Fishman & Schwarz: 832, 836-847, 849 (section 3.a only), 856-857, 861-862 (skip problem), 862-866
Supp.: 40, 41 (second note only), 43
Statutes & Regs: IRC § 4941(d), 4946 (pp. 373-376, 399-401)

7. Mutual Benefit Organizations - Social Welfare, Labor, Trade

Fishman & Schwarz: 990-1006
Statutes & Regs: reread IRC § 501(c)(4), (5) & (6) (p. 266)
Treas. Reg. §§ 1.501(c)(4)-1, 1.501(c)(5)-1, 1.501(c)(6)-1
(pp. 553-556)
Website: Handout #23: NAACP National Voter Fund Statement in
Support of Application for Tax-Exempt Status

8. Mutual Benefit Organizations – Other Types

Fishman & Schwarz: 1010-1026, 1027-1028, 1029-1030
Statutes & Regs: read IRC § 501(c)(2), (7), (8) & (10) (p. 267)
IRC § 501(i) (p. 284)
Treas. Reg. § 1.501(c)(7)-1 (p. 556)

PART 6: MAJOR TRENDS

1. Public-Private Partnerships

Website: Handout #24a: Minow, *Partners, Not Rivals?*
(Part I to end of carryover paragraph on p. 1065)
Handout #24b: Minow, *Partners, Not Rivals?*
(Part III to end of Section A)
Handout #25: Wolch, *The Shadow State*
(pp. 28-32, 36-43, 215-218)

2. “NGOS” – Globalization of Not-for-Profit Organizations

Fishman & Schwarz: reread 29-31
31-32, 895-899
Statutes & Regs: IRC § 501(p) (pp. 289-291)
Website: Handout #26: Treasury Anti-Terrorist Financing Guidelines
(read Section VI and the Annex; skim the rest)
Handout #27: International Nongovernment Organizations
(read pp. 333, 337-342, 344-345; skim the rest)

Professor: Nicholas Mirkay
School: Widener University School of Law
Course: Nonprofit Organizations

Materials

Fishman & Schwarz, *Nonprofit Organizations: Cases and Materials*, Third Edition, Foundation Press 2006

Fishman & Schwarz, *Nonprofit Organizations: Statutes, Regulations and Forms*, Foundation Press 2006

Additional Course Materials Package

Course Overview

This course examines the basics of nonprofit organizations that are necessary for forming a nonprofit organization or assisting a nonprofit in obtaining state/federal tax exemption. The course is divided into four main parts:

1. Introduction to the Nonprofit Sector & Relevant Legal Regimes
2. The Regulation of Nonprofit Organizations & Their Activities
3. The Regulation of Nonprofit Actors
4. Advanced Issues – Federal Tax Regulation of Nonprofit Organizations.

Order and Use of Text

The course begins with Chapter 1 of the casebook which provides an overview of the Nonprofit Sector. From there, the readings from the casebook skip back and forth between different chapters in order to follow the four main topic areas presented by the professor. For many of the topic areas presented, the readings assigned include excerpts from multiple chapters.

NONPROFIT ORGANIZATIONS

FALL 2007

Syllabus

Professor Nicholas Mirkay
(302) 477-2119, Room 420
e-mail: namirkay@widener.edu

Office Hours:

Wednesdays

12:30 pm – 3:00 pm
or by appointment

Course Materials

1. Fishman & Schwarz, Nonprofit Organizations – Cases and Materials (3rd ed., 2006) [Text].
2. Fishman & Schwarz, Nonprofit Organizations – Statutes, Regulations and Forms (3rd ed., 2006) [Supplement].
3. Additional Course Materials package [ACM].

Course Description

Why study nonprofit law? At some point in their practice, most attorneys are asked to serve on a nonprofit board of directors, form a nonprofit organization for a particular charitable cause, or assist a nonprofit in obtaining federal and/or state tax exemption. This course provides you with the basics necessary to adequately address each of these situations. Furthermore, the course is particularly important to students who anticipate practicing in the health law area because a majority of health care providers (hospitals, medical centers) are either nonprofit organizations or originated as such.

When discussing nonprofit organizations, there are two bodies of law that primarily govern – state entity law (corporations, trusts) and tax-exemption law (e.g., federal income tax; state & local tax). This course surveys both bodies of law concurrently. The state law aspect of nonprofits organizations is discussed in the context of choice of entity, formation, dissolution, and governance. In addition, federal income tax rules for obtaining and maintaining an income tax exemption are discussed, including a brief review of state and local tax exemption. In these discussions, you will gain an appreciation of the strong public policies that permeate these two bodies of law. Except for the charitable contributions rules, the tax rules and regulations reviewed in this course are generally not computational in nature. Accordingly, ***this is not a typical tax course!***

Attendance Policy

Attending class is an essential and beneficial part of the learning process and will improve your understanding of the materials presented in the course as well as your performance in the course (i.e., your final grade). Regardless of whether you agree with the above statement, you should nevertheless consult the Widener University School of Law Student Handbook for the School's attendance policy and procedures. Such policy and procedures will be fully adhered to in this class.

To encourage your participation in class, I reserve the option of awarding a “plus” to your final grade for outstanding performance. Obviously, the *quality* of what you say is more important than the *quantity* factor. I also reserve the right to award a “minus” to your grade if you “pass” more than two times during the semester. Special circumstances for being unprepared will be considered.

Assignments

The assignments listed below, which include problems, refer to the Text and the Supplement. For each class, read the assigned pages in each, study the Revised Model Nonprofit Corporation Act provisions or the income tax statutes and regulations referenced by the authors at the beginning of each section in the Text (contained in the Supplement), and review any additional materials listed below (typically contained in ACM package). Disregard references in the Text to specific states' statutes (e.g., NY, CA). ***The Supplement should be brought to every class.*** This syllabus constitutes a work in progress. As the semester progresses, assignments may be subject to change.

PART I: Introduction to the Nonprofit Sector & Relevant Legal Regimes

Topic #	Topic/Additional Instructions	Text Pages
1	Overview of the Nonprofit Sector; Nonprofit Rationales & Theory	2-3, 6-17, 19-29, 43-45
2	Choice of Entity and Formation Issues <ul style="list-style-type: none"> • <i>Read also:</i> Article, “Delaware Law Concerning Exempt ...” [ACM] • <i>Review</i> Problem on page 63 and Problems on pages 77-78 • <i>Review</i> Christmas in July, Inc. organizational documents [ACM] 	60-63, 66-78
3	Introduction to Income Tax Exemption – “Charitable” and “Mutual Benefit” Organizations; Application for Exemption <ul style="list-style-type: none"> • <i>Read also:</i> Article, “Limited Liability Companies as ...” [ACM] • <i>Review</i> Public Charity Life Cycle [ACM] • <i>Review</i> IRS Form SS-4 [ACM] and Form 1023 [Suppl. p. 1013] • <i>Review</i> IRS determination letter re Christmas in July, Inc. [ACM] 	320-332, 349-353, 751-756, 758-759, 781-786, 980-987, 990, 997, 1010-1011

PART I, Continued

Topic #	Topic/Additional Instructions	Text Pages
4	Other Benefits of Charitable Tax Exemption; Overview of Charitable Contributions Deduction <ul style="list-style-type: none"> • <i>Review</i> IRS Publication 1771 [ACM] • <i>Review</i> IRS Forms 8282 and 8283 [Suppl.] • Problem Set – Charitable Contributions 	348-349, 470-476, 894-895, 900-915, 935-937, 938-942, 964-966

PART II: The Regulation of Nonprofit Organizations & Their Activities

Topic #	Topic/Additional Instructions	Text Pages
5	Charitable Purpose Requirements <ul style="list-style-type: none"> • <u><i>Read also:</i></u> <ul style="list-style-type: none"> ○ Revenue Rulings 71-447 and 75-231 [ACM] ○ Revenue Procedure 75-50 [ACM] ○ Selected articles – hospitals' community benefit [ACM] 	78-81, 87-94, 353-377, 395-427
6	Other Exempt Purposes <ul style="list-style-type: none"> • Omit Problem (d) on page 444 • <i>Review</i> IRS Publication 1828 [ACM] 	427-462
7	Federal Tax Regulation: Limitations on Commercial Activities; Joint Ventures with For-Profit Organizations/Individuals <ul style="list-style-type: none"> • Omit Problems (f) to (i) on page 616 • Omit Problem on page 738 	593-616, 711-714 <i>Skim</i> 714-738
8	Dissolution; Doctrine of Cy Pres and Conversion; Other Nonprofit Restructuring; Charitable Solicitation Regulation <ul style="list-style-type: none"> • Omit Problem 2 on pages 105-106 • <u><i>Read also:</i></u> Selected articles – <i>Barnes Foundation</i> case [ACM] • <i>Skim</i> Article, "State Charitable Solicitation Statutes" [ACM] 	101-121, 130-139, 269-275

PART III: The Regulation of Nonprofit Actors

Topic #	Topic/Additional Instructions	Text Pages
9	Fiduciary Duties of Directors/Trustees and Officers <ul style="list-style-type: none"> • Omit Problems on pages 172-173 • Omit Problem 1 on pages 216-217 • <i>Review</i> Problem 2 on pages 217-219 • <u>Read also:</u> Article, "... Revised Conflicts of Interest Policy" [ACM] 	140-152, 158-172, 173-179, 185-219
10	Fiduciary Duties, Continued; Enforcement of Fiduciary Duties; Executive Compensation <ul style="list-style-type: none"> • <u>Read also:</u> Selected articles – executive compensation & nonprofit managers' misdeeds [ACM] • <i>Review</i> IRS Form 990 [Suppl. p. 987] 	219-224, 236-253, 260-264
11	Federal Tax Regulation: Private Inurement and Benefit; Intermediate Sanctions <ul style="list-style-type: none"> • <i>Review</i> Problems 1(a), (b), (c), (e) and (f) on pages 497-499 • Omit Problems 2 and 3 on pages 499-500 	476-499, 276-282

PART IV: Advanced Issues – Federal Tax Regulation of Nonprofit Organizations

Topic #	Topic/Additional Instructions	Text Pages
12	Lobbying and Campaign Activities – Restrictions and Prohibitions <ul style="list-style-type: none"> • Omit Problems 1, 2(h) and (i), and 3 on pages 568-570 • <u>Read also:</u> Selected articles – exempt organizations & political campaign activities [ACM] 	500-523, 532-557, 568-570
13	Overview of the Unrelated Business Income Tax	628-630, 648-656, 659-666, 709-710

Professor: Marilyn Phelan
School: Texas Tech University School of Law
Course: Nonprofit Organizations

Materials

Phelan and Desiderio, *Nonprofit Organizations Law and Policy*, 2nd Edition, Thomson/West, 2007

Overview

This course covers the topic of Nonprofit Organizations in depth. The class studies sixteen chapters regarding Nonprofit Organizations in the Phelan and Desiderio. The chapters are in the following order:

1. Overview of the Nonprofit Sector
2. The Nonprofit Corporation
3. Governance of a Nonprofit Corporation
4. Charitable Organizations
5. Obtaining and Maintaining Tax Exempt Status
6. Public Charities
7. Private Foundations
8. Fundraising
9. Unrelated Business Taxable Income
10. Churches and Other Religious Organizations
11. Schools
12. Hospitals
13. Social Clubs
14. Trade and Professional Organizations
15. Political Organizations
16. Homeowner's Associations

The syllabus also lists a number of questions assigned for class discussion that accompanies each chapter.

Order and Use of Text

This course uses the Phelan and Desiderio casebook. The course covers the topics in the order it occurs in the book, without excluding any chapters. The course covers five main topics in the following order.

1. The Nonprofit Sector
2. The Nonprofit Corporation
3. Requirements for Tax Exempt Status
4. Legal and Tax Considerations in Fundraising
5. Specialized Legal Issues of Certain Specific Nonprofits

TEXAS TECH UNIVERSITY SCHOOL OF LAW

PROFESSOR PHELAN

SPRING, 2008

NONPROFIT ORGANIZATIONS

REQUIRED READING: Phelan and Desiderio, *Nonprofit Organizations Law and Policy*, 2nd Edition, Thomson/West, 2007

ATTENDANCE: Regular and punctual attendance is required. Unpreparedness, in the discretion of the professor, may be counted as an absence. Students who are absent for more than three regularly scheduled classes may be withdrawn administratively from the course. It is the student's responsibility to keep a record of his/her absences.

GRADING CRITERIA: The student's grade in the course will be based on the student's grade on a final examination (80%) and on the preparation of a Certificate of Formation, bylaws, and application for tax exempt status for an entity seeking nonprofit corporate status (20%).

QUESTIONS FOR CLASS DISCUSSION: Attached to this syllabus are questions that focus on the issues in the text chapters.

COURSE ASSIGNMENTS

<u>Assignment</u>	<u>Subject</u>	<u>Text</u>
<u>THE NONPROFIT SECTOR</u>		
1	Overview of the Nonprofit Sector	1-46
2 & 3	Philanthropy Abroad; The Nonprofit Corporation—Creation, Directors and Members	47-61 62-90
<u>THE NONPROFIT CORPORATION</u>		
4	Governance of a Nonprofit Corporation: State Standards of Care	91-154
5	Federal Standards of Care	154-175
6	Charitable and Social Welfare Organizations	176-211

REQUIREMENTS FOR TAX EXEMPT STATUS

7	Obtaining and Maintaining Tax Exempt Status	212-262
8	Excess Benefit Transactions: Lobbying and Political Activities	262-280
9 & 10	Public Charities	281-302
11 & 12	Private Foundations	303-345

LEGAL AND TAX CONSIDERATIONS IN FUNDRAISING

13	Fundraising	346-368
14	Charitable Contributions	368-408
15	Cy Pres and Deviation Doctrines	408-428
16 & 17	Unrelated Business Taxable Income	429-490

SPECIALIZED LEGAL ISSUES OF CERTAIN SPECIFIC NONPROFITS

18 & 19	Churches and Other Religious Organizations	491-560
20 & 21	Schools	561-618
22 & 23	Hospitals	619-679
24 & 25	Social Clubs	680-725
26	Trade & Professional Organizations	726-760
27	Political Organizations	761-780
28	Homeowners' Associations	781-797

QUESTIONS FOR CLASS DISCUSSION**Questions for Chapter 1**

1. Should there be limitations on the right of association of members of a nonprofit

organization?

2. Should there be a “public policy” limitation on the right of persons to organize and operate as a nonprofit corporation?

3. If there should be a “public policy” limitation, what activities do you think would violate “public policy?”

4. Should advocacy organizations be granted § 501(c)(3) status as “charitable” organizations? How is “advocacy” a “charitable” purpose?

5. What are some of the advocacy organizations?

6. Is there a violation of a federal employee’s right of freedom of religion if she opposes abortion on religious principles but nonetheless must approve tax exempt status for abortion clinics?

7. Should the IRS be permitted to terminate an employee that cannot on religious grounds approve exemption status for an organization such as an abortion clinic?

8. Does the Attorney General of a state have an inherent power to regulate charitable organizations?

9. Is the Attorney General of a state the legal representative of the beneficiaries of all charitable trusts and charitable assets under the common law or must a state have a statute granting the Attorney General this power before the Attorney General can represent the public in an action against a charitable corporation?

10. Is a derivative action against directors of a charitable organization sufficiently different from an action to intervene on behalf of the public to make certain funds of a charitable organization are used for charitable purposes so that the Attorney General should have inherent power with respect to the latter but not the former?

11. Should only the Attorney General have standing to regulate affairs of a charitable organization? Should some members of the public be entitled to bring suit against a charitable organization? If so, what members of the public? (These questions will be discussed further in Chapter 3.)

Questions for Chapter 2

1. Can a state change the rights and duties of members and directors of nonprofit corporations through changes in the law relating to nonprofit corporations?

2. What are the rights of members of nonprofit corporations?

3. What are the rights and duties of members of the Board of Directors of a nonprofit

corporation?

4. May a Board of Directors of a nonprofit corporation eliminate members or take away a member's right to vote?

5. May a Board of Directors amend the bylaws of a nonprofit corporation to provide for a self-perpetuating board?

6. May members of a Board of Directors remove a life member of a nonprofit corporation?

7. How do rights of members of mutual benefit corporations differ from rights of members of public benefit corporations?

8. Does the creator of a charitable corporation retain any rights in the corporation?

9. Does the donor of property to a charitable corporation acquire any rights in the corporation?

10. Who shares in the assets of a dissolved nonprofit corporation?

Questions for Chapter 3

1. What is the standard of care for trustees? For directors of a charitable nonprofit corporation?

2. What is the standard of loyalty for trustees? For directors of a charitable nonprofit corporation? How does the standard of loyalty for a trustee of a charitable trust differ from that of a director of a charitable nonprofit corporation?

3. Which standards of care and loyalty should apply to a charitable nonprofit corporation (trustee or corporate director)? Why?

4. When, and to what extent, is a director of a nonprofit corporation entitled to indemnification for attorneys' fees and other costs incurred in defending herself in an action brought against the director for negligence? May a nonprofit corporation advance funds to a director to cover these costs?

5. How must assets of a charitable corporation be distributed upon dissolution of the corporation?

6. May corporate directors adopt a bylaw that would permit assets of a charitable corporation in the process of dissolution to be distributed for a purpose other than a charitable purpose?

7. What are the doctrines of cy pres and deviation?

8. What is the role of the Attorney General with respect to charitable trusts and corporations?

9. Does the Attorney General of a state have a common law right to represent, or intervene in the affairs of, charitable organizations or must there be a specific state statute granting the Attorney General such rights?

10. Should there be limitations on the right of the Attorney General to intervene in the affairs of a charitable organization?

11. May a member of the general public bring a lawsuit against directors of nonprofit corporations for failure to discharge properly their fiduciary duties?

12. May a donor bring a lawsuit against directors of nonprofit organizations for failure to follow conditions the donor imposed on the gift?

13. Should a state provide that certain parties in interest should have standing to challenge actions of directors of nonprofit organizations?

14. How does an "excess benefit transaction," as defined in § 4958 of the Internal Revenue Code, differ from an action of self-dealing, as defined in § 4941 of the Code?

Questions for Chapter 4

1. How does a social welfare organization differ from a charitable organization?

2. When can § 501(c)(4) status be more advantageous than § 501(c)(3) status?

3. What are the advantages of § 501(c)(3) status?

Questions for Chapter 5

1. What type of nonprofit organizations qualify for tax exempt status?

2. How does tax exempt status for the various type of nonprofit organizations differ?

3. How does one obtain tax exempt status for the different types of nonprofit organizations?

4. What are the requirements for tax exempt status for the different types of nonprofit organizations?

5. How do the requirements for tax exempt status for § 501(c)(3) organizations differ from the requirements for other tax exempt organizations?

6. How do commercial activities affect tax exempt organizations?
7. What is “private benefit?” What is “inurement?” How does “private benefit” differ from “inurement?”
8. What is an “excess benefit transaction?”
9. What is an “action organization?”
10. When does a § 501(c)(3) organization’s lobbying activity reach a prohibited level?
11. What § 501(c)(3) organizations can elect under § 501(h) of the Internal Revenue Code with respect to their lobbying activities?

Questions for Chapter 6

1. Why are § 501(c)(3) organizations separately classified either as public charities or as private foundations?
2. What is the difference between a public charity and a private foundation?
3. What are the requirements for public charity status?
4. What is the difference between a § 509(a)(1) and a § 509(a)(2) public charity?
5. What organizations qualify for § 509(a)(1) status? For § 509(a)(2) status?
6. How is the one-third support test calculated for a § 509(a)(1) charity? For a § 509(a)(2) charity?
7. What are the benefits of § 509(a)(3) public charity status?
8. How does a § 501(c)(3) organization qualify for § 509(a)(3) public charity status?
9. What is the purpose of the operational test for § 509(a)(3) organizations?
10. What is the relationship test for a § 509(a)(3) organization?
11. What is the integral part test for a § 509(a)(3) organization?
12. What is the responsiveness test for a § 509(a)(3) organization?
13. Why did the Lapham Foundation, in *Lapham Foundation, Inc. v. Commissioner*, fail to qualify as a § 509(a)(3) organization?

14. What are the “type III” § 509(a)(3) organizations?

15. Discuss whether the new § 509(a)(3)(f), added to the Internal Revenue Code in 2006 regarding “type III” § 509(a)(3) organizations, solves the problems the IRS found with the Lapham Foundation?

14. What are the annual filing requirements for public charities?

Questions for Chapter 7

1. What is a “private foundation” for federal income tax purposes?

2. What is the difference between an “operating” foundation and a “nonoperating” foundation?

3. What are the requirements for private operating foundation status?

4. How is the excise tax imposed by § 4940 of the Code calculated?

5. Why was the Zemurray Foundation, in *Zemurray Foundation v. Commissioner*, required to pay an excise tax on the sale of donated land?

6. Why was Greenacre Foundation, in *Greenacre Foundation v. Commissioner*, required to pay an excise tax on the sale of donated stocks when the stocks were sold immediately on receipt and never produced any passive revenue for the foundation?

7. What is the self-dealing penalty tax, which is imposed by § 4941 of the Code?

8. Why did the IRS impose a self-dealing tax on the executors of the Estate of Mark Rothko?

9. What is the “failure to distribute income” excise tax, which is imposed by § 4942 of the Code?

10. What was the problem for the trustees of the Hermann Charitable Trust in continuing the trust?

11. What holdings can a private foundation have in private businesses without incurring a penalty tax under § 4943 of the Code?

12. What are “jeopardizing investments?” How does this penalty tax affect the operations of a private foundation?

13. What is a “taxable expenditure?”

14. What is “expenditure responsibility?”
15. Why was the Mannheimer Charitable Trust, in *Mannheimer Charitable Trust v. Commissioner*, subjected to the penalty tax under § 4945 of the Code?
16. What is required for federal tax purposes to terminate a private foundation?
17. What is the § 507(c) penalty tax?
18. What penalty tax was imposed on the Gladney Foundation in *Gladney v. Commissioner*? Why was the Gladney Foundation subject to a penalty tax when it was dissolved by court order?

Questions for Chapter 8

1. What were the rulings of the Supreme Court with respect to a state’s regulation of solicitations and professional fundraisers in the trilogy of cases, *Schaumburg v. Citizens for a Better Environment*, *Secretary of State of Maryland v. Joseph H. Munson Co.*, and *Riley v. National Federation of Blind of North Carolina*?
2. What false or misleading representations did Telemarketing Associates, Inc. (*Madigan v. Telemarketing Associates, Inc.*) make to potential donors? How do you reconcile the decision of the Supreme Court in *Madigan* with its decisions in *Schaumburg*, *Munson*, and *Riley*?
3. How did the Internal Revenue Service attempt to regulate United Cancer Council’s use of a professional fundraiser (*United Cancer Council v. Commissioner*)? Do you think the IRS is more effective in regulating fundraisers than state courts?
4. Why were purchasers of insurance through the American Bar Endowment not entitled to a charitable contribution deduction for the portion of the premium rebate that the American Bar Endowment retained on their insurance policies (*United States v. American Bar Endowment*)?
5. What is the amount of the charitable contribution deduction, before annual limitations, for donations of property?
6. What are the annual limitations on donations to public charities and private operating foundations? To private nonoperating foundations?
7. What charitable contribution deduction may a donor claim for a donation of a partial interest in property?
8. What is a charitable remainder trust?
9. How does a CRUT differ from a CRAT?

10. What is a charitable gift annuity?
11. What is the cy pres doctrine? How does it differ from the doctrine of deviation?

Questions for Chapter 9

1. On what sources of income are tax exempt organizations taxed?
2. How does the taxation of income of social clubs, homeowners' associations, and political organizations differ from the taxation of income of most other tax exempt organizations?
3. What is an "unrelated trade or business?"
4. Are insurance activities of tax exempt organizations considered to be unrelated businesses that are subject to UBIT? (Consider *Professional Insurance Agents v. Commissioners* and *United States v. American Bar Endowment*.)
5. When is an unrelated trade or business "regularly carried on?" (Consider *National Collegiate Athletic Ass'n. v. Commissioner*.)
6. When is advertising taxed to an otherwise tax exempt organization? (Consider *United States v. American College of Physicians*.)
7. When is income from sponsorships taxed? What is a "qualified" sponsorship agreement?
8. To what extent is rental income taxed?
9. Is income from affinity card programs taxed to tax exempt organizations? (Consider *Sierra Club, Inc. v. Commissioner*.)
10. What is "unrelated-debt financed income?" (Consider *University Hill Foundation v. Commissioner*.)
11. Why would a tax exempt organization be taxed on investment income acquired from investments made from withdrawing the cash value of life insurance policies? (Consider *Mose and Garrison Siskin Memorial Foundation v. United States*.)

Questions for Chapter 10

1. What is a "church" for federal income tax purposes? Does the term "church" include synagogues and mosques?
2. How do federal income tax filing requirements differ for a "church" versus a "religious" organization?

3. An integrated auxiliary of a church also is exempt from filing status. What is an integrated auxiliary of a church? (Consider *Lutheran Social Service of Minnesota v. United States*.)

4. Must members of an organization express a belief in a Supreme Being for their organization to qualify as a church? (Consider the state court decision in *Strayhorn v. Ethical Society of Austin*.)

5. When there are disputes within a church that lead to some members withdrawing from the church, which group is entitled to the church property? Does it make a difference if the church is a hierarchical body rather than a self-governing congregational church? (Consider *Serbian Eastern Orthodox Diocese v. Milivojevich*, *Holiman v. Dover*, and *Mills v. Baldwin*.)

6. What is a “corporation sole?”

7. Is a civil court a proper forum to settle internal property disputes among church membership? (Consider *Presbyterian Church in United States v. Hull Presbyterian Church*.)

8. How does one determine the hierarchical structure of a church? (Consider *Presbyterian Church in United States v. Hull Presbyterian Church* and *Mills v. Baldwin*.)

9. If a church is not incorporated, how can a potential purchaser of property held by the church be assured of receiving good title to the property? Who can legally transfer title to church property?

10. Does the religion clauses of the First Amendment bar tort claims against a church? [Consider *Smith v. Calvary Christian Church* and *Guinn v. Church of Christ* (cited in *Smith v. Calvary Christian Church*.)]

11. How does actual membership in a church affect an individual’s right to bring a tort claim against the church? [Consider *Smith v. Calvary Christian Church* and *Guinn v. Church of Christ* (cited in *Smith v. Calvary Christian Church*.)]

12. Does the religion clauses of the First Amendment bar an employment discrimination claim against a church? (Consider *Elvig v. Ackles* and *Elvig v. Calvin Presbyterian Church*.)

13. Does a church have a duty to warn of alleged sexual abuse involving leaders in the church? (Consider *Doe v. Corporation of the President of the Church of Jesus Christ of Latter-Day Saints*.)

14. Should a church have vicarious liability for tortious actions of its leaders? (Consider *Wood v. Benedictine Society of Alabama*.)

15. What legal problems does an unincorporated church confront?
16. Are there specialized provisions in your state's nonprofit corporation act that apply to the incorporation of churches? If so, how do these provisions affect the incorporation of a church?
17. When an unincorporated church incorporates, does the new corporate entity acquire title to the property held by the unincorporated church? (Consider *Murphy v. Taylor*.)
18. What problems arise when church leaders support or oppose political candidates? (Consider *Branch Ministries v. Rossotti*.)
19. Does the prohibition of a § 501(c)(3) organization's involvement in political activities violate the religion clauses of the First Amendment?
20. What are the prerequisites for a tax audit of a church?

Questions for Chapter 11

1. To what extent may a state exert control over the educational programs of a private school? A private religious school? (Consider *New Life Baptist Church Academy v. East Longmeadow*.)
2. May a state provide subsidies to private school and/or parents of children who attend private schools? (Consider *Zelman v. Simmons-Harris*.)
3. On what authority does the IRS deny tax-exempt status to private schools that have racially discriminatory admission policies? (Consider *Bob Jones University v. United States*.)
4. How does the requirement that private schools have nondiscriminatory admission policies compare to the nondiscrimination policy required of social clubs as set out in § 501(i) of the Code?
5. To what extent can a private school that receives no federal funds limit admission to students of a certain race or culture? (Consider *Doe v. Kamehameha Schools/Berice Panahi Bishop Estate*.)
6. To what extent will courts be involved in disciplinary procedures of private schools? (Consider *Harris v. Trustees of Columbia University*.)
7. To what extent may a school limit First Amendment rights of students and faculty members while they are on school property? (Consider *Runsfield v. Forum for Academic*

and Institutional Rights, Inc.)

8. What privacy rights do students have with respect to school records?

Questions for Chapter 12

1. Do consumers prefer a nonprofit hospital to one that is for-profit?
2. Should there be more consumers on the boards of nonprofit hospitals? (Consider *American Hospital Association v. Hansbarger*.)
3. How can a hospital board be assured of continuing tax exempt status for hospitals and related health care organizations when these organizations are involved in reorganizations?
4. What incentives can a tax exempt hospital provide private physicians to encourage them to join the medical staff? (Consider Rev. Rul. 97-21.)
5. How can a tax exempt hospital maintain tax exempt status if it enters into a joint venture with a for-profit entity? (Consider Rev. Rul. 98-15 and *Redlands Surgical Services v. Comm.*)
6. Should a hospital provide substantial health care services to uninsured patients to qualify for or to maintain § 501(c)(3) status? For state property taxes exemptions? (Consider *Lamb County Appraisal District v. South Plains Hospital-Clinic* and *Utah County v. Intermountain Health Care*.)
7. May a hospital sell its assets to a for-profit health care entity that is not a hospital? (Consider *Queen of Angels Hospital v. Younger*.)
8. What legal and tax problems arise when a nonprofit hospital converts to a for-profit entity or dissolves and distributes its assets to a for-profit entity? (Consider *State of Florida v. Anclote Manor Hospital*. Consider also § 4958 of the Internal Revenue Code.)

Questions for Chapter 13

1. When are social clubs exempt from federal taxation?
2. May the assets of a social club be distributed to its members upon its dissolution? (Consider Rev. Rul. 58-501.)
3. What social clubs have a protected right of association? Which do not? (Consider *Board of Directors, Rotary International v. Rotary Club of Duarte* and *New York State Club Association, Inc. v. City of New York*.)
4. Do public accommodations laws prohibiting discrimination apply to § 501(c)(3)

organizations? (Consider *Boy Scouts of America v. Dale*.)

5. How does discrimination regarding membership affect a social club's tax exempt status? (Consider § 501(i) of the Internal Revenue Code.)

6. How are nonexempt social clubs taxed for federal income tax purposes?

7. What income of exempt social clubs is taxed for federal income tax purposes? (Consider *Portland Golf Club v. Comm.*)

8. To what extent can a tax exempt social club do business with the general public without jeopardizing its exempt status? When does a social club "do business with the public." (Consider Rev. Proc. 71-17.)

9. Can a university fraternity or sorority qualify under § 501(c)(10) of the Code? How does qualification under § 501(c)(10) differ from qualification under § 501(c)(7)? (Consider *Zeta Beta Tau Fraternity v. Comm.*)

10. Can a social club offset losses from nonmember income against its net investment income in computing its income tax on its investment income?

Questions for Chapter 14

1. When does an organization qualify for trade association status? What are the qualifications for tax exempt under § 501(c)(5) and (6)? (Consider *National Muffler Dealers Association, Inc. v. United States* and *Guide International Corporation v. United States*.) Why did the organizations in these two cases not qualify for tax exempt status?)

2. To what extent can a § 501(c)(5) or (6) organization be involved in lobbying activities without jeopardizing its tax exempt status?

3. How do lobbying activities of § 501(c)(6) organizations affect a member's ability to claim a business deduction for dues to such an organization?

4. What is the "proxy tax?"

5. Is imposition of a "proxy tax" on § 501(c)(6) organizations constitutional? (Consider *American Society of Association Executives v. United States*.)

6. To what extent are nonprofit organizations subject to provisions of the Sherman Act? (Consider *Goldfarb v. Virginia State Bar* and *National Colelgiate Athletic Assoc. v. University of Oklahoma*.)

7. Under what circumstances may a professional organizations suspend an individual's membership? Why should there be restrictions on the ability of a professional organization to terminate a member? (Consider *Austin v. American Association of*

Neurological Surgeons.)

Questions for Chapter 15

1. What is a political organization?
2. Why does a political organization qualify for tax exempt status for federal tax purpose? How is it classified for tax purposes?
3. What income of a political organization is subject to federal income tax?
4. What is exempt function income?
5. What federal income tax forms must political organizations file?
6. When are expenditures from a political fund taxed to the individual on whose behalf the expenditures are made?
7. What limitations does the Federal Election Campaign Act of 1971 impose on the contributions and expenditures of funds in political campaigns for federal offices?
8. What are the limitations on contributions to a candidate for federal office and to the candidate's political committee when the candidate is seeking election to a federal office?
9. Does the provision in the Federal Election Campaign Act barring corporations from contributing directly to candidates for federal office apply to nonprofit advocacy corporations? (Consider *Federal Election Commission v. Beaumont*.)
10. When does a public policy advocacy communication constitute an exempt function expenditure within the meaning of § 527(e)(2) of the Internal Revenue Code? What are the tax consequences of a public policy advocacy communication being designated as an exempt function expenditure?
11. How does the McCain-Feingold Bipartisan Reform Act of 2002 affect tax exempt advocacy organizations?
12. How does a nonprofit organization, other than a § 501(c)(3) organization, avoid a tax on its exempt function expenditures?
13. How is a separate fund created by a nonprofit organization to receive and disburse funds related to the nomination of, or the opposition to, candidates for public office, treated for federal income tax purposes?
14. In what instances would a § 501(c)(3) organization establish a separate fund to make exempt function expenditures?

15. In what circumstances can a church lose its tax exempt status because of political statements from members and employees of the church? (Consider *Branch Ministries v. Rossotti*.)

16. What nonprofit organizations must register with the Internal Revenue Service pursuant to § 527(i) of the Code?

17. What annual reports must nonprofit organizations file with the IRS if they engage in issue advocacy?

Questions for Chapter 16

1. What is a “homeowners’ association” that qualifies for tax exempt under § 528 of the Internal Revenue Code?

2. What income of an exempt homeowners’ association is subject to federal income tax?

3. To what extent can a homeowners’ association foreclose on a member’s homestead for failure to pay association dues? (Consider *Inwood North Homeowners’ Association v. Harris* and *Brooks v. Northglen Association*.)

4. May a member of a homeowners’ association offset against membership dues claims the member has against the association? (Consider *Trustees of the Prince Condominium Trust v. Prosser*.)

5. What recourse do members of a homeowners’ association have against bad faith actions of directors of homeowners’ associations? (Consider *Ashcreek Homeowner’s Association, Inc. v. Smith* and the Texas Residential Property Owners Protection Act.)

Professor: Jeffrey S. Piper

School: University of Hawaii Law School

Course: Nonprofit Organizations

Materials

Fishman & Schwarz, *Nonprofit Organizations: Cases and Materials*, Third Edition, Foundation Press 2006

Additional Supplementary Materials Provided by the Professor

Samuel King and Randall Roth, *Broken Trust: Greed, Mismanagement, and Political Manipulation at America's Largest Charitable Trust*, University of Hawaii Press 2006

Course Overview

This seminar is designed to prepare students to deal with many of the issues that nonprofit organizations face on a regular basis. Along with studying the basics of nonprofit organizations, this course also considers the special problems encountered by churches, schools, hospitals, and other types of nonprofit organizations. As part of their class project, students will be given an in-depth look at creating a 501(c)(3) organization and applying for tax-exempt status.

Order and Use of Text

The assigned readings in this course come from the Fishman and Schwarz casebook and supplementary materials. The order of the casebook is followed with one exception, Chapter 8 is taught between Chapters 4 and 5.

SUBJECT TO CHANGE BY PROFESSOR WITH PRIOR NOTICE

Nonprofit Organizations

Professor Jeffrey S. Piper

Spring 2008

TTh 2:00-3:15 pm in SR1

Brief Overview: This will be a seminar class limited to 16 students. We will examine the meaning, scope, and role of nonprofit organizations in contemporary society, and focus on selected non-tax laws (e.g., corporate, trust, constitutional, agency) and the primary tax issues that are relevant to nonprofit organizations (e.g., maintenance of tax-exempt status, unrelated business income, charitable deductions). We also will consider special problems and opportunities of churches and other religious organizations, schools, hospitals, and other types of nonprofit organizations. There will be occasional guest lecturers, including Professor Randall Roth and Deputy Attorney General Hugh Jones.

Casebook and Readings: Fishman & Schwarz, “Nonprofit Organizations”, Foundation Press Third Ed. is the casebook. Additional supplementary materials, including relevant statutory provisions, regulations and articles of interest will be posted on the MyUH website from time to time. Students should check the website regularly to determine which materials are to be discussed for the particular class. You are also asked to read Broken Trust (King and Roth) starting early in the semester. While this makes the reading demands of the course high, I believe you will find it not only an excellent read, but it will help put some of the legal concepts we discuss in class into a real world context. Because of the breadth of the subject area and the amount of reading, in a number of places students are given the option to “skim” the material. This is intended to indicate that the concepts (often more policy oriented) while they may be discussed in class and are helpful for your better understanding of the area, students will not be expected to provide in discussion as detailed analysis as with the other portions of the remainder of the reading assignments.

Class Project: As part of the participation component of the course, you will team up with a fellow student and draft the documents necessary to create a Internal Revenue Code Section 501(c)(3) public charity in corporate form and apply for tax-exempt status given facts and forms provided by the Professor.

Reasonable Expectations: While this course alone will not make you an expert on nonprofit organizations, it will enable you to see many issues that you would have otherwise missed, and it will prepare you to deal effectively with some of the many issues that nonprofit organizations encounter on a regular basis.

Credit for the Course: This is a graded course with a final exam and the option to take it C/NC. The final exam will count for two-thirds of the final grade with class participation counting for the remaining one-third. Students who attend class regularly, participate in discussion fully, and demonstrate consistently that they have read and given thought to the assigned materials will receive full credit for the participation component of the final grade. Students who attend regularly and are usually prepared, but who demonstrate a lack of

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preparedness or miss class without good reason on more than three occasions, can receive full credit for the participation component upon satisfactory completion of a short paper on an assigned topic. Students who do not attend regularly for reasons within their control, or who attend regularly but fail consistently to prepare adequately for class, will receive no credit for the participation component of the grade.

Missed Classes. Whether excused or not, students who miss any class (beginning January 29) must submit a 1-2 page written discussion of some aspect of that reading assignment and be prepared to discuss other aspects of the reading assignment with the professor in person or via email. The written discussion should be submitted by email within one week of the missed class. In addition, each student is allowed to have a combination of up to four unexcused absences/passes for the semester (e.g., one unexcused absence plus 3 passes; no unexcused absences and four passes etc.). Any student over the limit will be referred to the Associate Dean and or be subject to a grade reduction at the professor's discretion. An attendance sign in sheet will be circulated for each class and you are responsible for signing the attendance sheet.

Availability: Professor Piper will be available after class for a few minutes. In addition, Professor Piper is available by phone, 523-6789, but would prefer initial contact by email with a note as to when you might be available by phone for discussion. (jpiper@sil-law.com). A current version of this syllabus can be found at the MyUH website.

Reading Assignments

<u>Class Session</u>	<u>Subject Matter</u>	<u>Text Pages</u>
January 22	Overview of Nonprofit Sector	1-34
24	Overview cont.	34-63
29	Nonprofit Corporations ¹	66-87
31	Nonprofit Corporations—Define Charitable ²	87-101
February 5	Dissolution	101-136
February 7	Directors and Trustees—Duty of Care ³	141-173
12	Directors and Trustees—Duty of Loyalty ⁴	173-205
14	Directors and Trustees—Loyalty cont.	205-235

¹ Skim pp. HRS Sections 414D-14, 31-36, 81-90 and 110; also skim Sample Articles of Incorporation on MyUH website

² We will discuss some of the problems on pp. 96-101.

³ Read [Independent Sector Code of Values and Ethics](#) and pages 4-8 of [Panel on Nonprofit Sector Final Report](#).

⁴ Skim [IRS' Sample Conflict of Interests Policy](#).

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	19	Exec. Comp. and “Catch-up” Day	235-242
	21	Standing and Enforcement	242-268
	26	Regulation of Charities and Solicitation ⁵	Skim 269-305
	28	Charitable Contributions	Skim 874-894;894-900;927-935
March	4	Tax Exemption--Introduction	320-349;349-356
March	6	Requirements for Tax Exemption cont. ⁶	357-400;470-476
March	11	Inurement, Private Benefit etc. ⁷	476-487;276-282
	13	Inurement, Private Benefit continued/make up	
	18	Intermediate Sanctions/Class Project ⁸	487-500
	20	Non-Charitable Exempt Organizations	980-987;990-991;997-1011
	25	No Class	
	27	No Class—Drafts of Organizational Documents for Project due 3/30 by email	
April	1	Tax-Exemption--Public Policy Limitations	400-427
	3	Educational and Religious Institutions	427-461
	8	Private Right of Association and Lobbying ⁹	1058-1087 500-523;skim 523-530
	10	Political Activities	532-560; skim 560-567
	15	Commerciality Doctrine and UBIT	593-628
	17	UBIT Application	628-638;646-666

⁵ Skim HRS Chapter 469B

⁶ [IRS Lifecycle of a Public Charity](#); read [IRC 501](#) (subsections (a) and (c)(1)-(9) only) and Regs. Sec. 1.501(c)(3)-1; Read HRS Section 237-23 and [Hawaii Tax Facts](#)

⁷ Read [Est of Hawaii](#), 71 T.C. 1067; 1979 U.S. Tax Ct. LEXIS 151;

⁸ Read [IRC 4958](#) and Regs. Sec. 53.4958-6; Skim [Intermediate Sanctions primer](#)

⁹ Read Regs. Sec. 1.501(c)(3)-1(c)(3)(ii) and subsection (h) of [IRC 501](#); Skim [IRC 4911](#).

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	22	UBIT Application	668-684; skim 685-709
	24	Public Charities and Private Foundations	751-791
	29	Self-Dealing and Support Organizations ¹⁰	836-849; skim 803-806; 806- 813;820-827
May	1	Catch-Up and Discussion of <i>Broken Trust</i>	
		Class Project--Form 1023 due via email	
	1		
	—	Final Exam	

Miscellaneous Websites:

[Alliance For Justice](#)
[Chronicle of Philanthropy News Items](#)
[Foundation Center](#)
[Foundation News & Commentary](#)
[Guidestar Website](#)
[Hawaii Community Foundation Resources](#)
[Independent Sector Code of Values and Ethics](#)
[Intermediate Sanctions: What You Need To Know](#)
[Panel on Nonprofit Sector Final Report](#)
[Reform Proposal](#)
[Jack Siegel Charity Website](#)

Misc Cases and Statutes:

[Doe v. Kamehameha](#)
[Grutter v. Bolling](#)
[Hawaii Corporations Sole HRS 419](#)
[Hawaii Fiduciaries Act](#)
[Hawaii Nonprofit Corporations Act](#)
[Hawaii Tax Facts 97-3 re GET and fundraising](#)
[Hawaii Trustees' Powers Act](#)
[Hawaii Uniform Management of Institutional Funds Act](#)
[Hawaii Uniform Prudent Investor Act 554C](#)
[Hawaii Uniform Unincorporated Nonprofit Association Act](#)
[Honolulu Sec 8-10.10 Exemption for Charitable Purposes](#)
[IRS Charities Website](#)

- [IRS Lifecycle of a Public Charity](#)
- [IRS Lifecycle of a Private Foundation](#)

¹⁰ Read article on King Foundation (vol. 45, no. 5 at [Foundation News & Commentary](#))

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- [Hawaii Charity Regulation Websites](#)
- [Rev. Rul. 2004-27 re Corporation Sole](#)
- [Article re Rev. Proc. 75-50 on Private Schools](#)
- [Sample Articles of Organization](#)

[Internal Revenue Code](#)

- [IRC 170](#)
- [IRC 501](#)
- [IRC 501-530](#)
- [IRC 4910-4948](#)
- [IRC 4911](#)
- [IRC 4911-4912](#)
- [IRC 4940-4948](#)
- [IRC 4955](#)
- [IRC 4958](#)
- [IRC 4961-4963](#)

Professor: Dana Brakman Reiser
School: Brooklyn Law School
Course: Law of Nonprofit Organizations

Materials

Fishman & Schwarz, *Nonprofit Organizations: Cases and Materials*, Third Edition, Foundation Press 2006
Fishman & Schwarz Statutory Supplement

Overview

The course is a thorough analysis of contemporary nonprofit organizations and the legal issues they face. It addresses theoretical issues brought about by the nonprofit form, corporate issues in a nonprofit context, tax issues of nonprofit organizations and other issues current to nonprofits. Much of the course is a discussion of tax-exemption and its consequences.

Order and Use of Text

This course does not cover the entire casebook, however, it does cover a significant portion. The course does not proceed in order, instead jumping around the various issues covered by the text. Over the duration of the semester, students are asked to prepare four problems from the casebook, though the timing of the problems is spread out. While the majority of reading comes from the casebook, some of the classes do require supplementary reading of statutes and regulations.

LAW OF NONPROFIT ORGANIZATIONS

Brooklyn Law School

Fall 2006

Professor Dana Brakman Reiser

Syllabus – Installment 1

COURSE OVERVIEW: This is a three-credit upperclass elective. It will meet every Tuesday and on seven Thursdays throughout the semester, from 2:00-3:50 p.m. in Room 720M. **Please consult the syllabus for the dates of Thursday classes.** The course will analyze the role of private, nonprofit organizations in contemporary society and the legal issues they face. We will address theoretical issues raised by the nonprofit form, corporate issues arising in the nonprofit context, tax issues relating to nonprofit organizations, and other current issues. A significant portion of the course will involve discussion of tax-exemption and its consequences.

MATERIALS: The casebook is JAMES J. FISHMAN & STEPHEN SCHWARZ, *NONPROFIT ORGANIZATIONS: CASES AND MATERIALS*, (3d ed. 2006) [hereinafter FISHMAN & SCHWARZ]. Most assignments will include references to statutes and regulations and you will be responsible for them. You may purchase the Statutory Supplement to access these materials, or you may obtain them online or from the library.

ASSIGNMENTS: The following first installment of the syllabus is intended to cover the first month of class; however, it is possible that I will make changes to it in response to our progress. As we reach the end of this set of assignments, I will provide you with another installment. In many assignments, the pages will include statutory references noted in boldface in the text. You are always responsible for preparing these statutory materials, but when we will devote significant class time to discussing specific provisions, I have noted the sections on this syllabus. The pages assigned also often will include problems. We will spend significant time discussing some of these problems in class; others will be left for you to work through on your own. You always should review these problems, to test your knowledge and understanding. However, I have noted on the syllabus those problems that you should be prepared to discuss at length in class.

GRADING: Grades for this class will be calculated based on two components: a policy paper of no more than 5 pages (35%), and a final exam (65%). Students will have a choice of writing the policy paper at two different times during the semester. The first paper topic will be announced in early October, and papers on this topic will be due two weeks later. Student who do not write the first paper must write the second. This topic will be distributed around early November; papers again will be due two weeks later.

OFFICE HOURS: I will hold office hours for this course on Tuesdays, from 11:00 a.m. to 1:00 p.m. My office is Room 812. If you cannot attend these scheduled hours, please contact me at dana.brakman@brooklaw.edu or (718) 780-0396 to set up an appointment.

PART I: INTRODUCTION TO THE NONPROFIT SECTOR, NONPROFIT THEORY, AND RELEVANT LEGAL REGIMES

Assignment 1 – Scope and Nature of the Nonprofit Sector; Intro to Nonprofit Theory

August 24, 2006

FISHMAN & SCHWARZ, pp. 1-19, 43-54.
Revised Model Nonprofit Corporation Act § 13.01.

Assignment 2 – Nonprofit Theory Continued; Intro to Organizational Issues

August 29, 2006

FISHMAN & SCHWARZ, pp. 54-60; Supplemental Reading (to be distributed at first class); FISHMAN & SCHWARZ, pp. 60-75.
Prepare Introductory Problem on p. 63 (except for research on NY nonprofit law).

Assignment 3 – Introduction to Income Tax Exemption and Exemption Theory

September 5, 2006

FISHMAN & SCHWARZ, pp. 320-48, 349-51.
Internal Revenue Code [hereinafter IRC] § 501(c)(3).

Assignment 4 – Other Tax Benefits: Property Tax Exemption and Deductible Contributions

September 7, 2006

FISHMAN & SCHWARZ, pp. 348-49, 470-76, 874-79, 884-90, 894-95, 900 (¶ on Form and Timing), 907-15, 935-36 (¶¶ on Percentage Limits and Carryovers).
IRC § 170(c).

PART II: REGULATION OF NONPROFIT ORGANIZATIONS AND THEIR ACTIVITIES

Assignment 5 – The Public Policy Limitation; Charitable Purpose Requirements

September 12, 2006

FISHMAN & SCHWARZ, pp. 78-81, 400-20, 87-94, 353-65.
Treas. Reg. § 1.501(c)(3)–1(d)(2).
Prepare Problem on Charitable Purpose.

Assignment 6 – Educational, Religious and Other Charitable Purposes

September 19, 2006

FISHMAN & SCHWARZ, pp. 427-61.

Treas. Reg. §1.501(c)(3)–1(d)(3).

Prepare Problem d on p. 444.

Assignment 7 – Limits on Commercial Activity

September 21, 2006

FISHMAN & SCHWARZ, pp. 81-87, 593-603, 610-16, 711-23.

Treas. Reg. §1.501(c)(3)–1(e).

Prepare Problem on p. 87.

Assignment 8 – Dissolution (I)

September 26, 2006

FISHMAN & SCHWARZ, pp. 94-97 (read only through Note 1), 106-11, 101-06, 120-28.

Assignment 9 – Dissolution (II)

October 5, 2006

FISHMAN & SCHWARZ, pp. 111-20, 128-39.

Prepare Problem on pp. 128-30.

[**Note:** Please be sure to comprehensively prepare the Problem, to which close to half of our class discussion will be devoted.]

*****Policy Paper I Distributed. DUE DATE: October 19, 2006 *****

LAW OF NONPROFIT ORGANIZATIONS

Brooklyn Law School

Fall 2006

Professor Dana Brakman Reiser

Syllabus – Installment 2

PART III: REGULATION OF NONPROFIT ACTORS

Assignment 10 – Introduction to Fiduciary Duty; Duty of Care

October 10, 2006

FISHMAN & SCHWARZ, pp. 140-72, 173-76 (skim only).

Assignment 11 – Duty of Loyalty

October 17, 2006

FISHMAN & SCHWARZ, pp. 176-216.

Prepare the questions in Note 2 on pp. 216-19.

Assignment 12 – Advanced Issues in Fiduciary Duty

October 19, 2006

FISHMAN & SCHWARZ, pp. 222-42, 219-22.

Prepare Problem on pp. 266-68.

Assignment 13 – Enforcement of Fiduciary Duty

October 24, 2006

FISHMAN & SCHWARZ, pp. 242-65.

Guest Speaker: Sally G. Blinken, Assistant Attorney General, Office of the New York State Attorney General, Charities Bureau.

Assignment 14 – Tax Regulation of Nonprofit Actors: Private Inurement and Benefit

October 26, 2006

*****NOTE: This is a special session, to make up for cancelled date Nov. 2**

FISHMAN & SCHWARZ, pp. 476-87, 276-82, 487-500.

IRC § 4958

Prepare Problems 1(a), (c), (e) & (h) on pp. 497-500.

PART IV: ADVANCED ISSUES IN NONPROFIT REGULATION

Assignment 15 – Regulation of Charitable Solicitation

October 31, 2006

FISHMAN & SCHWARZ, pp. 269-75, 282-305, 311-15 (skim only), 316-18 (skim only).

*****Policy Paper 2 Distributed. DUE DATE: November 14, 2006 *****

Assignment 16 – Political Restrictions: “Substantial” Lobbying, Campaign Activity

November 7, 2006

FISHMAN & SCHWARZ, pp. 500-23, 532-40, 547-53.

Treas. Reg. § 1.501(c)(3)–1(c)(3); IRC § 4955.

Assignment 17 – Political Restrictions: Lobbying under § 501(h), Hybrid Structures

November 9, 2006

*****NOTE: This is a special session, to make up for cancelled date Nov. 16**

FISHMAN & SCHWARZ, pp. 523-32, 553-60.

IRC §§ 501(h), 4911; Treas. Reg. §§ 56.4911.

Prepare Problems 1(a), (b) and (e) on pp. 568-69. [N.B. The reading assignment is relatively light, but the problem is complicated. Please spend extra time on it; the Treas. Regs. will help.]

Assignment 18 – Private Foundations: Introduction and Classifications

November 14, 2006

FISHMAN & SCHWARZ, pp. 751-52, 759, 781-85, 791-803.

IRC §§ 509(a)(1)-(3); Treas. Reg. §§ 1.170A-9(e).

Prepare Problem on pp. 802-03. [N.B. This Problem is complex and may carry over to our next class. Still, please thoroughly work through it on your own. Again, the Treas. Reg. will help.]

Assignment 19– Private Foundations: Excise Taxes and Alternatives

November 21, 2006

FISHMAN & SCHWARZ, pp. 787-91, 769-79.

Assignment 20 – Unrelated Business Income Tax (UBIT): General Provisions

November 28, 2006

FISHMAN & SCHWARZ, pp. 616, 628-39, 646-66.

IRC §§ 511, 513.

Prepare Problems 1(a), 2(a), and 2(f) on pp. 666-68.

Assignment 21 – UBIT: Exceptions and Proposals for Reform; Conclusions

December 5, 2006

FISHMAN & SCHWARZ, pp. 668-85, 744-50.

IRC § 512

Prepare Problems 1(c), (e) on pp. 684-85.

Professor: Stephen Schwarz & Barbara Rosen
School: Hastings College of the Law
Course: Nonprofit Organizations

Materials

Fishman & Schwarz, *Nonprofit Organizations: Cases and Materials*, Third Edition, Foundation Press 2006
Fishman & Schwarz (eds.), *Nonprofit Organizations, Statutes, Regulations and Forms*
Application for recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code (Form 1023)
Various Handouts
Various IRS publications
Selected Library Reference Books on Nonprofit Organizations

Overview

This is a comprehensive course in nonprofit law, covering both state and federal law. The course spends about one-third of the time on state law, including formation, governance and fiduciary duties, with the remainder of the course covering federal tax law. The approach seeks to blend theory, legal doctrine and practice to provide for real-world experience in the field.

Order and Use of Text

This course covers almost the entirety of the Fishman & Schwarz casebook, save for the section on antitrust & nonprofits. Casebook problems are regularly integrated into the reading for each class, as are a number of additional sources to the casebook. The progress through the casebook proceeds out of order, but each class does require readings from the book.

Hastings College of the Law
Spring 2008 (Mon.: 2:40-3:30; Weds.: 2:40-4:30)
Professors Stephen Schwarz (Room 624, 200 McAllister St.)
(Tel: 415-565-4681; e-mail: schwarzs@uchastings.edu)
and Barbara Rosen (Evans & Rosen)
(Tel: 415-703-0300; e-mail: barbara@evansrosen.com)

NONPROFIT ORGANIZATIONS

Syllabus

REQUIRED MATERIALS:

Fishman & Schwarz, Nonprofit Organizations: Cases and Materials (Foundation Press, 3d ed. 2006) (hereinafter "CB" for "Casebook") & 2007 Supplement ("2007 Supp.")

Fishman & Schwarz (eds.), Nonprofit Organizations: Statutes, Regulations and Forms (Foundation Press, 3d ed. 2006) (hereinafter "Stat. Supp.")

Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code (Form 1023) -- handout; see also Stat. Supp. 1013-1078

Handouts -- distributed from time to time in class

IRS PUBLICATIONS (available free from IRS, or at www.irs.gov/charities)

Tax-Exempt Status for Your Organization (Publication No. 557)

Tax on Unrelated Business Income of Exempt Organizations (Publication No. 598)

Charitable Contributions (Publication No. 526)

and many other resources on IRS web site

SELECTED LIBRARY REFERENCE BOOKS ON NONPROFIT ORGANIZATIONS:

California Attorney General's Guide for Charities available at
http://ag.ca.gov/charities/publications/guide_for_charities.pdf

Guidebook for Directors of Nonprofit Corporations (American Bar Association, Section of Business Law).

Hill & Mancino, Taxation of Exempt Organizations (Warren, Gorham & Lamont, 2002, with current supplement)

Hopkins, The Law of Tax-Exempt Organizations (Wiley, 8th ed.)

Hopkins & Blazek, Private Foundations: Tax Law and Compliance (Wiley, 2d ed. 2003, with current supplement)

Whaley, et al. (eds.), Advising California Nonprofit Corporations (California C.E.B., 2d ed. 1998, with current supplement)

Mancuso, The California Non-profit Corporation Handbook (Nolo Press)

GUIDESTAR

Guidestar (www.guidestar.org) is a leading data base on the nonprofit sector. It provides access to all publicly available Form 990's filed by thousands of U.S. charities and other nonprofit organizations. Edu@GuideStar is a free service available to students and teachers in classes related to the sector. This class will be registered for this service for the Spring 2008 semester, giving all of us access to GuideStar Premium service at no cost. An introduction to GuideStar will be included in our introductory classes at the beginning of the semester, so be sure to bring your laptops.

STUDENT STUDY RESOURCES

There is currently no recommended student study aid for nonprofit organizations. For a good narrative overview of the tax law, see Joint Committee on Taxation, Historical Development and Present Law of the Federal Tax Exemption for Charitable and Other Tax-Exempt Organizations, April 19, 2005 (JCX-29-05), available at <http://www.house.gov/jct/x-29-05/pdf>. For a comprehensive resource on nonprofit governance best practices, see Panel on the Nonprofit Sector, Principles for Good Governance and Ethical Practice: A Guide for Charities and Foundations, available at: http://nonprofitpanel.org/selfreg/Principles_Guide.pdf and the related Reference Edition, which includes legal background for each principle.

OTHER INTERNET RESOURCES

See Stat. Supp. pp. 1091-1095

GOALS OF THE COURSE

This course is a selective survey of the law governing nonprofit organizations. Our study will be from the perspective of both state law (formation, governance, fiduciary duty of officers, directors and trustees, and related issues) and federal (mostly tax) law. About 1/3 of the class covers state law and 2/3 covers federal tax law.

Particular goals are to: (1) learn about a fascinating and dynamic area of the law, using an approach that blends theory, legal doctrine and practice; (2) provide an opportunity for skills training through a real-world simulation exercise; and (3) have a stimulating yet informal classroom experience. The course should be valuable for students whose career path will include interaction with the nonprofit sector as an employee, grantseeker, donor, board member, voyeur, journalist, or a paid or volunteer legal advisor to all of the above.

ASSIGNMENTS AND GRADES

Final grades will be based 25% on a take-home skills training exercise and 75% on a conventional final exam. In addition, as discussed below, discretionary grade adjustments may be made based on class participation. The exercise and final exam will be prepared by Prof. Schwarz in collaboration with Prof. Rosen, and will be graded by Prof. Schwarz.

The practice exercise will require preparing an application for tax-exempt status for a hypothetical nonprofit organization, along with a brief and focused memo addressing one or two aspects of the formation and application process. The assignment will be distributed on February 27, 2007 and will be due on or about Friday, March 28 (the exact date will be determined before the assignment is distributed). More details will be provided in class.

The open book three-hour final exam (you can bring anything you want except your attorney) will consist of a series of essay questions of varying length. More information on the exam will be provided near the end of the semester.

ATTENDANCE AND CLASS PARTICIPATION

Regular attendance is assumed, and participation in class discussion will be greatly appreciated and rewarded if it adds value. In determining final grades, class participation may be taken into account. Specifically, discretionary grade adjustments of up to one level (e.g., "B" to "B+", or vice versa) may be made based on meaningful contributions to class discussion or deficient preparation, chronic muteness, or non-attendance.

READING ASSIGNMENTS AND COURSE OUTLINE

The weekly allocation of reading assignments is intended to be a close approximation. You are encouraged to complete the reading for a particular week even if (as is possible) the class discussion is so lively that we fall slightly behind this schedule.

At the beginning of most assigned topics, the casebook provides references (in bold type) to original sources, such as statutes and regulations, all of which can be found in the Statutes, Regulations and Forms Supplement or, for legislation enacted in 2006, in an Appendix to the 2007 Supplement. Assignments (sometimes abridged) to these sources also are provided on the syllabus. Follow the syllabus. Most assignments also include problems in the casebook that will be the focus of class discussion. The original sources are best used as research tools for solving the problems, especially on the more technical tax topics.

Items marked with an asterisk (*) will be given accelerated treatment. "Skim" means that you only need to look at and be generally familiar with the material assigned.

Initials (e.g., "SS" or "BR") following the date of the assignment indicate the instructor (Schwarz or Rosen) for that week or class. We will appear together in a few classes.

Week of:

1/14/08-SS/BR

Scope Note: Our first two classes are an introductory overview of the nonprofit sector -- its dimensions and demographics, historical roots, role in contemporary society, and legal framework. We then will turn to the major legal issues that arise on the formation of a nonprofit organization, particularly choice of legal form under state law, organizational logistics, and the attorney's role in all of the foregoing. This introductory coverage concludes with an exploration of the rationale for charitable tax exemptions. A few specific hypothetical fact patterns will be provided to facilitate discussion of the theoretical portions of the reading assignment.

In explaining the attorney's role on formation of a nonprofit organization, the California C.E.B. text, *Advising California Nonprofit Corporations* (Chapter 1), poses 11 basic questions that need to be answered. They are:

1. Is a new entity necessary?
2. Is there a sound business plan and is the new entity financially viable?
3. Should the entity be a nonprofit entity?
4. If nonprofit, what type of entity should it be?

Week of:

1/14/08
(cont'd)

5. In what state or country should it be organized?
6. If a California nonprofit corporation, should it be public benefit, mutual benefit, or religious?
7. If a California nonprofit corporation, should it have voting members?
8. Is tax exemption appropriate and desirable?
9. If tax exemption is desirable, under what section of the Internal Revenue Code?
10. If the organization will be exempt from tax under § 501(c)(3), can it qualify for public charity classification under § 509?
11. If the organization does not qualify as a public charity, can it accept various restrictions applicable to private foundations?

All these questions will be answered during the course.

INTRODUCTION

AN OVERVIEW OF THE NONPROFIT SECTOR

Skim I.R.C. §§ 501(a)-(c); 170(a)(1),(c); 509(a); Calif. Corp. Code § 5410

CB 2-34 (read for general background), 43-54, 60-63; 2007 Supp. 1-2

FORMATION OF A NONPROFIT ORGANIZATION

CHOICE OF LEGAL FORM; TAX EXEMPTION

Calif. Corp. Code §§ 5111; 5130; 5227

I.R.C. § 508(a)-(c)

CB 66-77; 320-327; 351-353

Skim sample organizational forms (Stat. Supp. 948-960) and Form 1023 (Stat. Supp. 1013-1038)

Problem: CB 63

CHARITABLE TAX EXEMPTIONS: THEORY, STAKES AND QUALIFICATION REQUIREMENTS

_____ RATIONALE FOR TAX EXEMPTION

CB 327-349

Week of:

1/21/08-SS

Scope Note: This week's Wednesday class (Monday is a holiday) continues examining the affirmative requirements for qualifying for charitable tax exemption under § 501(c)(3). The threshold question is: what purposes and activities are "charitable?" The evolving standards will be studied in context, beginning with hospitals and then turning to other types of "charities."

ORGANIZATIONAL AND OPERATIONAL TESTS

I.R.C. § 501(c)(3)

Regs. §§ 1.501(c)(3)-1(a), (b)(1)-(4), (c)(1)-(2)

CB 349-353

THE EVOLVING CONCEPT OF "CHARITABLE"

Introduction

Treas. Reg. § 1.501(c)(3)-1(d)(1) & (2)

CB 353-357

Hospitals and Health Care Organizations

CB 357-376

Problems: 376-377; 2007 Supp. 10-11

1/28/08-SS

Scope Note: This week begins by continuing to explore the evolving tax exemption concept of charity and the public policy limitation, a judicially-created rule that has been principally applied to deny § 501(c)(3) tax exemption to racially discriminatory schools. We then consider the special qualification requirements and issues for educational and religious organizations, and a few other specialized types of § 501(c)(3) charities.

Public Interest Law Firms; Legal Services

CB 377-383

Problems: 383-384

Week of:

1/28/08
(cont'd)

*Community Development and Low-Income Housing

CB 384-389

*Protection of the Environment

CB 390-395

Disaster Relief

CB 395-400

The Public Policy Limitation

CB 400-427; 2007 Supp. 14
Problems: CB 427

Educational Organizations

Treas. Reg. § 1.501(c)(3)-1(d)(3)
CB 97-100 (Notes 2-5), 427-443
Problems: CB 443-444

Religious Organizations

CB 444-461
Problems: CB 461

*Other Charitable Purposes

Skim I.R.C. §§ 501(e), (f), (j)
CB 461-462, 468-470

2/4/08-SS

Scope Note: The next few weeks are devoted to operational and governance issues, focusing primarily on nonprofit public benefit corporations and charitable trusts. Coverage begins from the perspective of state law, using California as the model, and then turns to fiduciary standards imposed by the Internal Revenue Code. The goal is to study what the law requires (this often is amorphous) and what are "best practices" for nonprofit officers and directors.

Week of:

2/4/08
(cont'd)

OPERATION AND GOVERNANCE

DIRECTORS, TRUSTEES AND MEMBERS

Calif. Corp. Code §§ 5210
CB 140-143

STATE LAW FIDUCIARY OBLIGATIONS AND BEST PRACTICES

The Fiduciary Concept

CB 149-151

The Duty of Care

Calif. Corp. Code §§ 5230; 5231; 5047.5
CB 151-172 (it's ok to read these cases quickly, focusing on how the directors or trustees got into trouble and what standards were applied by the courts in evaluating their fiduciary behavior); skim 173-176; 2007 Supp. 4-6
Problems: CB 172-173 (omit (e))

The Duty of Loyalty

Calif. Corp. Code §§ 5227; 5233-5237; skim §§ 7233; 7236
CB 176-179; 184-206; 214-216
Problems: CB 216-217 (Problem 1 only)

The Duty of Obedience

CB 219-223

Investment Responsibility

CB 223-235; 2007 Supp. 6-8
Problem: CB 236

Week of:

2/11/08-SS Enforcement of Fiduciary Standards Under Federal Tax Law: Executive Compensation; Inurement, Private Benefit; Intermediate Sanctions

I.R.C. §§ 501(c)(3); 4958; 6033(b)(11) & (12)
 Treas. Reg. §§ 1.501(c)(3)-1(c)(2); § 53.4958 (as needed for problems);
 Prop. Treas. Reg. § 1.501(c)(3)-1(g)
 CB 236-242; 476-497; 2007 Supp. 9, 14-15
 Problems: 497-500 (as many as time permits)

2/18/08-BR/SS Other Enforcement and Oversight Issues; Donor Standing

I.R.C. § 6104(a)(1)(A), (b); 6033(a)-(b)
 CB 242-262; skim 573-576; 2007 Supp. 29-30
 Skim Form 990 (Stat. Supp. pp. 987-1000)

2/25/08-SS **Scope Note:** This week's classes examine the first of two major "border patrol" limitations on § 501(c)(3) exempt status: the limitations on lobbying and political campaign activities. We first examine the permissible level of advocacy and political activities for § 501(c)(3) organizations, and alternative structures for politically active charities. The § 4911 expenditure test election is very technical. Don't get discouraged by all the detail. Our goal is to develop an appreciation of the considerable opportunities for charities to influence the political process. After a brief discussion of the *Christian Echoes* case and a mini-lecture on the § 501(h) election, we will turn to the problems at pp. 568-570 and try to get through as many as time permits.

LOBBYING AND POLITICAL CAMPAIGN ACTIVITIES

Background

CB 500-502

No Substantial Part Test

I.R.C. §§ 501(c)(3); 504; 4912; 170(f)(6)
 Treas. Reg. § 1.501(c)(3)-1(c)(3)
 CB 502-514

Week of:

2/25/08
(cont'd)

*Constitutional Issues

CB 514-523 (this is a "skim"; it's an interesting case but our discussion will cut to the chase on its rationale and the concerns expressed in Justice Blackmun's dissent)

The § 501(h) Expenditure Test Election

I.R.C. §§ 501(h); 4911(a)-(e), (f)(1)(A)

Treas. Reg. -- The § 1.501(h) and § 1.4911 regulations should be used selectively as a research source for the problems

CB 523-532; skim 552-553

Problem: CB 568-569 (problem 1)

Political Campaign Limitations

I.R.C. §§ 501(c)(3); 4955; skim § 527

CB 532 (introductory note), 2007 Supp. 16-28; CB 540-552; skim CB 564-568

Problem: CB 569-570 (Problem 2)

The § 501(c)(4) and § 527 Alternatives

I.R.C. § 501(c)(4); 504; skim § 527

CB 553-560

*Nontax Regulation

Skim CB 560-564

3/3/08-BR

Scope Note: Classes for the next three weeks (one before spring break and two after) cover the distinction between private foundations and public charities. Our initial goal is to understand the pros and cons of private foundations and then explore the various paths to avoiding private foundation status when avoidance is desirable. After an introductory overview, this week's material will be covered largely through discussion of the problems at pp. 790-791.

Week of:

3/3/08
(cont'd)

**PRIVATE FOUNDATIONS, PUBLIC CHARITIES AND OTHER
FOUNDATION ALTERNATIVES**

THE UNIVERSE OF PRIVATE FOUNDATIONS

CB 751-762; skim 762-769 for general background; 769-771

PRIVATE FOUNDATIONS AND PUBLIC CHARITIES

I.R.C. §§ 509; 170(b)(1)(A); 507(d)(2); 4946

Treas. Reg. §§ 1.170A-9 & 1.509(a)-3 as necessary for the problems

CB 781-802; 2007 Supp. 34-35

Problem: CB 790-791 (Problem 1)

PRIVATE FOUNDATION ALTERNATIVES

Skim I.R.C. §§ 4958(c)(2); 4966; 4967 (in 2007 Supp.)

CB 771-780; 2007 Supp. 32-34, 44-48

Problem: CB 791 (Problem 2)

(Some of this material may carry over to the week of 3/17/08)

3/10/08

SPRING BREAK

3/17/08-BR

Scope Note: This week's classes take a closer look at supporting organizations and a few other private foundation classification issues.

SUPPORTING ORGANIZATIONS: A CLOSER LOOK

I.R.C. §§ 509(a)(3); 4958(c)(3) & (f)(1)(D); skim 509(f) (in 2007 Supp.)

Treas. Reg. § 1.509(a)-4 as necessary for problem

CB 803-825; 2007 Supp. 35-39

Problem: CB 825-827 (omit (h))

*Private Operating Foundations

I.R.C. § 4942(j)(3)

CB 827-829

Week of:

3/24/08-BR

Scope Note: The study of private foundations concludes with a selective survey of operational issues and challenges. The emphasis will be on preventive maintenance -- how to help a private foundation avoid landmines in the various excise taxes imposed by §§ 4940-4946. Note that the only assigned problems are on self-dealing, excess business holdings (a very basic exercise), and taxable expenditures.

PRIVATE FOUNDATION EXCISE TAXES

*Tax on Net Investment Income

Skim I.R.C. § 4940
CB 832-835; skim 2007 Supp. 40

Self-Dealing

Skim I.R.C. § 4941
CB 836-847; 2007 Supp. 40
Problems: 847-848 (Problems 1(a)-(f), (g)(1) & (2))

Charitable Distribution Requirements

Skim I.R.C. § 4942
CB 849-855; 2007 Supp. 40-41

Excess Business Holdings

Skim I.R.C. § 4943
CB 856-860; 2007 Supp. 41-42
Problem: CB 860

*Jeopardy Investments

Skim I.R.C. § 4944
CB 861-862; 2007 Supp. 43

Taxable Expenditures

Skim I.R.C. § 4945
CB 863-870; 2007 Supp. 43
Problem: CB 870-871 (Problems (a), (b), (d), (g)-(i), as time permits)

3/31/08-SS/BR

Scope Note: This week's classes (4 hours, counting the "administrative Monday" on Friday) examine the second major "border patrol" limitation on § 501(c)(3) qualification: the murky "commerciality" limitation and the unrelated business income tax.

IMPACT OF COMMERCIAL ACTIVITIES ON EXEMPT STATUS

CB 593-615

Treas. Reg. § 1.501(c)(3)-1(b)(1)(i), (iii), -1(c)(1), -1(e)

Problems: CB 615-616

THE UNRELATED BUSINESS INCOME TAX

Introduction

CB 616-628

Nature of an Unrelated Trade or Business

I.R.C. §§ 511(a), (b); 512(a)(1); 513(a), (c), (f), (h), (i); skim § 513(d)

Regs. §§ 1.513-1 as necessary, -4 & -7

CB 628-639; 646-666

Problems: CB 666-668

Exclusions from Unrelated Business Taxable Income

I.R.C. §§ 512(b)(1)-(5), (7)-(9), (13), (15)

Regs. § 1.512(b) as necessary

CB 668-670; 679-684; 2007 Supp. 31

Problems: CB 684-685

*Computation of UBTI and Planning

I.R.C. §§ 512(a)(1); 512(b)(6), (10), (12)

Regs. § 1.512(a)-1(a)-(e), (f)(1)

CB 685-687; 693

Unrelated Debt-Financed Income

Skim I.R.C. §§ 514(a), (b)(1)-(3), (c)(1),
(c)(9)(A)-(C)

CB 694-696; 705-708

Problems: CB 708-709 (if time permits)

Week of:

4/7/08-BR/SS

Scope Note: The first hour for this week will complete the previous week's assignment and consider why a nonprofit organization might use a controlled subsidiary to conduct a business activity. The remaining time will be devoted to joint ventures between nonprofit and for-profit organizations and tax exemption standards for mutual benefit organizations. Coverage of mutual benefit organizations will be limited to no more than an hour or so of class discussion, allocated equally to the rationale for exemption for mutual benefit organizations, and the special problems of social clubs and other private membership associations. Any remaining time will be devoted to constitutional and policy issues (which will spill over to the following week).

COMMERCIAL ACTIVITIES: SPECIAL PROBLEMS

Use of Controlled Subsidiaries

CB 709-711

Joint Ventures

CB 711-723; 733-738

Problem: CB 738-739

MUTUAL BENEFIT ORGANIZATIONS

RATIONALE FOR TAX EXEMPTION

CB 980-990

***TRADE ASSOCIATIONS AND BUSINESS LEAGUES**

I.R.C. § 501(c)(6)

CB 997, 1006-1009

SOCIAL CLUBS AND FRATERNAL ORGANIZATIONS

I.R.C. §§ 501(c)(7), (8) & (10)

CB 1010-1026

Problems: 1026-1027

Week of:

4/14/08-SS

PRIVATE MEMBERSHIP ASSOCIATIONS: CONSTITUTIONAL
ISSUES

CB 1062-1081

Problems: CB 1081

Scope Note: At some point in its life cycle, a nonprofit organization may decide to alter its mission, restructure, or dissolve and distribute its remaining assets. We will devote one hour of class time to the legal rules governing these various types of organic changes.

CHANGED PURPOSES AND EXITS: STATE LAW ISSUES

Cy Pres and Deviation

CB 106-119

Changed Purposes and Dissolutions

CB 120-128

CHARITABLE CONTRIBUTIONS

Scope Note: Our final classes survey the policy aspects of the charitable deduction and tax planning for charitable giving. Some of this was covered in basic income tax. After the policy discussion, the focus will be selective (what's interesting and fun) and practical.

INTRODUCTION

CB 874-879; 884-894; 2007 Supp. 49

4/21/08-SS

BASIC PRINCIPLES

I.R.C. §§ 170(c), (f)(8); 6113; 6115

CB 894-900, 907-915, 927-942; 2007 Supp. 49-50

Problems: 942-944

Week of:

4/21/08
(cont'd)

CONTRIBUTIONS OF PROPERTY

I.R.C. §§ 170(a)(3), (e)(1)-(3), 1011(b); skim §§ 170(e)(1)(B) as amended; 170(e)(7); 170(f)(15) & (16); 170(o) (in 2007 Supp.)
CB 944-945, 953-958, 959-962, 964-968; 2007 Supp. 50-52
Problems: 968-969 (Problems 1, 3)

PLANNED GIVING TECHNIQUES

You'll need to take the Estate Planning seminar

Professor: Linda Sugin
School: Fordham University School of Law
Course: Nonprofit Organizations and Philanthropy

Materials

Fishman & Schwarz, *Nonprofit Organizations: Cases and Materials*, Third Edition, Foundation Press 2006

Fishman & Schwarz, *Nonprofit Organizations: Statutes, Regulations and Forms*, Foundation Press 2006

Course Overview

This course covers Parts 1-3 of the Fishman Schwarz book. The students each pick an organization to follow throughout the semester as different issues are covered. The course is divided into eight main sections:

1. Introduction to Nonprofit Organizations
2. State Law Basics
3. Governance under State Law
4. Regulation of Charitable Solicitation
5. Tax Exemption under Federal Law
6. Commercial Activities
7. Private Foundations
8. The Charitable Contribution Deduction

Order and Use of Text

This course uses the Fishman and Schwarz almost exclusively. The course topics track the order of the casebook. The relevant statutes and regulations from the statutory supplement are assigned along with each reading assignment from the casebook.

Nonprofit Organizations and Philanthropy

Professor Linda Sugin

Fall 2007

Syllabus

The text for the course is James Fishman and Stephen Schwarz, Nonprofit Organizations: Cases and Materials (3rd edition) ("FS"). The statutes are in a supplement associated with the text ("SS"). Both books should be in the bookstore.

You must use blackboard for this class (it is very easy to use). There will be regular updates and supplementary materials posted on blackboard. I will post information about every class by the end of the day of the preceding class (i.e. by end of day Monday with information about Wednesday's class). My posts will tell you how far to read in the syllabus and which problems in the book to prepare.

I. Introduction to Nonprofit Organizations

FS: pp. 2-4, 43-60

SS: Code §§501(c)(3) to (c)(8); 508(a), (c)

Pick an organization to adopt for the semester. Peruse its website before the first class. What does it do? Where does its money come from? Who runs it? You do not need to pick a charity, but it might be more interesting if you do. Follow it throughout the semester as we cover different issues. You may not pick Fordham University (that's mine).

II. State Law Basics

Formation:

FS: pp. 66-81, 87-100

SS: Revised Model Nonprofit Corporation Act §§2.02, 3.01, 3.02, 13.01, 13.02
NY Not-for-Profit Corp L (NY NPCL) §201, 202, 204, 402, 404(a)-(e), 508,
Restatement of Trusts (2d) §368
NY AG Procedures for Forming (on blackboard)

Changes – Cy Pres and Deviation:

FS: pp. 106-120

Dissolution and Distribution:

FS: pp. 120-126

III. Governance under State Law

Duty of Care:

FS: pp. 140-143, 149-176

SS: Rev. Model Nonprofit Corp. Act: §§ 8.01; 6.21; 8.30, 8.33, 8.41-42.
N.Y. NPCL §§ 717; 719.

Duty of Loyalty:

FS: pp. 176-179, 185-204, 214-216

SS: Rev. Model Act §§ 8.31, 8.33
N.Y. NPCL §§ 715-16

Duty of Obedience:

FS: pp. 219-222

Investment Responsibility:

FS: pp. 222-224, 230-232

SS: UMIFA § 1-4
N.Y. NPCL §§ 512-514

Endowment building articles on blackboard

Enforcement:

FS: pp. 242-262, 264-265

SS: Rev. Model Act §§ 16.01-16.05, 16.20-22

IRS Good Governance Practices

IV. Regulation of Charitable Solicitation

FS: pp. 269-315

Look at “Pennies for Charity” link on blackboard

V. Tax Exemption under Federal Law

Why Are Nonprofits Tax Exempt?

FS: pp. 320-348

General Requirements for Exemption:

FS: pp. 349-357, 400-427

SS: Code § 501(c)(3)
Regs §§ 1.501(c)(3)-1(a), (b), (c); 1.501(c)(3)-1(d)(1), (2)

Inurement and Private Benefit:

FS: pp. 476-497

SS: Code § 4958
Regs § 1.501(c)(3)-1(c)(2), 1.4958-1 through -8, Prop Reg 1.501(c)(3)-1(g)

Private benefit article posted on blackboard

Special Issues for Particular Types of Organizations:

FS: pp. 357-372 (health care orgs)
pp. 427-443 (educational organizations)
pp. 444-461 (religious organizations)
SS: Regs §1.501(c)(3)-(1)(d) (educational)
Credit counseling GCM posted on blackboard (educational)

Limitations on Lobbying and Campaign Participation:

FS: pp. 500-570
SS: Code §501(c)(3), (4); 501(h); 4911, 4912, 4955, 6033(b)(8).
Look at your organization's Form 990 for disclosure about lobbying.
Revenue Ruling 2007-41 on blackboard

VI. Commercial Activities

Reforming Internal Revenue Code Provisions on Commercial Activity by Charities by John D. Colombo, posted on blackboard

Commercial Purposes under State Law:

FS: pp. 81- 87
Look at your organization's Form 990 to determine where it gets its resources.

Commercial Purposes and Exemption:

FS: pp. 593-616
SS: Code §502; Reg. §1.501(c)(3)-1(e)
NCAA letter to Ways and Means Inquiry posted on blackboard

Unrelated Business Income Tax:

FS: pp. 616-639, 648-666, 668-685
SS: Code §512(a)(1),(b)(1)-(5),(7)-(9),(13),(15), 513(a),(c),(f),(h),(i)
Reg. 1.512(b)-1(a)(1),(b),(c)(2)-(5),(d)(1), 1.513-1

If time permits, we will study

Computation and Planning Issues in UBIT

FS: pp. 685- 693
SS: Code §512(a)
Reg. 1.512(a)-1(a),(b),(c),(d),(e),(f)(1)

Unrelated Debt-Financed Income

FS: pp. 694-708
SS: Code §514(a);(b);(c)(1)-(4),(7),(9)(A)-(D),(E);
Reg. 1.514(b)-1(a),(b),(d).

VII. Private Foundations

Avoiding Private Foundation Status:

FS: pp. 751-762, 781-803

SS: Code §§ 4940; 4946; 507(d)(2); 509(a)(1); 509(d); 170(b)(1)(A)(i) - (vi); 509(a)(2); 509(a)(3).

Excise Taxes on Private Foundations:

FS: pp. 832-840, 849-856, 862-866

SS: Code §§ 4941; 4945; 4946.

VIII. The Charitable Contribution Deduction

FS: pp. 874-935

SS: Code §170(c), (f)(8); legislative proposals posted on blackboard

Professor: Robert A. Wexler
School: Stanford Law School
Course: The Law of Nonprofit Organizations

Materials

Fishman & Schwarz, *Nonprofit Organizations: Cases and Materials*, Third Edition, Foundation Press 2006

Supplement to Fishman & Schwarz, *Nonprofit Organizations: Cases and Materials*, 2007

Additional Materials and Problems posted by the Professor throughout the semester

Course Overview

This course focuses primarily on the formation and operation of nonprofit organizations. This is not a heavily tax based class, and students are not required to have taken Income Tax or Corporations before enrolling in this course. The majority of the classes are spent discussing the 501(c)(3) exemption and corporate governance. The course is divided into five main topic areas:

1. Federal Tax Exemption under section 501(c)(3)
2. Earned Income Issues
3. Private Foundations
4. The Donor's Perspective
5. Corporate Governance

Order and Use of Text

This course primarily uses the Fishman and Schwarz casebook and supplementary materials. After a one class discussion introduction to the law of nonprofit organizations (Chapter 1 and the beginning of Chapter 2) of the casebook, the course skips immediately to the federal tax exemption (Chapter 5). Following this, the assigned readings come from selected sections of Chapter 6 and Chapter 7. The class concludes with the topic of Corporate Governance, and readings from Chapters 2 and 3 are assigned.

**THE LAW OF
NONPROFIT ORGANIZATIONS**
Stanford Law School
Robert A. Wexler
Winter / Spring 2008
Syllabus

This course provides an overview of the rules governing the formation and operation of nonprofit organizations. The law in this area has two primary sources: state law on trusts and nonprofit corporations; and federal tax law. These bodies of law, however, are sufficiently distinct from the rest of the tax code and from for-profit corporate law that there is no need to have taken either Income Tax or Corporations prior to taking this class.

The textbook for the course is Fishman and Schwarz, *Nonprofit Organizations Cases and Materials* (3rd ed. 2006) (“**FS**”), along with the Statutory Supplement (“**SS**”) and the Cases and Materials Supplement (2007) for that book. I have also assigned additional materials and problems, which I will post on *coursework*. Grades will be based on an open-book final exam (80%), and class participation (including attendance) (20%).

SYLLABUS

THE BASICS

Class I. Introduction and Overview

FS: pp. 17-50, 60-63; 66-78
(Problem on p. 63)

SS: Sample Articles of Incorporation and Bylaws (skim and bring to class)

FEDERAL TAX EXEMPTION UNDER SECTION 501(C)(3)

Class II. Requirements for 501(c)(3) exemption & Exploration of “Charitable” Purposes

A. Five Requirements for 501(c)(3) exemption

FS: pp. 349-353

SS: I.R.C. 501(c)(3), 508(a)-(c);
Regs. 1.501(c)(3)-1(a),(b),(c), 1.501(c)(3)-1(d)(1) & (2),
1.508-(a)(1)

B. Charitable Purposes

FS: pp. 353-365; 377-399

Class III. Educational and Religious Purposes

A. Educational Purposes

FS: pp. 427-444
(Problems on pp. 443-444)

B. Religious

FS: pp. 444-461
(Problems on p. 461)

Class IV. Prohibition on Inurement & Excess Benefits

FS: pp. 476-497
(Problems on pp. 497-500)
Handout on *coursework* on Section 4958
SS: I.R.C. Section 4958
Regs. 53.4958

Class V. Lobbying

FS: pp. 500-532
(Problem 1 on p. 568)
Handout on *coursework* on Lobbying
SS: I.R.C. Section 4911

Class VI. Political Activity

FS: pp. 532-568
(Problems 2 and 3 on pp. 569-570)

EARNED INCOME ISSUES

Class VII. Unrelated Business Income

FS: pp. 628-685
Handout on *coursework*
Problems on *coursework*

PRIVATE FOUNDATIONS & PUBLIC CHARITIES

Class VIII. Avoiding Private Foundation Status

Handouts on *coursework*
Problems on *coursework*
SS: I.R.C. Section 509; Regs. 1.509(a)(1); 1.509(a)(2); 1.509(a)(3)

Class IX. Consequences of Being a Private Foundation

FS: pp. 832-870
(Problems on pp. 847-849 and 870-871)
SS: I.R.C. Sections 4940 – 4946

THE DONOR'S PERSPECTIVE

Class X. Charitable Contributions

Handout on *coursework*
Problems on *coursework*
SS: I.R.C. Section 170

CORPORATE GOVERNANCE

Class XI. Duty of Care

FS: pp. 151-172
(Problems on pp. 172-173)
Handout on *coursework*
SS: CCC Sections 5231, 5240
RMNCA Section 8.30

Class XII. Duty of Loyalty

FS: pp. 176-179; 185 – 206
(Problems on pp. 216-219)
SS: CCC Sections 5227, 5233
RMNCA Sections 8.31 – 8.33

Class XIII. Charitable Trust & Enforcement

FS: pp. 101-139
(Problems on pp. 119-120 and 128-129)
Handout on *coursework*
SS: CCC Sections 5142 & 5250

WRAPPING UP

Class XIV. Review and Problems

IRS Form 1023 on *coursework*
Problems on *coursework*

NONPROFIT TAXATION

Professor: John D. Colombo
School: University of Illinois College of Law
Course: Tax Exempt Organizations

Materials

Fishman and Schwarz, Taxation of Nonprofit Organizations (Foundation Press, 2d ed., 2006)

Fishman and Schwarz, Nonprofit Organizations Statutes, Regulations and Forms (Foundation Press, 2006)

Additional materials posted on the course Web site

Overview

This course covers the rationale and technical tax requirements for exempting charities from federal and state taxes. Subjects discussed include the rationale for exemption with a focus on churches, schools and hospitals; qualification rules under Code Section 501(c)(3); the Unrelated Business Income Tax; and if time permits, the charitable contributions deduction.

Order and Use of Text

This course uses the Fishman and Schwarz casebook and supplementary materials. The course covers the topics mostly in the order it occurs in the book, with the exception of the topic of formation and filing, which is taught last. The course covers seven main topics in the following order:

1. Introduction and Overview
2. Tax Exemption for Public Charities
3. Limitations on Exempt Status
4. Private Foundations
5. Charitable Contributions
6. Noncharitable Exempt Nonprofits
7. Some Practicalities: Formation and Filing

Course Syllabus

Tax Exempt Organizations

Spring 2008

Professor Colombo

I. Materials

The course casebook is Fishman & Schwarz, *Taxation of Nonprofit Organizations* 2d ed., Foundation Press, 2006. You will also need a copy of Fishman & Schwarz, *Nonprofit Organizations Statutes, Regulations and Forms* (this book contains both the IRC and Regulations sections referenced in the casebook; if you have a 2006 or later **complete** edition of the Code and Regs, you can use that instead, but you **will need to read the Code and Regs for this class**). Note that the edited code volume that I use for basic income tax **does not** have the necessary regulations for this class (sorry).

II. Grades/Exam

Course grades will be based virtually completely on the final exam. Borderline cases with outstanding class participation will be given the benefit of the doubt.

The exam in this class will be a take-home. The take-home format will be as follows: I will e-mail all of you the exam at the beginning of the exam period in May, and you will need to e-mail your answer to my secretary, Carrie May-Borich, by the end of the exam period. You will have the entire exam period to work on the exam, but there will be a word-count limitation. I will give you more details on this later in the semester. I will not reschedule the exam except in cases of medical or immediate family emergency. In the case of a medical emergency, I will need a note from your doctor confirming that you were medically unable to take the exam during the relevant exam period. Without such a note, I will not reschedule the exam and without taking the exam you will fail the course.

III. Assignments

Below is an outline of the material I hope to get through, in the order I will cover it. As is my current custom, I have not assigned particular days to the material; if you stay one assignment ahead of where we end a particular class, that will be sufficient (most of the assignments below will take more than one class session to complete). Please note that at the beginning of many of the assignments, the casebook lists Internal Revenue Code Sections and Regulations Sections; ***please read the assigned Code and Regulations along with the text*** (you **really do** need to read the regulations for this class; I will expect you to be familiar with the regulations assigned when we work through the class material). You should also do any problems in the text *unless this syllabus specifically omits them*. I will link answers to the problems to this syllabus after we cover them in

class.

Topic	Assignment
I. Introduction and Overview	1-65 (omit introductory problem) and 68-74.
II. Tax Exemption for Public Charities	
A. Rationales	75-97.
B. Basic Requirements; Educational Organizations	97-105; 175-192 (from now on, remember to also read the Code and Regs. sections reference in the reading assignment in the text). In addition to the text materials, I will e-mail a list of web sites that I want you to visit as part of this assignment.
C. Religious Organizations	192-209. In addition to the text materials, I will e-mail a list of web sites that I want you to visit as part of this assignment
D. Hospitals/Health Care Organizations	105-125. In addition to the text materials, I will e-mail you a copy of an article I wrote for the Journal of Health Policy, Politics and Law that I want you to read as part of the assignment
E. Public Interest Law Firms and Community Development Organizations	125-138.
III. Limitations on Exempt Status	
A. Public Policy Limitation	148-175.
B. Private Inurement, Private Benefit and Intermediate Sanctions	223-256. Do parts (a) and (c) of the problem on page 256-257. In addition to the text materials, I will e-mail you an article of mine ("In Search of Private Benefit" from the Florida Law Review) that you need to read as part of this assignment.
C. Limits on Lobbying	259-291 (no problems for this assignment, but you absolutely will have to struggle with the regs. cited on page 282 of the casebook to understand this stuff and do the problems for the next assignment).
D. Political Campaign Limits and the (c)(4) alternative	291-316. Do problems 1 and 2 on pages 327-329.
E. Commercial Activity	352-375, including the problems on 374-75. In addition to the assignment in the text, I will e-mail you a copy of an article I wrote for the Fordham

	Law Review on commercial activity that you need to read as part of this assignment.
F. UBIT	375-440, including problems 1 and 2 on pages 426-427.
IV. Private Foundations	510-550. Omit problem 2 on page 550.
IV. Charitable Contributions	
A. Background and basic principles	651-722 (including problem).
B. Regulation of Charitable Solicitation	No Casebook Assignment; I will hand out a copy of <i>Illinois v. Telemarketing Associates</i> for this class.
V. Noncharitable Exempt Nonprofits	No Casebook Assignment; please read all the subsections of Code Section 501(c) other than 501(c)(3).
VII. Some Practicalities: Formation and Filing	330-351; Form 1023 (in the back of your Code supplement books).

Professor: Jill Manny
School: New York University School of Law
Course: Tax-Exempt Organizations

Materials

Fishman & Schwarz, *Taxation of Nonprofit Organizations: Cases and Materials*, Second Edition

Statutory Supplement to Fishman & Schwarz, *Taxation of Nonprofit Organizations: Cases and Materials*, Third Edition 2007

Various Web sites and newspaper articles

Overview

The course is a standard introduction to the issues affecting tax-exempt organizations. It begins with an introduction and then covers the various types of tax-exempt organizations and the limits on activities the organizations may perform. Each class requires readings from the casebook, and in addition, students are asked to prepare answers to casebook problems for in-class discussion.

Order and Use of Text

The course covers nine major topics in addition to an introduction to tax-exempt organizations. Each class has reading from the casebook, as well as readings from the statutory supplement. Some classes also require readings from the New York Times and from the websites of various organizations with tax-exempt status. The casebook is not covered in order, nor is the entire book used; instead, there is a greater focus on fewer issues rather than less focus on more issues.

TAX-EXEMPT ORGANIZATIONS

Professor Manny

Spring 2008

January 16 and 23, 2008—Introduction

Purchase the casebook entitled "Cases and Materials on Taxation of Nonprofit Organizations, Second Edition" by James Fishman and Stephen Schwarz, along with the Statutory Supplement, Third Edition, at the N.Y.U. Bookstore.

1. In the Casebook, read:

pp. 51 – 56; 61 – 63; 68 – 105; 148 - 175. Prepare a written outline of your answer to the Introductory Problem on p. 65 for your own reference during class discussion. Focus on the reading up to page 105 for the first class.

2. In the Statutory Supplement, read:

Code § 501(a), (b), (c)(1-25)

§ 170(a), (b), (c)

§ 508(a), (b), (c)

Regs. § 1.501(a)-1

§ 1.501(c)(3)-1

§ 1.508-1(a)(1); -1(a)(2)(i); -1(a)(3)(i)

3. Read the two articles posted on Blackboard:

Stephanie Strom, *Big Gifts, Tax Breaks and a Debate on Charity*, N.Y. TIMES, Sept. 6, 2007, at A1.

Robert B. Reich, *Is Harvard a Charity?*, L.A. TIMES, Oct. 2007, at A 13.

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

www.metmuseum.org

www.komen.org

www.pewtrusts.org

www.fordfound.org

www.sierraclub.org

www.now.org

www.abanet.org

www.nfl.org

Note the 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 will 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.

January 30 and February 6, 2008 —Inurement, Private Benefit, and Excess Benefit Transactions

1. In the Casebook, read:

pp. 223 – 259. Prepare a written outline of your answers to Problems 1(a) – (f) and 2 on pp. 256 - 259 for your own reference during class discussion.

2. In the Statutory Supplement, read:

Code: § 4958

Regs: §§ 1.501(c)(3)-1(c)(2); 53.4958-1 – 8.

3. Read the article posted on Blackboard:

Cornelia Dean, *Wealthy Stake \$25 Million in a War With the Sea*, N.Y. TIMES, July 8, 2007.

February 13, 2008—Educational and Religious Organizations

1. In the Casebook, read:

pp. 175 – 208. Prepare a written outline of your answers to the problems on pp. 191 – 192 and Problems (a) and (c) on pp. 209 for your own reference during class discussion.

2. In the Statutory Supplement, read:

Regs: § 1.501(c)(3)-1(d)(3).

February 20, 2008—Health Care Organizations and Miscellaneous Organizations

1. In the Casebook, read:

pp. 105– 124; 143 – 147; 209 – 223. Prepare a written outline of your answers to the problems on pp. 124 – 125; Problem (b) on p. 131; the problems on p. 138; and Problems (a) and (c) on p. 217 for your own reference during class discussion.

2. In the Statutory Supplement, read:

Code: § 501(j).
 Regs: §§ 1.501(c)(3)-1(d)(4), (5).

February 27, 2008— Commercial Activities

1. In the Casebook, read:

pp. 352 – 374. Prepare a written outline of your answers to Problems (a), (b), and (e) – (i) on pp. 374 – 375 for your own reference during class discussion.

2. In the Statutory Supplement, read:

Code: § 502
 Regs: §§ 1.501(c)(3)-1(c)(1); -1(e); 1.502-1.

March 5 and 12, 2008— Limitations on Lobbying and Political Campaign Activities

1. In the Casebook, read:

pp. 259 – 326. Prepare a written outline of your answers to Problems 1 and 2 on pp. 327 – 329 for your own reference during class discussion. Focus on lobbying activity restrictions for the first class and political campaign restrictions for the second class.

2. In the Statutory Supplement, read:

Code: §§ 501(c)(3), (4); 501(h); 504; 527; 4911; 4912; 4955; 6033(b)(8).
 Regs: §§ 1.501(c)(3)-1(c)(1) and (3); 1.501(h)-1, -2, -3; 56.4911-1, -2, -3, -4, -5, -6, -7(a), (b); 53.4955-1.

April 2—Private Foundations and Alternatives

1. In the Casebook, read:

pp. 510 – 515; 519 – 538; 540; 545 – 591. Prepare a written outline of your answers to Problems 1(a), (b), and (f) on pp. 549 – 550 and the Problem on pp. 561 – 562.

2. In the Statutory Supplement, read:

Code: §§ 4946; 507(d)(2); 509; 170(b)(1)(A)(i) - (vi).
 Regs: §§ 53.4946-1(a); 1.507-6(b)(1); 1.170A-9(a), (b), (c)(1), (d), (e)(1) -

(9); 1.509(a)-3(a) – (e), - (4).

April 9 – Private Foundation Excise Taxes

1. In the Casebook, read:

pp. 591 – 632 (ignoring all problems not assigned). Prepare a written outline of your answers to Problems 1(a) – (g) and 2 on pp. 606 – 608 and Problems (a) – (e), (g), and (i) on pp. 629 – 630.

2. In the Statutory Supplement, read:

Code: §§ 4940 – 4946; 6033(c); 6104(d); 507.

Regs: §§ 53.4941(a)-1(a), (b), (c); 53.4941(d)-1(a), (b)(1), (2), (4)-(8);
53.4941(d)-2(a), (b)(1), (b)(2), (c), (d), (e), (f), (g); 53.4941(d)-3;
53.4945-1(a), (d), -3, -4, -5, -6.

April 16 and 23 — Unrelated Business Income Tax

1. In the Casebook, read:

pp. 375 – 443, 444 – 455, and 464 – 497. Prepare a written outline of your answers to the problems on pp. 425 – 427 (excluding problem 1(d)) and pp. 443 – 444, Problem 1 on pp. 452 – 453, and the problems on pp. 467 - 468 for your own reference during class discussion.

2. In the Statutory Supplement, read:

Code: §§ 511(a), (b); 512(a), (b)(1)-(5), (7) - (9), (13), (15); 513(a), (c), (f), (h), (i); 514(a), (b), (c)(1) - (4), (7), (9)(A) - (D), (E).

Regs: §§ 1.512(a)-1(a), -1(b), -1(c), -1(d), -1(e), -1(f)(1); 1.512(b)-1(a)(1), -1(b), -1(c)(2) - (5), -1(d)(1), -1(l); 1.513-1, -4, -7; 1.514(b) – (1)(a), (b), (d).

3. On the Web, visit www.metmuseum.org/store/ . Think about which items sold at the shop might generate UBTI and which items further the exempt purposes of the museum.

CHARITABLE GIVING

Professors: Harvey Dale & Jill Manny
School: New York University School of Law
Course: Tax Aspects of Charitable Giving

Materials

Cases & Materials Course packet
The Internal Revenue Code
Treasury Regulations Issued under the Internal Revenue Code
Various Newspaper Articles

Overview

This is the only course currently taught on the tax aspects of charitable giving, and as such does not use a specific casebook. The course provides an overview of the tax implications of donations to charities, through the use of selected statutory readings and cases. Each of the class sections works around a number of problems assigned based on the readings.

Order and Use of Text

This class does not have a casebook assigned. However, the course packet contains selections from various cases on the topic issues. The course packet also includes a diverse sample of readings, including statutes, IRS private letter rulings, and revenue rulings. In addition, each class contains readings from the Internal Revenue Code and the Treasury Regulations based on the Internal Revenue Code.

New York University School of Law
Tax Aspects of Charitable Giving
Spring 2009
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8. Rev. Rul. 63-252, 1963-2 C.B. 101.....	119
9. Rev. Rul. 67-246, 1967-2 C.B. 104.....	124
10. Rev. Rul. 55-410, 1955-2 C.B. 297.....	132
11. TAM 200119005 (Nov. 21, 2000).....	134
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13. Notice 2004-41, 2004-2 C.B. 31.....	143
14. Rev. Proc. 90-12, 1990-1 C.B. 471.....	145
15. <u>Daniel Gomez et ux. v. Commissioner</u> , T.C. Summ. Op. 2008-93 (July 30, 2008)	148
16. <u>Van Zelst v. Commissioner</u> , 100 F.3d 1259 (7th Cir. 1996).....	155

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17. <u>Hewitt v. Commissioner</u> , 98-2 U.S. Tax Cas. (CCH) P50,880.....	162
18. <u>Hudspeth v. United States</u> , 471 F.2d 275 (8th Cir. 1972)	166
19. <u>Grove v. Commissioner</u> , 490 F.2d 241 (2d Cir. 1973).....	172
20. <u>Ferguson v. Commissioner</u> , 174 F.3d 997 (9th Cir. 1999).....	182
21. <u>Eisenberg v. Commissioner</u> , 155 F.3d 50 (2d Cir. 1998).....	192
22. <u>Allen v. Commissioner</u> , 925 F.2d 348 (9th Cir. 1991).....	202
23. Rev. Rul. 81-163, 1981-1 C.B. 433.....	209
24. <u>Ebben v. Commissioner</u> , 783 F.2d 906 (9th Cir. 1986).....	210
25. <u>Estate of Marine v. Commissioner</u> , 990 F.2d 136 (4th Cir. 1993).....	224
26. <u>Ithaca Trust Co. v. United States</u> , 279 U.S. 151 (1929).....	229
27. <u>Longue Vue Foundation v. Commissioner</u> , 90 T.C. 150 (1988), <u>acq.</u> , 1989-1 C.B. 1, 1989-2 C.B. 1.....	234
28. Rev. Rul. 74-523, 1974-2 C.B. 304.....	246
29. Rev. Rul. 70-452, 1970-2 C.B. 199.....	248
30. Rev. Rul. 93-48, 1993-2 C.B. 270.....	249
31. PLR 9403005 (Oct. 14, 1993)	251
32. PLR 8008105 (Nov. 29, 1979)	254
33. Excerpt from III SCOTT ON TRUSTS §§ 232-33.2 (3d ed. 1967)	257
34. Excerpt from New York Estates, Powers & Trusts Law § 11-A-1.3	274
35. Excerpt from New York Estates, Powers & Trusts Law § 11-2.3.....	276
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37. Excerpt from Leo L. Schmolka, <u>Income Taxation of Charitable Remainder Trusts and Decedents' Estates: Sixty-six Years of Astigmatism</u> , 40 TAX L. REV. 1 (1984)	290
38. Rev. Proc. 2005-24, 2005-1 C.B. 909.....	317
39. Notice 2006-15, 2006-8 I.R.B. 501.....	320
40. Rev. Rul. 72-395, 1972-2 C.B. 340.....	322
41. Rev. Rul. 80-123, 1980-1 C.B. 205.....	335
42. Rev. Rul. 60-370, 1960-2 C.B. 203.....	337
43. Notice 94-78, 1994-2 C.B. 555.....	341
44. TAM 9825001 (Oct. 29, 1997).....	343
45. <u>In re Estate of Rowe</u> , 274 A.D.2d 87 (N.Y. App. Div. 2000).....	350
46. Notice 2000-37, 2000-2 C.B. 118.....	358
47. <u>Mott v. United States</u> , 462 F.2d 512 (Ct. Cl. 1972), <u>cert. denied</u> , 409 U.S. 1108 (1973).....	360
48. Rev. Rul. 68-667, 1968-2 C.B. 289.....	371
49. <u>Rebecca K. Crown Income Charitable Fund v. Commissioner</u> , 8 F.3d 571 (7th Cir. 1993).....	375
50. <u>Rifkind v. United States</u> , 84-2 U.S. Tax Cas. (CCH) P13,577.....	382
51. Rev. Proc. 2007-45, 2007-29 I.R.B. 89	393
52. Rev. Proc. 2007-46, 2007-29 I.R.B. 102	406

TAX ASPECTS OF CHARITABLE GIVING
Professors Manny and Dale
Spring 2008

Assignment for January 15 and 22, 2008

Purchase a copy of the Cases and Materials, Spring 2008, from the Bookstore. You will need a current version of the Internal Revenue Code and the Treasury Regulations issued under the Code.

1. In the Cases and Materials, read items 1 – 7.

2. Read the three articles posted on Blackboard:

Stephanie Strom, *Big Gifts, Tax Breaks and a Debate on Charity*, N.Y. TIMES, Sept. 6, 2007, at A1.

Robert B. Reich, *Is Harvard a Charity?*, L.A. TIMES, Oct. 2007, at A 13.

Cornelia Dean, *Wealthy Stake \$25 Million in a War With the Sea*, N.Y. TIMES, July 8, 2007.

3. In the Internal Revenue Code of 1986, as amended, read §§ 62(a), 67(a), 67(b)(4), 68, 170(a)(1) and (2), 170(b), 170(c), 170(d), 170(f)(8), 501(c)(3), 509(a), 642(c)(1), 642(c)(6), 702(a)(4), 703(a)(2)(C), 1366(a)(1), 6115, and 6714.

4. In the Treasury Regulations, read §§ 1.61-3(a), 1.170-0, 1.170A-1, 1.170A-8, 1.170A-9 [very lightly — just to become acquainted with its coverage and organization], 1.170A-10 (except 1.170A-10(d)), 1.170A-13, and 1.501(c)(3)-1.

5. Prepare Problem 1 (Introduction), parts A and B.

Assignment for February 5, 12, and 26

1. In the materials, read Items 8 – 21.

2. Review the Items, Code sections, and Treasury Regulations assigned previously.

3. In the Internal Revenue Code of 1986, as amended, read §§ 170(e), 170(f), 170(g), 170(j), 170(l), 170(m), 170(o), 509(a), 1015(a), 1221, 1222(3), 2055(a) and (d), 2522(a), 6050L, 6662 (except subsections (c), (d), and (f)), and 6664(c).

4. In the Treasury Regulations, read Treas. Reg. §§ 1.170A-4, 1.170A-11, and

1.1015-4.

5. Prepare a written outline of your answer to Problem 1 (Introduction), parts C through G, for your own use during class discussions.

Assignments for March 4 and 11—Substantiation and Valuation

1. Review the Items, Code sections, and Treasury Regulations assigned previously.
2. In the materials, review:
 - a. Item 1: Excerpt from John Simon, Harvey Dale & Laura Chisolm, *The Federal Tax Treatment of Charitable Organizations*, previously published by Yale University Press in THE NONPROFIT SECTOR: A RESEARCH HANDBOOK 267.
 - b. Item 2: Hernandez v. Commissioner, 490 U.S. 680 (1989).
 - c. Item 3: Sklar v. Commissioner, 282 F.3d 610 (9th Cir. 2002)
 - d. Item 4: Sklar v. Commissioner, 125 T.C. 281 (2005)
 - e. Item 9: Rev. Rul. 67-246, 1967-2 C.B. 104.
 - f. Item 14: Rev. Proc. 90-12, 1990-1 C.B. 471.
 - g. Item 15: Van Zelst v. Commissioner, 100 F.3d 1259 (7th Cir. 1996).
 - h. Item 16: Hewitt v. Commissioner, 82 A.F.T.R. 2d 98-7164 (4th Cir. 1998).
3. In the Internal Revenue Code of 1986, as amended, read §§ 170(a)(1), 170(f), 170(l), 170(m), 507(d)(2), 509, and 4946, 6115, and 6714.
4. In the Treasury Regulations, read Treas. Reg. §§ 1.170A-1, 1.170A-13 [first skim through this lengthy regulation quickly to understand how it is structured; then focus more carefully on §§ 1.170A-13(c) and 1.170A-13(f)], 20.2031-1(b), 1.6115-1, 53.4946-1(a), 1.170A-9(a), (b), (c)(1), (d), (e)(1) - (4), (6), (7), (8), (9), and 1.509(a)-3(a).
5. Prepare Problem 1, Parts A, D, E, and F, concentrating on substantiation and valuation issues.

Assignment for March 25, April 1, 8, and 15, 2008

1. In the Materials, read:
 - a. Item 32: Excerpt from III SCOTT ON TRUSTS §§ 232-33.2 (3d ed. 1967).
 - b. Item 33: Excerpt from New York Estates, Powers & Trusts Law § 11-A-1.3.
 - c. Item 34: Excerpt from New York Estates, Powers & Trusts Law § 11-2.3.
 - d. Item 35: Excerpt from New York Estates, Powers & Trusts Law § 11-2.4.
 - e. Item 36: Excerpt from Leo L. Schmolka, Income Taxation of Decedents' Estates and Charitable Remainder Trusts, 40 TAX L. REV. 1 (1984).
 - f. Item 37: Rev. Proc. 2005-24, 2005-16 I.R.B. 909
 - g. Item 38: Notice 2006-15, 2006-8 I.R.B. 501.
 - h. Item 39: Rev. Rul. 72-395, 1972-2 C.B. 340.
 - i. Item 40: Rev. Rul. 80-123, 1980-1 C.B. 205.
 - j. Item 41: Rev. Rul. 60-370, 1960-2 C.B. 203.
 - k. Item 42: Notice 94-78, 1994-2 C.B. 555.
 - l. Item 43: Technical Advice Memorandum 9825001 (October 29, 1997).
 - m. Item 45: Notice 2000-37, 2000-29 I.R.B. 118.
2. In the Internal Revenue Code of 1986, as amended, carefully read §§ 170(e)(1); 170(f)(1), (2), and (3); 501(a); 501(c)(3); 508(d)(2); 508(e)(1); 512(a)(1); 512(b)(1) through (5); 643(b); 664; 671; 674; 677(a); 2036(a)(1); 2055(e)(2) and (3); 2056(a), (b)(1), and (b)(8); 2522(c)(2) and (4); 2523(a), (b)(1), and (g); 4947; and 7520. In addition, read for understanding (but without the need to dominate the details) §§ 170(f)(7) and 2518 on reformations; and, with respect to private foundations, §§ 4941; 4942(a) through (e); 4943; 4944(a) through (c); 4945(a), (b), and (d); and 4946(a) and (b).
3. In the final Treasury Regulations, read Treas. Reg. §§ 1.170A-4(c); 1.170A-4(d) example (9); 1.170A-8(a)(2); 1.643(a)-8; 1.643(b)-1; 1.664-1(a) through (e)¹ and -1(f)(4); 1.664-2; 1.664-3; 1.664-4(a) through (d); 20.2031-7(d); and 20.2036-1. Also read Treas. Reg. §§ 1.7520-1, 1.7520-2, 20.7520-1, 20.7520-2, 25.7520-1, and 25.7520-2. Because the three versions of the 7520-1 and -2 regulations are so similar, you should concentrate on the income tax regulations, but note any material differences among the three versions. Treas. Reg. § 1.643(b)-1 was amended Jan. 2, 2004 by T.D. 9102, 69 Fed. Reg. 12-22 (Jan. 2, 2004).
4. Prepare the Charitable Remainder Trusts Problem. Answer Question 1(a) first, Question 4(a) second, and Question 1(b) third. Then proceed to the rest of the

¹ Read the entire T.D. 9190, including the “Background” and “Explanation of Provisions” text for Final Regulations under 1.664-1(d).

problem in proper numbered order.

Assignment for April 22, 2008

1. In the materials, read:
 - a. Item 24: Estate of Marine v. Commissioner, 990 F.2d 136 (4th Cir. 1993).
 - b. Item 25: Ithaca Trust Co. v. United States, 279 U.S. 151 (1929).
 - c. Item 26: Long Vue Foundation v. Commissioner, 90 T.C. 150 (1988), acq., 1989-1 C.B. 1, 1989-2 C.B. 1.
 - d. Item 27: Rev. Rul. 74-523, 1974-2 C.B. 304.
 - e. Item 28: Rev. Rul. 70-452, 1970-2 C.B. 199.
 - f. Item 29: Rev. Rul. 93-48, 1993-2 C.B. 270.
 - g. Item 30: PLR 9403005 (Oct. 14, 1993).
 - h. Item 31: PLR 8008105 (Nov. 29, 1979).
 - i. Item 13: Notice 2004-41, 2004-28 I.R.B. 31
2. In the Internal Revenue Code of 1986, as amended, read §§ 170(e)(1) and (7), 170(f)(3) and (7), 170(h), 2001, 2010, 2044, 2053, 2055, 2106(a), 2502(a), 2503(g), 2505, 2522, 2651(e).
3. In the Treasury Regulations, read Treas. Reg. §§ 1.170A-7(a), 20.2044-1(b), 20.2055-1, 20.2055-2(a), 20.2055-3, 25.2522(a)-1.
4. Prepare Problem - Charitable Giving and the Transfer Taxes

Assignment for April 29, 2008

A. ESTATE AND GIFT TAX

Read:

Code: § § 2055(e), 2522(c), 2702, 7520

Regs.: Treas. Reg § § 20.2055-2(c)(2)(vi) and (vii), 25.2522(c)-3(c)(2)(vi) and (vii).

Materials Items 48 – 51

B. INCOME TAX

Read:

Code: § 170(f)(2)(B), § 642(c)

Regs.: § 1.170A-6(c)

C. GENERATION-SKIPPING TRANSFER TAX

Read:

Code: § § 2601 through 2603, § 2611, 2612, 2631, 2632, 2641, 2642(a), (b), and (e), and 2654(a).

Regs.: § 26.2642-3

NON LAW SCHOOL COURSES

Professor: Willard Boyd, Richard Koontz, Jude West, Lon Moeller
School: University of Iowa
Course: Nonprofit Organizational Effectiveness I

Materials

The Jossey-Bass Handbook of Nonprofit Leadership and Management, 2nd Edition (John Wiley & Sons, Inc., 2005)

Additional readings assigned from the Iowa Principles and Practices for Charitable Nonprofit Excellence.

Additional readings also assigned from various Internet sites.

Overview

This course is not a law school course. The course is designed to give student an overview of the role of nonprofit organization in building and enhancing local communities. Students are required to draft a mission statement and a strategic plan for a nonprofit organization by the end of the class.

Order and Use of Text

This course assigns select chapters from the Jossey-Bass Handbook. Chapters are included in the following order: Chapter 4, 6, 3, 8, 16, 14, 18, 19, 17, and 15. The course covers several topics. The topics are covered in the following order:

1. Course Overview and the Role of Nonprofit Organizations in Community Life
2. Nonprofit Constituencies, Principles and Practices and Nonprofit Mission Statements
3. Board Governance
4. Organization, Nonprofit Bylaws, Fiduciary Duties and Indemnification
5. Internal Controls and Conflicts of Interest
6. Strategic Planning
7. Strategic Planning (Continued) and Program Evaluation
8. Financial Management Tools and Budgeting
9. Entrepreneurial Session – Earned Income Opportunities
10. Principles of Endowment Management and Finance Fundamentals
11. Information Management and Web Page Formation
12. Fundraising Methods (Direct Mail, Special Events, Foundation Girls and Stewardship) and Planned Giving
13. Fundraising (continued)
14. Organizing the Development Effort: Proposal Development and Grants
15. Private Trusts and Foundations

6J:147/247 SCA Nonprofit Organizational Effectiveness (“NOE”) I

Fall 2007

Kollros Auditorium (Biology Building East)

Wednesdays, 5:30 P.M. – 8:00 P.M.

“Nonprofits are the essence of community life”

Willard L. Boyd, Larned A. Waterman Iowa Nonprofit Resource Center

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Office Hours: Tuesday/Thursday

(9:00 A.M. – 11:00 A.M.)

Class Webpage: Iowa Courses Online (**ICON**) <http://icon.uiowa.edu/index.shtml>

Academic Course Home: Department of Management and Organizations
(Henry B. Tippie College of Business)

Cross-Listed Courses: Nursing (96:168); Public Health (174:247); Law (91:320); Liberal Arts: Art and Art History (18:170); Health, Leisure and Sports Studies (28:257); Library and Information Science (21:263); Museum Studies (24:147, 24:247); Music (25:176); Religion (32:127, 32:227); Social Work (42:157, 42:247); Theatre Arts (49:175); and Urban and Regional Planning (102:247).

Note: Details of the University policy concerning cross-enrollments can be found at: <http://www.uiowa.edu/~provost/deos/crossenroll.pdf>

Course Description and Overview

NOE I offers students a broad overview of the role nonprofit organizations play in building and enhancing local communities. Students will develop an understanding of how nonprofit organizations are both similar to and different from for-profit organizations and will identify the specific management skills needed for the effective day-to-day operation of nonprofit organizations. NOE I students will learn about the operational and financial aspects of nonprofits (board governance, finance, budgeting, income generation, fundraising and information management/technology) and gain an additional understanding of nonprofits by drafting a mission statement and strategic plan.

Assigned Text and Readings

The assigned text for NOE I is ***The Jossey-Bass Handbook of Nonprofit Leadership and Management, 2nd Edition*** (John Wiley & Sons, Inc., 2005) (ISBN#0-7879-6995-8), which is available (under the course number 6J:147/247 SCA) at the University Book Store in the Iowa Memorial Union. Additional readings are assigned from the **Iowa Principles and Practices for Charitable Nonprofit Excellence** (available on the Content section of the class **ICON** site) and from various Internet sites.

Course Requirements

Attendance

Regular attendance is required for NOE I. A student may have no more than two unexcused absences during the fall semester. Please understand that unless otherwise approved by Professor Moeller, coming to class late or leaving early will be considered an unexcused absence.

If you need to miss class because of medical excuse, family business/emergency, job-related travel/interviews or for other University-approved absence, please advise Professor Moeller in writing (e-mail) as soon as possible.

The final grade for students who have more than two unexcused absences will be lowered by one full grade.

Writing Assignments

The NOE I writing assignments include your typewritten responses to posted discussion questions (75 points), the mission statement assignment (50 points) and the strategic plan assignment (100 points).

All writing assignments are to be typed (double-spaced) with one-inch margins, 12 point font and page numbers. Specific instructions and requirements for each writing assignment are posted on the class **ICON** site.

Each writing assignment is due no later than the end of class on the dates indicated on the syllabus. Absent the approval of Professor Moeller, late writing assignments will not be accepted and the student will receive a 0 for that assignment.

Grading

There are 225 total points in NOE I: the written discussion questions (75 points), the mission statement assignment (50 points) and the strategic plan assignment (100 points). A total of 90% or more of the total possible points will establish the A range, 80-89% the B range and so on. We do use + and - on the grades.

Academic Integrity

Academic integrity is expected of all University of Iowa students. NOE I students are subject to the requirements of the Tippie College of Business, including the College's Honor Code (<http://www.biz.uiowa.edu/honorcode>). Cheating, plagiarism or unauthorized collaboration on an assignment will result in a zero score and the student(s) involved may receive a failing grade for the class.

Academic Accommodations

Please contact Professor Moeller as soon as possible if you have a disability or condition that may require some modification of seating or any other class requirement so that appropriate arrangements can be made. If you have any emergency medical information about which the faculty should know, or if you need special arrangements in the event the classroom must be evacuated, please let Professor Moeller know. Additional assistance is available from the Office of Student Disability Services (3100 Burge Hall); 319-335-1462; <http://www.uiowa.edu/~sds>.

Sexual Harassment Policy

The Tippie College of Business and the University of Iowa are committed to providing students with an environment free from sexual harassment. If you feel you are being or have been harassed or you are not sure what constitutes sexual harassment, the University encourages you to visit the University website (<http://www.sexualharassment.uiowa.edu/index.php>) and to seek assistance from department chairs, the Dean's Office, the University Ombuds Office or the Office of Equal Opportunity and Diversity.

Schedule of Classes and Reading Assignments

HNLM = *Jossey-Bass Handbook of Nonprofit Leadership and Management*.

ICON = 6J:147/247 SCA ICON site. **Principles and Practices** = Iowa Principles and Practices for Charitable Nonprofit Excellence (posted on NOE I **ICON** site and available at the Iowa Secretary of State's web page - <http://www.sos.state.ia.us/business/nonprofits/index.html>)

1. Wednesday, August 29, 2007

Lon Moeller

Course Overview and the Role of Nonprofit Organizations in Community Life

“The Essence of Community: Iowa’s Nonprofits” Video

Readings: Chapter 4 (**HNLM**), Section I – Role of Charitable Nonprofit Organizations (**Principles and Practices**) and “Report on the Survey of Iowa Nonprofit Organizations” - <http://inrc.continuetolearn.uiowa.edu/education/books/ourPub.asp> (**ICON**)

Note: “The Looking-Glass World of Nonprofit Money: Managing in For-Profits’ Shadow Universe,” (<http://www.nonprofitquarterly.org/section/704.html>) provides an interesting comparison between for-profit and not-for-profit organizations. For background information about the Larned A. Waterman Iowa Nonprofit Resource Center, its mission statement and additional information about nonprofit organizations, see the Center’s webpage – <http://nonprofit.law.uiowa.edu/>

2. Wednesday, September 5, 2007

Willard Boyd

Nonprofit Constituencies, Principles and Practices and Nonprofit Mission Statements

Readings: The Role of Charitable Nonprofit Organizations in Iowa - The Governor’s Task Force on Nonprofits - <http://inrc.continuetolearn.uiowa.edu/education/books/ourPub.asp> (**ICON**); Section III – Mission Statement (**Principles and Practices**); and excerpts from “Building Capacity in Nonprofit Organizations” and “Effective Capacity Building in Nonprofit Organizations” (**ICON**)

Also review the mission statements for the University of Iowa (<http://www.uiowa.edu/homepage/news/strategic-plans/strat-plan-05-10/mission/index.html>), the United Way of East Central Iowa (<http://www.uweci.org/ourMission.asp>) and The Field Museum

(http://www.fieldmuseum.org/museum_info/mission_statement.htm)
(ICON)

3. Wednesday, September 12, 2007

Jude West

Board Governance

Readings: Chapter 6 (HNLM) and Section V – Board of Directors (Principles and Practices)

4. Wednesday, September 19, 2007

Richard Koontz

Organization, Nonprofit Bylaws, Fiduciary Duties and Indemnification

Readings: Chapter 3 (HNLM), Section II – Starting the Charitable Nonprofit and Section XIII – Accountability and Compliance (Principles and Practices), “Articles of Incorporation,” “Articles of Incorporation Issues” “Bylaws,” and “Bylaw Committees,” and Federal Tax Exemption documents - “1023 (<http://www.irs.gov/pub/irs-pdf/f1023.pdf>, <http://www.irs.gov/pub/irs-pdf/i1023.pdf>), “SS-4” (<http://www.irs.gov/pub/irs-pdf/fss4.pdf>) and “Statement of Change of Registered Agent” (http://www.sos.state.ia.us/pdfs/buspdfs/static/635_0119.pdf) (ICON)

***Discussion Questions #1 Due* (25 points)**

5. Wednesday, September 26, 2007

Kay Hegarty, Director, Tax Services, RSM McGladrey, Inc. and Katie Oberbroeckling, Director of Finance, St. Luke’s Hospital

Internal Controls and Conflicts of Interest

Assignment: Section VIII - Financing and Funding (B. and D. Financial Accountability) (Principles and Practices)

6. Wednesday, October 3, 2007

Jude West

Strategic Planning

Readings: Chapters 8 and 16 (HNLM) and Section IV – Strategic Planning (Principles and Practices)

Note: For additional information about strategic planning and nonprofit organizations, you may want to review the “Organizational Analysis” and

“Planning” links on the Management Consultants for the Arts webpage - <http://mcaonline.com/MCApage3.html>, Adrian Ellis’ “Planning in a Cold Climate” (**ICON**), as well as the information provided in “Strategic Planning in Nonprofit or For-Profit Organizations,” http://www.managementhelp.org/plan_dec/str_plan/str_plan.htm

7. Wednesday, October 10, 2007

Jim Ernst, Four Oaks
Darlene Schmidt, Community
Health Free Clinic
Dan Strellner, Aging Services
and Jason Wright, Cedar Rapids
Symphony

Strategic Planning (Continued) and Program Evaluation

Readings: Chapter 14 (**HNLM**); also review the webpages for Four Oaks (<http://www.fouroaks.org>), the Community Health Free Clinic (<http://www.communityhfc.org>), Aging Services (<http://www.abbefamily.org/agingservices>) and the Cedar Rapids Symphony (<http://www.crsymphony.org>)

Note: If you are interested, the webpage for United Way of America Offers an overview of goals-based program evaluation – www.unitedway.org/outcomes

***Mission Statement Assignment Due* (50 points)**

8. Wednesday, October 17, 2007

Jack B. Evans, President, The Hall-
Perrine Foundation and Leslie H.
Garner, Jr., President, Cornell College

Financial Management Tools and Budgeting

Readings: Section VIII – Financing and Funding (**Principles and Practices**); also review the Cornell College webpage (<http://www.cornellcollege.edu>)

Note: If you are interested, the Minnesota Council of Nonprofits webpage offers a very good review of financial management “basics” for nonprofit organizations including a discussion about budgeting - http://www.mncn.org/info_finance.htm

9. Wednesday, October 24, 2007 David Hensley, Pappajohn
Entrepreneurial Center, Tippie College
of Business

Entrepreneurial Session – Earned Income Opportunities

Readings: Chapter 18 (HNLM)

***Discussion Questions #2 Due* (25 points)**

10. Wednesday, October 31, 2007 Jack B. Evans, President, The Hall-
Perrine Foundation and John Spitzer,
Finance, Tippie College of Business

Principles of Endowment Management and Finance Fundamentals

Readings: Chapter 19 (HNLM)

11. Wednesday, November 7, 2007 Warren Boe, Management
Sciences, Tippie College of
Business and Rachel Stewart
Tippie College of Business

Information Management and Web Page Formation

Readings: Section X – Information Technology (**Principles and Practices**)

12. Wednesday, November 14, 2007 Floyd Akins, UI Foundation
Dave Triplett, UI Foundation

Fundraising Methods (Direct Mail, Special Events, Foundation Gifts and Stewardship) and Planned Giving

Readings: Section VIII – Financing and Funding (Review C. and E.) (**Principles and Practices**); and Chapter 17 (HNLM)

***Discussion Questions #3 Due* (25 points)**

Thanksgiving Break – No Class (November 21, 2007)

13. Wednesday, November 28, 2007

Fundraising (Continued)

Deb Dunkhase, The Iowa Children's Museum; Kristie Fortmann-Doser, DVIP; April Rouner, Catholic Community Foundation; and Connie Benton Wolfe, United Way of Johnson County

Readings: Chapter 17 (HNLM) (review); also review the webpages for the Iowa Children's Museum (<http://www.theicm.org>), DVIP (<http://www.dvipiowa.org>), Catholic Community Foundation (<http://www.ccf-ic.org>) and United Way of Johnson County (<http://www.unitedwayjc.org>)

14. Wednesday, December 5, 2007

Jill Smith

Organizing the Development Effort: Proposal Development and Grants

Readings: Chapter 15 (HNLM)

Note: If you are interested, the University's Division of Sponsored Program's webpage provides a good listing of "grant writing tools" – <http://research.uiowa.edu/dsp/main/?get=proprep>.

15. Wednesday, December 12, 2007

Matthew McGarvey, Director, Wellmark Foundation and Troy K. Ross, Executive Administrator, Roy J. Carver Charitable Trust

Private Trusts and Foundations

Note: If you are interested, the Wellmark Foundation webpage includes a very comprehensive list of grant writing resources - http://www.wellmark.com/foundation/apply/web_resources.htm. You may also want to review the grant guidelines established by the Roy J. Carver Charitable Trust - <http://www.carvertrust.org/index.php?page=68>.

***Strategic Plan Assignment Due* (100 points)**

Professor: Willard Boyd, Sandy Koontz, Jude West, Lon Moeller
School: University of Iowa
Course: Nonprofit Organizational Effectiveness II

Materials

The Jossey-Bass Handbook of Nonprofit Leadership and Management, 2nd Edition (John Wiley & Sons, Inc., 2005)

Additional readings assigned from the Iowa Principles and Practices for Charitable Nonprofit Excellence

Overview

This course focuses on the qualities needed for leaders of nonprofit organizations and examines the relationship of nonprofit organizations with the external world. Students are given writing assignments that are in response to discussion questions.

Order and Use of Text

This course assigns select chapters from the Jossey-Bass Handbook. Chapters are included in the following order: 7, 9, 11, 24, 23, 13, 21, 12, and 10. The course covers several topics. The topics are covered in the following order:

1. Course Overview and Nonprofit Leadership
2. Ethics, Nonprofit Accountability, Collaboration, Dissolution and Merger
3. The role of nonprofits in Community Building
4. Human Resources Practices in Nonprofits
5. The Role of Volunteers in Nonprofit Organizations
6. Diversity Issues in Nonprofits
7. Nonprofits and Risk Management
8. Communication Issues in Nonprofits
9. Public Relations and Nonprofit Marketing/Communication
10. Nonprofit Marketing
11. Nonprofit Marketing and Branding (continued)
12. Nonprofit Advocacy and Lobbying
13. Negotiation and Conflict Management Skills

**6J:148/248 SCA Nonprofit Organizational Effectiveness
("NOE") II (Spring 2008)**

W151 Pappajohn Business Building ("PBB")
Wednesdays, 5:30 P.M. – 8:00 P.M.

"People, not structures make great organizations"

Willard Boyd, Founder, Larned A. Waterman Iowa Nonprofit Resource Center

Host Faculty

Willard Boyd

College of Law, 460 BLB
willard-boyd@uiowa.edu
(319) 335-9004
Office Hours: By appointment

Richard Koontz

Course Coordinator
College of Law/INRC
100 INRC
richard-koontz@uiowa.edu
(319) 335-7094
Office Hours: By appointment

Lon Moeller

Course Coordinator
College of Business, C352 PBB
lon-moeller@uiowa.edu
(319) 335 – 0924
Office Hours: Wednesday
(1:30P.M. – 4:30 P.M.)

Jude West

College of Business, S344 PBB
jude-west@uiowa.edu
(319) 335 – 1030
Office Hours: By appointment

Course Webpage (Iowa Courses Online - **ICON**): <http://icon.uiowa.edu/index.shtml>

Academic Course Home: Department of Management and Organizations (Henry B. Tippie College of Business)

Cross-Listed Courses: Nursing (96:169); Public Health (174:248); Law (91:322); Liberal Arts: Health, Leisure and Sports Studies (28:258); Library and Information Science (21:265); Museum Studies (24:148, 24:248); Music (25:177); Religion (32:128, 32:228); Social Work (42:158, 42:248); and Theatre Arts (49:176).

Note: Details of the University policy concerning cross-enrollments can be found at:
<http://www.uiowa.edu/~provost/deos/crossenroll.pdf>

Course Description and Overview

NOE II has two primary areas of emphasis. First, it focuses on the qualities needed for leaders of nonprofit organizations, including relationships with staff and volunteers. Second, NOE II examines the relationship of a nonprofit organization with the external world: the nonprofit's community constituencies, governmental entities, professional associations and collaboration with other organizations. The course focus will be on integrated strategic communication involving marketing, public relations, public advocacy and internal relations.

Assigned Text and Readings

The assigned text for NOE II is **The Jossey-Bass Handbook of Nonprofit Leadership and Management**, 2nd Edition (John Wiley & Sons, Inc., 2005) (ISBN #0-7879-6995-8), which is available (under the course number 6J:148/248 SCA) at the University Book Store in the Iowa Memorial Union. Additional readings (including assigned sections from the **Iowa Principles and Practices for Charitable Nonprofit Excellence**) for the different class sessions are posted on the NOE II ICON site.

Course Requirements

Attendance

Regular attendance is required for NOE II. A student may have no more than two unexcused absences during the spring semester. Please understand that unless otherwise approved by Professor Moeller or Professor Koontz, coming to class late or leaving early will be considered an unexcused absence.

If you need to miss class because of medical excuse, family business/emergency, job-related travel/interviews or for other University-approved absence, please advise Professor Moeller in writing (e-mail) as soon as possible.

The final grade for students who have more than two unexcused absences will be lowered by one full grade.

Writing Assignments

The NOE II writing assignments include your typed responses to posted discussion questions (75 points).

All writing assignments are to be typed (double-spaced) with one-inch margins, 12-point font and page numbers. Specific instructions and requirements for NOE II writing assignments will be posted on the class **ICON** site.

Each writing assignment is due no later than the end of class on the dates indicated on the syllabus. Absent the approval of Professor Moeller or Professor Koontz, late writing assignments will not be accepted and the student will receive a 0 for that assignment.

Grading

There are 225 total points in NOE II: the written discussion questions (75 points) and two examinations (150 points). A total of 90% or more of the 225 possible points will establish the A range, 80-89% the B range and so on. We **do use** + and - on the grades.

Academic Integrity

Academic integrity is expected of all University of Iowa students. NOE II students are subject to the policies of the Henry B. Tippie College of Business, including the requirements of the College's Honor Code -

<http://www.biz.uiowa.edu/upo/advising/honorcode.html>. Cheating, plagiarism or unauthorized collaboration on an assignment (or on the examinations) will result in a zero (0) score and the student(s) involved may receive a failing grade for the class.

Academic Accommodations

Please contact Professor Moeller as soon as possible if you have a disability or condition that may require some modification of seating, testing or any other class requirement so that appropriate arrangements can be made. If you have any emergency medical information about which the faculty should know, or if you need special arrangements in the event the classroom must be evacuated, please let Professor Moeller know. Additional assistance is available from the Office of Student Disability Services (3100 Burge Hall); 319-335-1462; <http://www.uiowa.edu/~sds>.

Schedule of Classes and Reading Assignments

Note: Readings from the *Jossey-Bass Handbook of Nonprofit Leadership and Management* are referenced as “**HNLM**.” Other readings are posted on the NOE II **ICON** site.

1. Wednesday, January 23, 2008

Professor Lon Moeller

Course Overview and Nonprofit Leadership

Assignment: **HNLM**, Chapter 7; also review Section V – Board of Directors (D. Board Chair Leadership and E. Board Staff Relationships) and Section VI - Executive Director of the *Iowa Principles and Practices for Charitable Nonprofit Excellence (ICON)*

2. Wednesday, January 30, 2008

**Professor Willard Boyd
and Professor
Richard Koontz**

**Ethics, Nonprofit Accountability, Collaboration, Dissolution and
Merger**

Assignment: **HNLM**, Chapters 9 and 11; also review Section XIII - Accountability and Compliance and Section XII - Collaboration of the *Iowa Principles and Practices for Charitable Nonprofit Excellence (ICON)*

3. Wednesday, February 6, 2008

**Professor Heather
MacDonald, Urban
and Regional Planning
and Jeffrey Schott, IPA**

The role of nonprofits in **Community
Building**

The role of nonprofit organizations in **Community Building**

***Discussion Questions #1 Due* (25 points)**

4. Wednesday, February 13, 2008

**Professor Kenneth Brown,
Management and
Organizations**

Human Resources Practices in Nonprofits

Assignment: **HNLM**, Chapter 24; also review Section VII - Human Resources (A. Motivating Staff and B. Developing Staff) of the *Iowa Principles and Practices for Charitable Nonprofit Excellence (ICON)*

5. Wednesday, February 20, 2008

Professor Lon Moeller

Human Resources Law and Nonprofits

Assignment: **HNLM**, Chapter 23

6. Wednesday, February 27, 2008

**Mary Matthew Wilson, Civic
Engagement Program
Coordinator, University of Iowa
Civic Engagement Program**

The Role of Volunteers in Nonprofit Organizations

Assignment: **HNLM**, Chapter 13; also review Rosabeth Moss Kanter's "Restoring People to the Heart of the Organization of the Future" (**ICON**) and Section VII - Human Resources (C. Volunteer Role) of the *Iowa Principles and Practices for Charitable Nonprofit Excellence* (**ICON**)

7. Wednesday, March 5, 2008

Diversity Issues in Nonprofits

**Professor Marcella David,
Special Assistant to the
President for Equal
Opportunity & Diversity and
Associate Provost for Diversity
and Professor Paul Retish,
College of Education**

***Discussion Questions #2 Due* (25 points)**

8. Wednesday, March 12, 2008

MID-TERM EXAMINATION

SPRING BREAK – No Class on March 19th

9. Wednesday, March 26, 2008

**Professor Scott Fisher,
Finance**

Nonprofits and Risk Management

Assignment: **HNLM**, Chapter 21; also review Section V (G. Board Risk Management) of the *Iowa Principles and Practices for Charitable Nonprofit Management* (**ICON**)

Note: For background information on risk management considerations for nonprofit organizations, see "Basic Considerations in Risk Management," (<http://www.managementhelp.org/legal/rskmgmnt.htm>), "Insurance Trips and Traps for Nonprofits" (http://www.guidestar.org/news/features/npo_insurance.jsp) and the Nonprofit Risk Management Center homepage - <http://www.nonprofitrisk.org/>

10. Wednesday, April 2, 2008

Professor Jude West

Communication Issues in Nonprofits

Assignment: Section IX - Communication of the *Iowa Principles and Practices for Charitable Nonprofit Excellence* (**ICON**)

Note: For additional information about the importance of effective communications for nonprofit organizations, see the W.K. Kellogg Foundation Communications Toolkit, available at <http://www.wkkf.org/default.aspx?tabid=75&CID=385&NID=61&LanguageID=0>

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|---|---|
| 11. <u>Wednesday, April 9, 2008</u> | Professor Pamela Creedon,
School of Journalism and
Mass Communication and
Nancy Garberson, President,
Marketing and Communication
Strategies, Inc. |
| Public Relations and
Nonprofit Marketing/Communication | |

Note: For information about public relations efforts for nonprofit organizations, see “Promoting Your Not-for-Profit Through Public Relations,” (<http://www.guidestar.org/news/features/pr.jsp>) and “Nonprofit Media Tour: Free Press Makes Cents!” (http://www.guidestar.org/news/features/media_tour.jsp).

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|--------------------------------------|---|
| 12. <u>Wednesday, April 16, 2008</u> | Professor Dave Collins,
Department of Marketing and
Mark Mathis, Partner/Director
of Cool, ME&V Advertising and
Consulting |
| Nonprofit Marketing | |

Assignment: **HNLM**, Chapter 12

***Discussion Questions #3 Due* (25 points)**

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|---|--|
| 13. <u>Wednesday, April 23, 2008</u> | Scott A. Ketelsen, Associate
Director for Marketing
Communications, University of
Iowa and Dr. Robert A. Sevier,
Senior Vice President,
Strategy, Stamats, Inc. |
| Nonprofit Marketing and Branding
(Continued) | |
| 14. <u>Wednesday, April 30, 2008</u> | Professor Chris Atchison,
Director, Iowa Hygienic
Laboratory and Professor Ann
Rhodes, Colleges of Law and
Nursing |
| Nonprofit Advocacy and Lobbying | |

Assignment: **HNLM**, Chapter 10; also review Section XI - Advocacy of the *Iowa Principles and Practices for Charitable Nonprofit Excellence (ICON)*

15. Wednesday, May 7, 2008

Professor Lon Moeller

Negotiation and Conflict Management Skills

Note: For some negotiation “basics,” see Margaret Neale’s article, “Are You Giving Away the Store? Strategies for Savvy Negotiation,” in *Stanford Social Innovation Review* (Winter 2004), which is available at the Guidestar.org webpage – <http://www.guidestar.org/news/features/negotiation.jsp>

FINAL EXAMINATION - MONDAY, MAY 12, 2008, 7:00 P.M. – 9:00 P.M.

Professor: Jill Manny
School: New York University Wagner School of Public Service
Course: Nonprofit Law

Materials

Fishman & Schwarz, *Nonprofit Organizations: Cases and Materials*, Third Edition, Foundation Press 2006
Fishman & Schwarz Casebook Supplement
Various Web sites and newspaper articles

Overview

This course focuses on the federal and state legal issues affecting nonprofit organizations likely to be confronted by nonprofit managers. The course covers a broad range of legal issues and underlying policies contained in tax law, constitutional law, trust law, contract law, and state corporate law that govern nonprofit organizations and the individuals who manage nonprofit organizations. The purpose of the course is to familiarize nonprofit managers with the restrictions and opportunities that the law provides which impact the effective management of nonprofit organizations. Although the course will touch on several types of nonprofit organizations, the focus will be on charities exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code.

Order and Use of Text

The course covers the first seven chapters of the casebook, omitting only chapter 4 which examines regulation and charitable solicitation. This course meets once a week, and for almost each class students are asked to prepare answers to problems in the casebook for discussion. The course starts at the beginning of the casebook covering the first two chapters almost in their entirety, which provides an overview of the nonprofit sector and a discussion of the formation and dissolution of nonprofits. The majority of the course is then devoted to covering the taxation of charitable organizations in chapters 5, 6, and 7. For the final topic discussed in the course, chapter 3 is assigned to study the governance of nonprofits. A handful of classes have readings from ancillary sources, such as Web sites, articles, and drafts of proposed regulations.

NONPROFIT LAW
Professor Manny
Fall 2008

September 2, 2008—Introduction

Purchase the casebook entitled "Cases and Materials on Nonprofit Organizations, Third Edition," by James Fishman and Stephen Schwarz at the N.Y.U. Bookstore, along with the Casebook Supplement. **Do not purchase the Statutory Supplement.**

1. In the Casebook,^{*} read:

pp. 2 – 29, 43 – 56 of the Casebook Supplement. Prepare a written outline of your answer to the Introductory Problem on p. 63 for your own reference during class discussion.
2. On the Web, visit the following web sites:

www.metmuseum.org
www.komen.org
www.peta.org
www.fordfound.org
www.sierraclub.org
www.now.org
www.abanet.org
www.pioneerfund.org
www.pewtrusts.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 and differences, how might you group them? We will 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.

3. Read the excerpt from the Final Report of the Panel on the Nonprofit Sector available on Blackboard.
4. Read the two articles posted on Blackboard:

^{*} Read all pages in the Casebook Supplement corresponding to the assigned pages in the Casebook.

Stephanie Strom, Big Gifts, Tax Breaks and a Debate on Charity, N.Y. Times, Sept. 6, 2007, at A1.

Robert B. Reich, Is Harvard a Charity?, L.A. Times, Oct. 2007, at A 13.

5. Bring a small photo of yourself to class.

September 9, 2008

Organization and Dissolution Under State Law

In the Casebook, read:

pp. 66 – 87, 93 – 128. Prepare a written outline of your answers to the problems on p. 77, problems (c), (e), and (f) on p. 101, the problems on p. 105, and Problems 1 – 3 on p. 119 for your own reference during class discussion.

September 16, 2008

Tax-Exempt Status and the Charitable Requirement

In the Casebook, read:

pp. 322 – 357, 395 – 426.

Read the Letter from Rep. Thomas to Myles Brand, President of the NCAA, and the excerpt from the response from Mr. Brand, both posted on Blackboard.

September 23 and 30, 2008

Private Inurement, Private Benefit, and Excess Benefit Transactions

In the Casebook, read:

pp. 476 – 497. Prepare a written outline of your answers to Problems 1(a)-(e) and 2 on pp. 497 – 500 for your own reference during class discussion.

Read the article posted on Blackboard:

Cornelia Dean, Wealthy Stake \$25 Million in a War With the Sea,

N.Y. Times, July 8, 2007.

October 7, 2008

Educational Organizations

In the Casebook, read:

pp. 427 – 443. Prepare a written outline of your answers to the problems on pp. 443 – 444 for your own reference during class discussion.

Religious Organizations

In the Casebook, read:

pp. 444 - 461. Prepare a written outline of your answers to Problems (a) and (c) on p. 461 for your own reference during class discussion.

October 28, 2008

Healthcare Organizations

In the Casebook, read:

pp. 353 – 376. Prepare a written outline of your answers to the problems on pp. 376 – 377 for your own reference during class discussion. We may or may not get to this topic today. If you do not have time to prepare this topic for today's class, prepare it for next week.

November 4 and 11, 2008

Miscellaneous Organizations

In the Casebook, read:

pp. 384 – 390; 461 – 470. Prepare a written outline of your answers to the problems on pp. 390 and problems (a) and (c) on p. 470 for your own reference during class discussion.

Limitations on Lobbying and Political Campaign Activities

pp. 500 - 568. Prepare a written outline of your answers to Problems 1 and 2 on pp. 568 - 570 for your own reference during class discussion. Focus on lobbying activities for the first class and political campaign activities for the second class. **Be sure to read Revenue Ruling 2007-44, in the Casebook Supplement.**

November 18, 2008

Commercial Activities

In the Casebook, read:

pp. 593 – 615. Prepare a written outline of your answers to Problems (a), (b), and (e) – (i) on pp. 615 – 616 for your own reference during class discussion.

November 25, 2008

Unrelated Business Tax

In the Casebook, read:

pp. 616 – 621; 628 – 639; 646 – 666; 668 – 681. Prepare a written outline of your answers to the problems on pp. 666 – 668 and the problems on pp. 684 – 685 for your own reference during class discussion.

On the Web, visit www.metmuseum.org/store (or go to the shop). Think about sales of which items might generate unrelated business income.

December 2, 2008

Private Foundations and Their Alternatives

In the Casebook, read:

pp. 751 – 753; 760 – 762; 769 – 779; 781 – 790; 791 – 806; 813 – 814; 818 – 825; 827 – 829; 832 – 840; 849 – 855; 856 – 857 (a. Introduction only); 861 – 870, skipping any problem set not specifically assigned. Prepare a written outline of your answers to problems 1(a), (b), (c), and (f) on pp. 790 – 791 and the problems

1(a)-(g) and 2 on pp. 847 – 849 and problems (a), (d), (e), (g), (h), and (i), on pp. 870 - 871 for your own reference during class discussion.

December 9, 2007 — Governance

1. In the Casebook, read:

pp. 140 – 143, 149 – 152, 166- 172, 176 – 179, 201- 204.
2. Michael Klausner & Jonathan Small, *Failing to Govern? The Reality of Nonprofit Boards*, STAN. SOC. INNOVATION REV., Spring 2005, at 42. (Handout)

Professor: Barbara Rhomberg
School: University of San Francisco
Course: Legal Issues Affecting Nonprofit Organizations

Materials

Course reader prepared by the Instructor
Problem sets

Overview

This course is for non-law students enrolled in the University of San Francisco's Masters of Nonprofit Administration program. The course looks at California corporate law and federal tax law, with an emphasis on those aspects of the law that regulate nonprofit organizations. The goal of the class is to facilitate an understanding of relevant issues that may affect a nonprofit organization, such that students would be able to recognize these issues in practice. The course has both a mid-term and final exam, each with problems similar to those found in the weekly problem sets.

Order and Use of Text

As this course uses a course reader rather than a casebook, the materials are organized by class, with a number of different topics covered during each session. The course is taught in seven sessions, which span about half the length of a typical semester. As such, each class session covers a larger degree of material than most courses which use a casebook.

**University of San Francisco
College of Professional Studies**

Master of Nonprofit Administration (MNA)

Syllabus

Spring 2008

MNA 674

LEGAL ISSUES AFFECTING NONPROFIT ORGANIZATIONS

Thursdays, 6:15 to 10:15 PM, January 31 through March 13

Instructor: Barbara K. Rhomberg, J.D.
Silk, Adler & Colvin
235 Montgomery Street, Suite 1220
San Francisco, CA 94104
415/421-7555 (office phone)
415/421-0712 (fax)
brhomberg@silklaw.com

Course Description

The well-rounded nonprofit executive best serves his or her organization by bringing a variety of skills and values to the table. These skills include a working knowledge of the legal requirements, best legal practices, and ethical standards affecting the operation of nonprofit organizations.

The course focuses primarily on two bodies of law of major importance to nonprofit organizations: (1) California corporate law, which governs and regulates the formation of nonprofit corporations, the structure of the board of directors, the rights, responsibilities, and conduct of boards of directors, and the rights of members; and (2) federal tax law, which governs and regulates the application for tax-exempt status, tax-exempt operations, limitations on lobbying and political activity, limitations on private benefit and inurement transactions (including reasonable compensation rules), tax-deductible donations, and income generating activities within a nonprofit organization. The course will also cover, in less detail, other bodies of law with special relevance to nonprofit organizations, including: the charitable trust doctrine, the Uniform Prudent Management of Institutional Funds Act, and fundraising laws and regulations.

The course will not cover the many areas of law that apply equally to all businesses and organizations in society (such as employment and labor law, landlord/tenant law, copyright and

trademark law, liability and insurance, etc.) Rather, our focus is on the laws that are directed at regulating nonprofit organizations.

Students are *not* expected to develop a complete mastery of nonprofit law, but rather the ability to recognize legal problems in real-life situations, identify possible solutions and best practices, and understand when it is necessary to call in legal counsel. Nonprofit organizations will continue to benefit from executives who can identify and resolve potential problems before the IRS, the Attorney General, or the local newspaper raises the issue for the Board and the public.

Learning Outcomes

By the end of the course, students will:

- A. have a working knowledge of the principal laws governing nonprofit organizations;
- B. be able to recognize a legal problem when it exists within their organization;
- C. be able to apply the law to specific facts;
- D. know when, and how, to communicate with legal counsel; and
- E. be able to think critically about the distinction between minimum legal standards and best legal practices.

Course Format

The course will be taught using problem sets, class discussion, and lecture. Each week students will complete the assigned readings and prepare answers to the assigned problem set for that week. During class, students will be expected to discuss each of the problems.

Each problem set will consist of a series of short (typically no longer than a paragraph) questions, often with hypothetical facts. Students will apply the legal principles that are discussed in the course materials, including excerpted statutes and regulations, to the hypothetical facts. Some problems are intended to have clear, definitive answers, but many are designed to be on the borderline, requiring students to consider what additional facts might be relevant and to make judgment calls on the law. This process will help students learn how real-life legal problems are identified and resolved. An example of a problem that may be used is:

Article II of the Bylaws provides that the Charity has no members. The directors regard Joe Smith, a fellow director, as a troublemaker who attempts to throw each Board meeting into turmoil. They want to remove him. How can they do it, if at all? Should they do it?

Course Requirements

Students should come to class sessions (including the first one) having completed the reading assignment and prepared to discuss the problem set for that session. A new problem set will be posted on Blackboard for discussion the following week. Students will not be required to submit

written answers to the problem sets to the Instructor, but will be evaluated on the quality of their participation in the class discussion.

Examinations

There will be two exams, which will be similar to the weekly problem sets, but focus on broader, more complex fact patterns. They are intended to gauge whether the student has developed the ability to: (1) identify the key legal issues in a set of facts, (2) describe the legal issues, (3) apply the law to facts, and (4) arrive at an appropriate answer (or set of possible answers).

Midterm Exam: The first exam will be handed out and posted on Blackboard following Session Three. A written response to the exam must be *emailed* to the Instructor approximately one week later, before Session Four. The exam will contain specific instructions and deadlines.

Final Exam: The final exam will be handed out and posted on Blackboard following Session Six. A written response to the exam must be *emailed* to the Instructor approximately one week later, before Session Seven. The exam will contain specific instructions and deadlines.

Grading

The final course grade will be determined according to the following proportions:

<u>Requirement</u>	<u>Grade Weight</u>
Class participation (quality, not quantity)	25%
First exam	35%
Final exam	40%

Required Texts

The Course Reader for MNA 674, prepared by the Instructor, available without charge on Blackboard.

Problem sets will be posted on Blackboard each week.

SCHEDULE OF CLASSES AND ASSIGNMENTS

Session 1 – January 31, 2008

Introduction to Laws that Govern Nonprofit Organizations

Reader: Session I Materials

Problems: Prepare answers to Problem Set I for discussion in class

Topics include:

- What is a “nonprofit organization?”
 - Introduction to legal entities
 - Forms of nonprofit corporations in California
- What is a “tax-exempt organization?”
 - Overview of categories of tax exemption in the Internal Revenue Code
 - Sections 501(c)(3), (4), (5), and (6)
 - Overview of California Revenue and Taxation Code
- What is the difference between a “public charity” and a “private foundation?”
- What bodies of law regulate nonprofit, tax-exempt organizations?
 - State corporate law
 - Federal and State tax law
 - State charitable trust rules, from both statutes and case law
 - State and local fundraising rules
 - Uniform Management of Institutional Funds Act
- What federal and state agencies enforce these laws and rules, and how does a nonprofit organization come into contact with these agencies?

Session 2 – February 7, 2008

Corporate Governance, Memberships, Board Duties and Responsibilities

Reader: Session II Materials

Problems: Prepare answers to Problem Set II for discussion in class

Topics include:

California Corporate Law

- The composition and structure of the Board of Directors
- Methods of appointing or electing directors
- Board meetings and Board action
- Directors' duties and responsibilities
- Duty of care
- Duty of loyalty – conflicts of interest
- Indemnification
- Investments
- The role of officers
- The role of committees
- The role, rights, and responsibilities of members

California Nonprofit Integrity Act

- When audits and audit committees are required
- Compensation review of CEO and CFO

- **Session 3 – February 14, 2008**

Federal Tax Law Basics for Section 501(c)(3) Organizations

Reader: Session III Materials
Problems: Prepare Session III Problem Set for class discussion
Exam: First Exam available on Blackboard after class

Topics:

- Requirements and prohibitions to be exempt under Section 501(c)(3)
 - ⇒ Organized for exempt purposes
 - ⇒ Operated for exempt purposes (and not for private benefit)
 - ⇒ No private inurement
 - ⇒ No campaign intervention
 - ⇒ Limits on legislative lobbying
- Private foundations and public charities – distinctions
 - ⇒ Statutory public charities
 - ⇒ Public support tests
 - ⇒ Supporting organizations
- Special rules for private foundations
 - ⇒ Self-dealing
 - ⇒ Minimum distributions
 - ⇒ Excess business holdings
 - ⇒ Jeopardizing investments
 - ⇒ Taxable expenditures
- Special rule for public charities
 - ⇒ Excess Benefit Transactions

A focus of the class will be understanding the similarities and differences among the rules concerning Section 501(c)(3) charities and the provision of financial or other benefits to private parties:

- ⇒ Private inurement (a prohibition for all Section 501(c)(3) organizations)
- ⇒ Private benefit and the operational test (when an organization's purposes do not qualify for Section 501(c)(3) status because of substantial private benefit)
- ⇒ Section 4941 self-dealing (a special rule for private foundations)
- ⇒ Section 4958 excess benefit transactions (a special rule for public charities)

Session 4 – February 21, 2008
Advocacy, Lobbying, and Political Activity

Reader: Session IV Materials
Problems: Prepare Session IV Problem Set
Exam: Midterm exam due prior to class (see instructions on exam)

Topics include:

- Lobbying and advocacy by Section 501(c)(3) charities
 - Tax law limits on the amount of legislative lobbying a 501(c)(3) can engage in
 - Treatment of ballot measure advocacy as legislative lobbying
 - Federal, state and local lobbying disclosure laws
 - Campaign finance rules applicable to ballot measures
- Campaign intervention by Section 501(c)(3) charities
 - Section 501(c)(3)'s absolute prohibition on activities to influence candidate elections
 - What activities are considered partisan, prohibited campaign intervention
 - Permissible election year activities
- Lobbying and electoral activity by Section 501(c)(4), 501(c)(5), and 501(c)(6) organizations
 - Tax law allows unlimited lobbying and ballot measure advocacy related to exempt purpose
 - Tax law permits candidate electioneering as a *secondary* activity
 - Separate segregated 527 funds as a way to avoid Section 527 tax on electioneering expenses
 - Federal, state, and local campaign finance rules also regulate candidate electioneering
- Tandem organizations with different tax status

Session 5 – February 28, 2008

Income Generating Activities of 501(c)(3) Organizations in the 21st Century

Guest Lecturer: Rob Wexler

Reader: Session V Materials

Problems: Prepare Session V Problem Set for class discussion

Topics include:

- Historical perspective
- Ways in which nonprofit activities generate income (other than fundraising)
- Exempt versus non-exempt operating activity: When an organization's purpose is too "commercial" for Section 501(c)(3) status
- Unrelated business income tax
 - The basic elements of UBIT
 - The exceptions to UBIT
 - Corporate sponsorship special problems
 - Affinity cards
- Generating income through the internet
- Involvement with taxable subsidiaries, LLCs, and partnerships

Session 6 – March 6, 2008

Restricted Funds; Income Tax Deduction for Charitable Gifts

Reader: Session VI Materials

Problems: Prepare Session VI Problem Set for discussion in class

Topics:

California Charitable Trust Law and UMIFA

- Endowments and restricted funds

Introduction to the federal income tax deduction for charitable gifts

- Requirements of a deductible gift
- Substantiation of charitable gifts
- Planned giving vehicles

Session 7 – March 13, 2008

Regulation of Fundraising, Fiscal Sponsorship, Donor-Advised Funds, Grant Agreements, and International Philanthropy

Reader: Session VII Materials

Exam: Return Final Exam before class

Topics:

- State regulation of charitable fundraising
- Making and receiving grants – grant agreements
- Fiscal sponsorship
- Donor-advised funds
- International philanthropy & activity

RESOURCES

Useful Websites

USF, Institute for Nonprofit Management, www.inom.org

National Center on Philanthropy and the Law, NYU School of Law,
<http://ncpl.law.nyu.edu/ncplsearch> (excellent, searchable bibliography)

Nonprofit Insurance Alliance of California, www.niac.org

Council on Foundations, www.cof.org (many publications of interest for grantmakers)

The Foundation Center, www.fdncenter.org

Independent Sector, <http://www.independentsector.org/>

BoardSource, www.boardsource.org

CompassPoint Nonprofit Services, www.CompassPoint.org

Northern California Grantmakers, www.ncg.org

The Genie, <http://www.compasspoint.org/askgenie/index.php> (a project of CompassPoint and the California Management Assistance Partnership)

Craigslist Foundation, <http://www.craigslistfoundation.org> (with links to many sources of information about nonprofits)

Alliance for Justice, <http://afj.org> (publications on charities and lobbying)

California Secretary of State, www.ss.ca.gov/business/corp/corporate.htm

Internal Revenue Service, www.irs.gov

Attorney General's Office, www.caag.state.ca.us/charities/publications.htm

General

Advising California Nonprofit Corporations. (California Continuing Education of the Bar, 1998, updated annually).

The Rules of the Road. By Betsy Buchalter Adler. (Council on Foundations, Inc., 1999) Available from the Council on Foundations, P.O. Box 98293, Washington, D.C. 20090-8293, tel: (301) 645-7303 or (888) 239-5221, or you can order on the Web, at <http://www.cof.org/Store/ProductDetail.cfm?productID=5221>.

The Second Legal Answer Book for Nonprofit Organizations. By Bruce R. Hopkins. (Wiley Nonprofit Law, Finance and Management Series, 1999). Available on the Web, at http://www.amazon.com/Second-Nonprofit-Organizations-Finance-Management/dp/0471296120/ref=sr_1_1/002-8028339-1663204?ie=UTF8&s=books&qid=1187201895&sr=8-1

IRS Materials

The IRS has extensive educational materials for nonprofits on its website (click the “Charities & Non-profits” button on the bar under the IRS logo). Some publications of particular interest are:

Circular E, Employer's Tax Guide (IRS Publication 15)

Employer's Supplemental Tax Guide (Fringe Benefits) (IRS Publication 15-A)

Charitable Contributions Deductions (IRS Publication 526)

Tax-Exempt Status for Your Organization (IRS Publication 557)

Determining the Value of Donated Property (IRS Publication 561)

Tax on Unrelated Business Income of Exempt Organizations (IRS Publication 598)

Exempt Organization Appeal Procedures for Unagreed Issues (IRS Publication 892)

Charitable Contributions: Substantiation and Disclosure Requirements (IRS Publication 1771)

Tax Guide for Churches and Religious Organizations (IRS Publication 1828)

Gaming Publication for Tax-Exempt Organizations (IRS Publication 3079)

Tax Guide for Veterans Organizations (IRS Publication 3386)

Disaster Relief, Providing Assistance through Charitable Organizations (IRS Publication 3833)

Applying for 501(c)(3) Tax-Exempt Status (IRS Publication 4220)

Compliance Guide for 501(c)(3) Tax-Exempt Organizations (IRS Publication 4221)

A Charity's Guide to Vehicle Donations (IRS Publication 4302)

A Donor's Guide to Vehicle Donations (IRS Publication 4303)

Public Inspection of Tax Exempt Application and Annual Information Returns (IRS Notice 88-120, 1988-2 Cum. Bull. 454)

Deductibility of Admission Fee for Fundraising Events (Revenue Ruling 67-246, 1967-2 Cum. Bull. 104)

Insubstantial Return Benefits (Revenue Procedures 90-12, 1990-1 Cum. Bull. 471, and Revenue Procedure 92-49, 1992-1 Cum. Bull. 987)

IRS Publications and Forms are available from the IRS website at www.irs.gov, and by telephone from (800) 829-3676.

Federal Tax Law

Taxation of Exempt Organizations. By Frances R. Hill and Douglas M. Mancino. (Warren, Gorham & Lamont, 2006).

The Law of Tax-Exempt Organizations. Eighth Edition. By Bruce R. Hopkins. (John Wiley & Sons, Inc., 2003 & Supp. 2006) – available from John Wiley & Sons, Inc., or at the Foundation Center Library.

State Charity Law

California Attorney General's Guide for Charities. Available from the California Attorney General's website at http://ag.ca.gov/charities/publications/guide_for_charities.pdf

Governance

“Corporate Scandals and the Governance of Nonprofit Corporations: What Every Director, Officer, and Advisor of Nonprofit Corporations in California Should Know about Corporate Responsibility Rules.” By Thomas Silk, in *The Exempt Organization Tax Review*, December 2002.

Guidebook for Directors of Nonprofit Corporations. Second Edition. (Section of Business Law, American Bar Association 2002) – available by calling 800-285-2221.

Planning Guide for The Law of Tax-Exempt Organizations: Strategies and Commentaries. By Bruce R. Hopkins. (John Wiley & Sons 2004) – available from John Wiley & Sons, Inc., or at the Foundation Center Library.

California Nonprofit Public Benefit Corporation Law (Sections 5000 to 6910 of the California Corporations Code) – available at the public library or any law library or on the Web, at http://california.lp.findlaw.com/ca01_codes/index.html#castatecode.

Relationships between Organizations

Fiscal Sponsorship: Six Ways To Do It Right. Second Edition. (Silk, Adler & Colvin, 1993, 2005) – available from San Francisco Study Center, P.O. Box 425646, San Francisco, California 94142-5646, tel: (888) 281-3757, <http://www.studycenter.org/test/scp.html>.

Outline of Nonprofit Parent-Affiliate Issues (Silk, Adler & Colvin, 1992) – available from Silk, Adler & Colvin.

How to Set Up and Maintain an Action Fund Affiliated with a Charity. By Gregory L. Colvin and Rosemary E. Fei (Taxation of Exempts, 2004) – available from Silk, Adler & Colvin.

Lobbying and Politics

Being a Player: A Guide to the IRS Lobbying Regulations for Advocacy Charities. By Gail M. Harmon, Jessica A. Ladd, and Eleanor A. Evans (The Alliance for Justice, 1995) – available from the Alliance for Justice, www.afj.org.

The Rules of the Game: An Election Year Legal Guide for Nonprofit Organizations. Gregory L. Colvin and Lowell Finley (The Alliance for Justice, 1996) – available from the Alliance for Justice, www.afj.org.

The Public Charity's Guide to the California Initiative Process. By Rosemary E. Fei, Diane M. Fishburn, and Barbara K. Rhomberg (Northern California Grantmakers, 2003) – available online at http://www.ncg.org/services_policy_resources.html.

Myth v. Fact -- Foundation Support of Advocacy. By Thomas R. Asher. (The Alliance for Justice, 1995) – available from The Alliance for Justice.

Election-Year Issues for Charities. By Rosemary E. Fei, April 2006 – copies available from Silk, Adler & Colvin.

Fundraising

The Law of Fund-Raising. Third Edition. By Bruce R. Hopkins. (John Wiley & Sons, Inc., 2002 & Supp. 2006) – available from John Wiley & Sons, Inc., or at the Foundation Center Library.

The Tax Law of Charitable Giving. Third Edition. By Bruce R. Hopkins. (John Wiley & Sons, Inc., 2005 & Supp. 2006) – available from John Wiley & Sons, Inc., or at the Hastings College of the Law Library, 200 McAllister Street, San Francisco, CA 94102, tel: (415) 565-4750.