WITH SOME 2011-2012 UPDATES. . . .

Prof. Evelyn Brody
Mon. & Wed., 4:00 - 5:25 pm.

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

NONPROFIT LAW
COURSE SYLLABUS: FALL 2011

Course Coverage:

This is a course in the legal issues raised in governing a nonprofit organization, primarily a charity. (As used in the law, the term "charity" is much broader than social service entities, including such institutions as hospitals, colleges, museums, environmental advocacy groups, and churches.) 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. In our coverage of the governing board's fiduciary duties, you will learn how to read nonprofit financial statements. More general 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 (2006) containing primary sources –** case law, statutes and regulations, and other material. See index to assigned material, by class number, after this Syllabus.

2. 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. We will, of course, slow down or speed up as necessary.

Note: You can access the assigned **Internal Revenue Code** sections either by:

* The Supplementary Material, which begins with excerpts ("**Code & Regs**").

* Clicking the following link from the IRS, for a searchable Title 26, Internal Revenue Code (on the Cornell website): http://www.irs.gov/taxpros/article/0,,id=98137,00.html.

From that IRS link, you can also get **Treasury Regulations and other authorities**.

3. **ALI Nonprofit Principles Draft**: We will read selections from drafts I'm preparing as Reporter for the American Law Institute's project on Principles of the Law of Nonprofit Organizations. Since the project is only about halfway through (and even the approved drafts will be revised), your suggestions will be most timely and welcome! Current versions of all the draft chapters will be on library Reserve; the 3 Tentative Drafts are also on Westlaw and LEXIS.

4. **Course Website:** I might post additional material at http://www.kentlaw.edu/classes/ebrody. The Course Webpage also has this Syllabus, with its hot links. Major sources are:

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 (Illinois Secretary of State)

http://www.ag.state.il.us/charities (Illinois Attorney General, Charities Division)

http://www.law.columbia.edu/center_program/ag/policy/CharitiesProj (Columbia Law School)

http://philanthropy.com/section/Todays-News/284/ (links to news stories on nonprofits)

http://www.guidestar.org (recently filed IRS Form 990s for charities) (free registration); Forms 990 going back to 2001 are available from Economic Research Institute at: http://www.eri-nonprofit-salaries.com/index.cfm?FuseAction=NPO.Search&trkid=292-49

http://ncpl.law.nyu.edu/ncplsearch (National Center on Philanthropy and the Law, NYU School of Law – excellent searchable bibliography)

Buddy System and Assignments, Attendance, Preparation, Exam, and Grade:

To make preparation for class more effective, you must form into groups of two or three. Let me know who your co-counsel are (if you wish, come to me and I'll pair you off). You should meet with each other regularly to discuss the material. Starting with our second class, you and your co-counsel must SUBMIT 2 or 3 BRIEF COMMENTS OR QUESTIONS (no written answers required!) about the assignment, no later than one hour before EACH CLASS. I'll try to work your thoughts and questions into our discussion if they don't come up in class.

The grade will be based primarily on your exam. The exam will be 3 hours long, and completely open-book. (For more info, see the end of this Syllabus.) I reserve the right to bump up your grade one notch for consistently good questions and to bump down your grade if you consistently neglect to send in questions. Separately, I reserve the right to increase your grade one notch for productive class participation. You may take this course pass/fail.

Get organized; *keep up*; and contact me with questions (preferably with your co-counsel). If you're unprepared, at least come to class, but please let me know.

LEGAL LANDSCAPE FOR NONPROFIT ORGANIZATION

1. Overview of the Legal Landscape for Nonprofit Organizations

(Please read ahead to Assignment 2, which we will start.)

As you try to get your hands around "the nonprofit sector," think about whether the concept of three sectors (government, business, and nonprofit) makes sense. Who has done and does more "good" – the Gates Foundation or Microsoft (well . . . , Apple?!)?

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

Supp.: National Center on Charitable Statistics, Overview, from http://nccsdataweb.urban.org/nonprofit-overview.html, and other data, Supp. at 1-1 through 1-12 (the full Joint Committee report describing federal law on tax-exempt organization (JCX-53-07, July 19, 2007) is at http://www.jct.gov/publications.html?func=startdown&id=1411; and "The 50 Largest Charities," Supp. at 1-13.

To see what information we can readily learn about a charity, see the news story and skim the excerpts from the June 30, 2009 Form 990 of Feed the Children, Supp. at 1-14 through 1-34 (the Core Form and relevant portions of Schedule O (explanations)). We will return to the governance issues in later classes.

Web: Listen to Diana Aviv, head of Independent Sector, speaking on threat of fundamental tax reform at http://bcove.me/arnd9xie (June 2011).

Read Put Barber, "Five Tips and a Warning" – particularly the warning – available from the list in the right-hand column at http://www.idealist.org/info/Nonprofits/Npofaq; see also the Start-up Basics (and links) available from the same list.

2. Nonprofit Associations as Expressive Activity: Constitutional and Policy Issues

(We should finish Assignment 2 this class.)

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 (full text on the CD-ROM, under Ch. 3\Associative Rights); and Boy Scouts news story, Supp. at 2-27 through 2–29.
Higgins, *The "Diversity" Threat to California Charity* (op-ed), and Alliance for Charitable Reform, "Legislatures in Florida and Virginia Move to Protect Foundations from Overreaching Influence from Pressure Groups and Government," Supp. at 2-30 through 2-33.

Web: "Federated" charities suffer particular associational issues, such as when a church schisms and a dispute arises over property ownership. Read the application of state franchise law in *Girl Scouts of Manitou Council, Inc. v. Girl Scouts of America* (7th Cir., May 31, 2011), at **[CHECK LINKS]** http://www.ca7.uscourts.gov/tmp/9A19T0D6.pdf; for the audio of the excruciating oral argument (for the national body's lawyer), go to http://www.ca7.uscourts.gov/tmp/9A18LPXH.mp3. (Background can be found at http://www.gsmanitou.org/who-we-are/efforts-to-protect-council/efforts-to-protect-council.html, although the site has not been updated since the first 7th Cir. victory in 2008.) See comment at http://www.nixonpeabody.com/linked_media/publications/Nonprofit_Alert_06_08_2011.pdf. See also Mary Elizabeth Williams, *The Right's Latest Target: Girl Scout Cookies*, at http://www.salon.com/2011/05/18/girl_scouts_usa_abortion_controversy/.

3. Charitable and Nonprofit Purposes

(Please read ahead to Assignment 4, which we will start.)

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/services/services_business.html and click on “Business Organization Acts,” and then click on “805 ILCS 105 / General Not-for-Profit Corporation Act of 1986”).

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

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 also consider the definition of charity for purposes of federal tax-exemption in **Assignment 4**, and focus on other aspects of tax exemption throughout the semester.

CD-ROM: Under Ch. 6, skim *Bob Jones University* (at \Charitable), especially pp. 11-13 (majority opinion) and pp. 20-21 (Powell’s famous concurrence).

Supp.: Note: We examine the federal tax requirements for charity more thoroughly in **Assignment 4** (see particularly the ruling on Project Veritas). As to terrorism, see Ford Foundation’s grant-making policy, Supp. at 3-7 through 3-8; and for an unusual tax case, see *U.S. v. Mubayyid* (D. Mass. 2008) (excerpts), Supp. at 3-9 through 3-11, and the news story on First Circuit argument, Supp. at 3-12 through 3-14.

Web: See Determination Letter 2010-33-039 (school lacking an adequate racial nondiscrimination policy), at http://www.irs.gov/pub/irs-wd/1033039.pdf.

Go to www.fiestabowl.org; and read Jack Siegel’s posting at http://www.charitygovernance.com/charity_governance/fiesta-bowl/.

Read the IRS’s denial of § 501(c)(3) status to a social networking site, Determination Letter 201125045 (Mar. 30, 2011, released June 24, 2011), at http://www.irs.gov/pub/irs-wd/1125045.pdf.

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

Guide: Recall 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: The IRS's website, www.irs.gov/charities, has links to the application form (Form 1023 for charities and Form 1024 for the non-(c)(3)'s)); 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**). See also **Assignment 14**, where we'll focus on the governance questions on the Form 990 redesigned in 2008.

Much more interesting, though – and the way we'll proceed in class – is to explore an actual exemption application. Reportedly because of a FOIA request, the IRS released the documents relating to the successful application of Project Veritas (self-described muckraking journalist James O'Keefe's group); go to https://www.documentcloud.org/documents/96774-project-veritas.html (a PDF is at https://s3.amazonaws.com/s3.documentcloud.org/documents/96774/project-veritas.pdf).

Note: See our Course Webpage, under "Interesting Links," for information on the May 2011 automatic revocation of 275,000 small exempt organizations for failing to file a Form 990-N (a.k.a. the e-Postcard), as required by Congress in 2006 legislation.

Skim the compliance guide that the IRS sends to all successful charities (a separate one is prepared for private foundations), at http://www.irs.gov/pub/irs-pdf/p4221pc.pdf; the guide for exempt orgs other than charities is at http://www.irs.gov/pub/irs-pdf/p4221nc.pdf.

See generally Rob Reich, et al., "Anything Goes: Approval of Nonprofit Status by the IRS" (Stanford Center on Philanthropy, October 2009), at http://www.stanford.edu/group/reichresearch/cgi-bin/site/2009/12/05/new-research-on-501c3s-anything-goes-approval-of-nonprofit-status-by-the-irs/.

Supp.: For criticism of the IRS process, see Streckfus, Supp. at 4-1 through 4-3.

5. The Corporate Form: Registration and Reporting.

Guide: Chapter 3, **Organization Basics**: "Board Committees," at pp. 31-35; "The Regulators–State 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, at 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 at http://www.sos.state.il.us/services/services_business.html), and click "Business Organizations Acts," and then "Nonprofit Corporations." Read the Illinois requirements for the articles of incorporation. Now go back to the homepage; click on Publications; and (under "Business") click on Not-for-Profit Corporations. Read "Articles of Incorporation" (and "A Guide for Organizing Not-for-Profit Corporations" (April 2011)) and "Not-for-Profit Annual Reports" (May 2008).

Take advantage of the Ford Foundation's laudable amount of disclosure (at http://www.fordfoundation.org/About-Us), 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.

6. Organizational Form: Comparing Charitable Trusts and Nonprofit Corporations

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*.

Supp: For analysis of the ALI project and the Model Nonprofit Corporation Act, Third Edition (2008), see excerpts from Brody, "The Ambitions And Limitations of U.S. Nonprofit Law Reform Projects" (July 2011 draft), Supp. at 6-1 through 6-17. Note that we will spend time in future classes addressing in detail many of the issues raised in my draft.

GOVERNANCE: STATE FIDUCIARY LAW AND FEDERAL TAX RULES

7. Fiduciary Duties in General

(We will finish this class next time.)

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").

Supp.: ALI, excerpts from draft §§ 300 and 315.

Pogrebin, *Trustees Find Board Seats Are Still Luxury Items*, Supp. at 7-1 through 7-4.

Web: See Michael Wyland's criticisms of the governance portion of the Freeh report on Penn State (regarding the Sandusky scandal) at http://www.sumptionandwyland.com/index.php?option=com_content&task=view&id=40&Itemid=57&rid=82 (the Freeh report is available at http://thefreehreportonpsu.com/). For an uncomfortable story about Penn State's general counsel, see http://www.philly.com/philly/news/breaking/20120725_Penn_State_counsels_role_in_Sandusky_inquiry_called_into_question.html.

8. Exploring the Duty of Loyalty: Conflicts of Interest

(We will finish both Assignment 7 and Assignment 8.)

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

Supp.: Ostrower, "Findings on Financial Transactions between Nonprofits and Board Members" (2007), Supp. at 8-1 through 8-6; Smithsonian Institution materials (2007 through 2008 – also available, with a 2009 GAO report, under "Reading Room" at www.si.edu/governance), Supp. at 8-7 through 8-23.

Web: Continue exploring the Ford Foundation's website – at http://www.fordfoundation.org/about-us/governance – specifically, the Foundation's Standards of Independence, Trustee Code of Ethics, Staff Code of Conduct and Ethics, and Procedures for Approving Affiliated Grants.

See the May 2011 Massachusetts Senate proposal to disallow board pay (unless the attorney general approves it) described in the AG's press release at http://www.mass.gov/?pageID=cagopressrelease&L=1&L0=Home&sid=Cago&b=pressrelease&f=2011_05_27_compensation_amendment&csid=Cago – also, click the link and read the AG's April report. This proposal did not survive in the final FY 2012 budget adopted by the Massachusetts legislature – but its main sponsor vows to try again. A 2012 report on hospital executive compensation available at http://doj.nh.gov/media-center/press-releases/20120702-nhcpps-report-hospital-compensation.htm noted: "New York Governor Andrew Cuomo earlier this year signed an executive order that placed a $199,000 limit on the amount of state money that certain non-profits can use towards executive compensation. Though the order may have little practical impact on non-profit hospitals in New York, which get most of their money from federal sources or private donors, the move came amid intense scrutiny of high compensation at Medicaid-funded health facilities in the state." Other states, including Illinois, are considering compensation limits on charities that receive a minimum of state contracts or other funding.

If time, we'll discuss Boyd, *Lawyers' Service on Nonprofit Boards: Managing the Risks of an Important Community Activity*, available at http://www.nyemaster.com/userdocs/BLT_NovDec08_boyd_.pdf.

9. Federal Tax Prohibitions on Private "Inurement"

(Note: This assignment could take up to two classes.)

Private Inurement and Private Benefit:

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

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

Web: *Rameses School v. Commissioner* (just skim the burden of proof), at http://www.ustaxcourt.gov/InOpHistoric/Rameses.TCM.WPD.pdf.

Supp.: Recent news stories on executive compensation, Supp. at 9-1 through -11.

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" [renumbered in the 2008 Form 990 redesign], 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).

Code & Regs: I.R.C. § 4958 and Treas. Reg. § 53.4958-3 (defining disqualified persons), and -6 (presumption of prudence) on CD-ROM and in Supp. in Code & Regs.

Supp.: "Grassley Seeks to End Reasonable Compensation Safe Harbor," Supp. at 9-11 through -12.

Web: Consulting companies provide compensation studies; also, Economic Research Institute for a fee prepares salary surveys based on comparables, as explained at http://www.eri-nonprofit-salaries.com/index.cfm).

Return to Feed the Children's 2009 Form 990, in the Supplement for **Assignment 1**, and read Part VI of the Core Form and the explanations on the process for setting compensation in Schedule O.

Go online to www.guidestar.org for the 2010 Form 990 of the Arizona

Sports Foundation (d.b.a. Fiesta Bowl) and look at: Core Form Part VI; compensation disclosure in Schedule J; and Schedule O re setting executive compensation and possible excess benefit transactions (pp. 33-35).
Explore the Fiesta Bowl's webpage on its Special Committee Investigation (for highlights read the news release and the Q&A; just skim the report itself to see what it covers – we return to the political-contributions issue in **Assignment 22**) at: http://www.fiestabowl.org/index.php/media_room/press_release/specialcommittee/.

See ASAE's letter to Senator Grassley re the rebuttable presumption, at http://www.asaecenter.org/files/FileDownloads/PublicPolicy/Comments%20on%20Grassley%20HC%20Amendments%209-23-09.pdf.

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

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

Regs: Reg. § 1.501(c)(3)-1(f), in Code & Regs in Supp.

Web: PLR 2011-15-025 (revoking exemption of a scholarship organization on grounds it was a sham and operated for the benefit of its president and wife; also held them liable for both the 25% and 200% excess benefits tax), at http://www.irs.gov/pub/irs-wd/1115025.pdf.

10. Understanding Nonprofit Financial Statements

(Jack Siegel will guest teach this – I'll let you know if he wants different or additional reading.)

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 the Art Institute of Chicago's 2010 audited financial statements audited financial statements at:
http://www.artic.edu/aic/aboutus/annual_report.html.
See Jack Siegel's "Ten Financial Controls that Every Charity Should Put in Place":
www.charitygovernance.com/charity_governance/2007/10/ten-financial-c.html

11. Exploring the Duty of Care: Delegation vs. Abdication; Investments

(Please start on Assignment 12, too.)
(Note: This class also provides a preview of the Assignment 13, enforcement and sanctions.)

Guide: Chapter 4, **Legal Duties and Obligations**: "A Further Look at Investments," at pp. 99-115. (We will discuss UMIFA/UPMIFA at greater length in **Assignment 15**.)

Supp.: Endowment values have recently recovered, but it was scary! Barton & Goss, "Charity's Declining Fortunes," Supp. at 11-1 through 11-4; skim articles on alternative investments," Supp. at 11-5 through 11-13; read articles on charities that invested with Bernie Madoff, Supp. at 11-18.

Web: For fiscal year ending June 30, 2011, Harvard University's endowment grew 20.4%, resulting in an ending endowment value of $32 BILLION! For the 5-page press release of the Harvard Management Company, go to: http://www.hmc.harvard.edu/docs/Sept%2021%20Draft-Annual%20Report.pdf. On the compensation issue, a separate document (available from a link in the report or at http://cdn.wds.harvard.edu/alumni_ltr_20110513.pdf) explains how the Harvard Management Company compensates its investment professionals.

For the Oregon AG's $2 million victory for poor trustee investing, see http://www.doj.state.or.us/releases/pdf/wintercross_ruling.pdf.

Siegel on charities that invested with Bernie Madoff: http://www.charitygovernance.com/charity_governance/madoff / especially http://www.charitygovernance.com/charity_governance/2009/03/it-was-fun-while-it-lasted-university-investment-policies-are-going-to-change.html and http://www.charitygovernance.com/charity_governance/2009/04/yeshiva-university-get-religion.html (be sure to click the link to the heavily-redacted board minutes). For the unpublished opinion denying defendants' motion to dismiss in the New York AG's civil case again the conflicted Yeshiva investment committee chair, see Cuomo v. Merkin, 26 Misc. 3d 1237A, 907 N.Y.S.2d 439, 2010 N.Y. Misc. LEXIS 523 (Feb. 8, 2010). Interestingly, the defendants, at oral argument, introduced board meetings showing the Merkin was a member of and attended Yeshiva's investment committee, prompting the court to note: "Both parties acknowledge that the documents submitted at oral argument on October 15, 2009 before this court, are subject to a confidentiality stipulation between the parties. Therefore, they will be returned to the defendants. However, the defendants are directed to file redacted copies of these documents for the court file."

12. Limitations on Fiduciary Monetary Liability; Board or Board Member Enforcement of Fiduciary Duties

(We should finish Assignment 12 this class.)

(Note: This class also provides a preview of the Assignment 13, enforcement and sanctions.)

Supp.: ALI draft Intro Note to Chap. 3, Topic 2; § 370 (Limitations on Monetary Liability for Breach).
News story on Schlinger Foundation, Supp. at 12-1 through -2.

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.

Chapter 6, **Federal Tax Exemption**, discussion of King Foundation, at pp. 276-77; and of Maddox Foundation, at pp. 279-80 (note: this case settled in May 2007 – by splitting the Maddox Foundation into two, one in each state).

Web: Compare the whistleblower policies of the American Cancer Society (go to http://www.cancer.org/AboutUs/WhoWeAre/Governance/report-fraud-or-abuse) and (particularly the last paragraph!) of Beth Israel Deaconess Medical Center (go to http://www.bidmc.org/CentersandDepartments/Departments/OfficeofBusinessConduct.aspx -- more on BIDMC in **Assignment 13**. . .).

CD-ROM: Under Ch. 4: *John v. John* (at \Breach of Duties); and King Foundation Jury Instructions and Jury Questions (at \King Foundation).

Supp.: Siegel on *Yeckel v. Abbott* (King Foundation), Supp. at 12-3 through 12-11.

13. State Enforcement of Fiduciary Duties and Sanctions for Breach

(We will finish this Assignment next class. See also Assignments 11 and 12.)

Supp.: Brody, outline for 2008 Attorney General Conference, Supp. at 13-11 through 13-6; Strom, *Less Oversight*, Supp. at 13-7 through 13-12; sentencings of Carter and Fumo in Independence Seaport Museum, Supp. at 13-13 through 13-26; "New Jersey College Is Beset by Accusations," Supp. at 13-27 through 13-30.

Web: Explore the posts by Bob Carlson, top charity official in Missouri, at http://philanthropy.com/blogs/watchdog/ (especially his first post and "Embezzlement Happens. It's What Charities Do Next That Matters") and Janet Kleinfelter, in Tennessee AG's office ("Boards Can't Just Abandon an Insolvent Nonprofit").

https://doj.mt.gov/campaigns/investigative-report-of-greg-mortenson-and-central-asia-institute/ ; read report at __ - __.

Read Siegel on NJ AG action against Stevens Institute of Technology at http://www.charitygovernance.com/charity_governance/2009/09/new-jersey-attorney-general-brings-lawsuit-in-what-could-turn-out-to-be-the-nonprofit-case-of-the-ye.html and at http://www.charitygovernance.com/charity_governance/2009/09/new-jersey-attorney-general-brings-lawsuit-in-what-could-turn-out-to-be-the-nonprofit-case-of-the-year--part-2.html; and see Steven's page on this at http://stevens.edu/sit/board-of-trustees-statement.cfm.

To get the Mass. AG's 11-page review of conflict-of-interest transactions at Beth Israel hospital, go to the AG's Sept. 1, 2010 press release at http://www.mass.gov/?pageID=cagopressrelease&L=1&L0=Home&sid=Cago&b=pressrelease&f=2010_09_01_bidmc_review&csid=Cago.

See also the California Attorney General's May 2010 multi-million dollar complaint against former fiduciaries of the Monterey County AIDS Project available through the press release at http://oag.ca.gov/news/press_release?id=1924&c=6.

For the Uniform Law Commission's Model Protection of Charitable Assets Act (adopted July 2011, so not yet enacted in any state), go to http://www.uniformlaws.org/Committee.aspx?title=Protection%20of%20Charitable%20Assets%20Act. For background the Dec. 2009 memo from the reporter, Laura Chisolm, at: http://www.law.upenn.edu/bll/archives/ulc/ocaa/2009dec18_memo.pdf.

For links to state AG websites and material on enforcement, go to http://www.law.columbia.edu/center_program/ag/policy/CharitiesProj.

14. Role of IRS in Charity Governance

(We will finish Assignments 13 and 14.)

Supp: News stories and other material relating to the IRS's 2008 redesign of the Form 990 – including, for comparison with the final Form 990 that you have in **Assignment 1**, the summary page and the governance page of the 2007 draft at Supp. 14-12 and 14-13 – in Supp. at 14-1 through 14-16.

ALI excerpts from draft § 130 (on federalism).

Web: IRS, "Governance and Tax-Exempt Organizations – Examination Materials" (Dec. 3, 2009), available under examination materials at http://www.irs.gov/charities/article/0,,id=178221,00.html.
Read Jack Siegel's comment on these at http://www.charitygovernance.com/charity_governance/2009/12/pulling-back-the-curtain-irs-audit-check-sheet.html#more.

You can also find the IRS's guidance on filling out Part VI (Governance) of the Form 990 through the same IRS link.

Bruce Hopkins keeps a running tab of denial and revocation letters; for his latest (July 1, 2011), go to http://www.nonprofitlawcenter.com/resDetails.php?item_ref=78.

Letter from House Ways & Means Oversight Subcommittee to Commissioner Shulman, at http://waysandmeans.house.gov/UploadedFiles/Tax-exempt.Oct_6.11_Redacted.pdf.

CHARITABLE CONTRIBUTIONS

15. Exploring Fiduciary Duties: Endowment Spending and Accounting (UPMIFA)

(Assignment 15 will take only a class hour; please start Assignment 16.)

For fun and context, explore Yale's endowment policies, at http://giving.yale.edu/gift-policies.

To help you grasp this topic, think about a $100 million gift to endowment. How much should be permanently restricted – i.e., not spendable by the charity! – if the gift value: (a) increases to $120 million (appreciates) or (b) falls to $80 million (is "underwater")?

Guide: Chapter 10, **Fundraising**, "Donor-Restricted Endowments," at pp. 456-66. Note: this material predates UPMIFA, but gives a good overview.

Web: Uniform Prudent Investment of Institutional Funds Act (UPMIFA) (2006): http://www.uniformlaws.org/Act.aspx?title=Prudent%20Management%20of%20Institutional%20Funds%20Act.

Note: Illinois adopted UPMIFA in June 2009, but: (1) It omits the optional rebuttable presumption that spending 7% of the fair market value of an endowment fund is imprudent; and (2) it defines "small" as a fund with a total value of less than $50,000 (instead of $25,000) for purposes self-help *cy pres* for a small charity (see generally **Assignment 17**).

For commentary by Jack Siegel on UPMIFA and accounting:
http://www.charitygovernance.com/charity_governance/2008/04/fasb-needs-to-g.html
http://www.charitygovernance.com/charity_governance/2008/06/fasb-signals-ma.html

See pages 18-20 ("Endowment Funds") of the Art Institute of Chicago's 2010 audited financial statements at: http://www.artic.edu/aic/aboutus/annual_report.html

CD-ROM: Ch. 7\Restrictions\PLR 200202032.

16. Board's Responsibilities to Donors; Consequences of Breach of Restrictions and Who Can Enforce

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, *Smithers*; and at \Naming Rights, *United Daughters of the Confederacy v. Vanderbilt*.

Supp.: Excerpts from ALI Draft, Introductory Note to Chapter 6, Topic 2 (private enforcement), at pages 42-48.

"University Gains Control over Robertson Endowment in Settlement," Supp. at 16-1 through 16-5. For more on *Robertson v. Princeton*, see www.princeton.edu/robertson.

Pretend you're the charity that received the donor letter in Supp. 16-6 through 16-10. What do you do?!

See Form 990 requirement at Supp. 16-11 (this blog post, with links to info on gift acceptance policies, is also available at http://www.nonprofitlawblog.com/home/2009/01/gift-acceptance-policies.html); Lady Gaga suit at Supp. 16-12.

Web: Siegel on New Jersey's proposal to encourage restricted gifts, at http://www.charitygovernance.com/charity_governance/2011/07/fuzzy-thinking-in-new-jersey-the-latest-round-of-proposed-fundraising-legislation.html.

The complaint against Lady Gaga is at http://www.fileden.com/files/2011/6/24/3157454/complaint.pdf. See also http://www.rollingstone.com/music/news/the-dark-side-of-celebrity-charities-20110628.

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

(We will finish Assignment 17 next class.)

Supp.: From the ALI draft, read the excerpts from § 460 (Cy Pres); § 240 (Effecting a Change in Charitable Purpose), and § 250 (Effect on Assets from a Change in Charitable Purpose). Chapter 4 has been tentatively approved, but I'm currently drafting Chapter 2 (probably to become Chapter 5), so your suggestions will be most helpful!

Guide: Chapter 10, **Fundraising**, "Changed Circumstances," at pp. 466-68.

CD-ROM: CH. 10\Cy Pres: *In the Matter of Estate of Donald Othmer*.

18. Regulation of Charitable Solicitations

(We will finish both Assignment 17 and Assignment 18 this class.)

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.

Explore the website of the National Association of Attorneys General/ National Association of State Charity Officials, at www.nasconet.org.

See the New York attorney general's latest report "Pennies for Charities," available at http://www.charitiesnys.com/home.html. The December 2011 version of this annual report on commercial fundraising concludes that telemarketers gave, on average, 37.6% of their gross to the charities for which they raise money in 2010. The California Attorney General issued a similar annual report on November 29, 2011, which noted that organizations received less than 45% of the gross receipts by commercial fundraisers in 2010, representing an increase from 43% in 2009.

For info on New Jersey's free mobile app on specific charities (rolled out in May 2012), go to http://itunes.apple.com/us/app/new-jersey-charity-search/id503535534?ls=1&mt=8.

Supp.: Penn, *Before Handing Over Money to Help with the Oil Spill, Do Some Homework*, Supp. at 18-1 through 18-2.

19. Pledges

(We will start Assignment 20, too.)

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

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

Supp.: Doherty, *Record Pledge Remains Unsettled*, Supp. at 19-1 through 19-2.

OTHER TAX RULES FOR CHARITIES AND OTHER NONPROFITS

20. Tax Treatment of Charitable Contributions

Supp.: Skim § 170(a)(1), (c) and (f)(8), (f)(16) & (f)(17), at beginning of Supp. at Code & Regs 1-3.

Web: IRS, "Eight Tips for Taxpayers Making Charitable Donations" (March 2011), at http://www.irs.gov/newsroom/article/0,,id=106990,00.html, and *Charitable Contributions–Substantiation and Disclosure Requirements* (Pub. 1771, 2011), at http://www.irs.gov/pub/irs-pdf/p1771.pdf.

CD-ROM: Ch. 7\Internal Revenue Code: We will briefly discuss subsections (b) and (e) [not in the Supplement] of § 170.
Skim § 6115 (quid-pro-quo contributions) and regs under \Regulations.
Lest you think these rules aren't serious, see *Cohan v. Commissioner*, No. 19849-05, T.C. Memo. 2012-8 (2012), where the U.S. Tax Court upheld the IRS's disallowance – because of the charity's failure to provide a contemporaneous acknowledgement that no goods or services were provided in return for the contribution – of a $4.5 million charitable-contribution deduction for the grant to the Nature Conservancy of rights related to a Martha's Vineyard farm.

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 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.: NY Times editorial, "Charity Begins in Washington," Supp. at 20-1.

Web: For the latest IRS data on noncash gifts, see the first 6 pages of http://www.irs.gov/pub/irs-soi/11in08noncashcontrwinbull.pdf; read IRS Chief Counsel Advice 2006-23-063 (on quid-pro-quo penalty), at http://www.irs.gov/pub/irs-wd/0623063.pdf.

For Obama's proposal to cap the value of itemized deductions (including charitable contributions) at 28%, see pp. 131-32 of http://www.treasury.gov/resource-center/tax-policy/Documents/Final%20Greenbook%20Feb%202012.pdf. The Joint Committee staff provides the following example of this proposal (full discussion at pp. 528-36 of http://www.jct.gov/publications.html?func=startdown&id=3796):

"Assume that a taxpayer in the 35-percent income tax bracket for 2012 makes a $10,000 charitable contribution. Under present law, the $10,000 contribution will result in a $3,500 tax savings, or 35 percent of $10,000 (disregarding any other limitations that may apply to reduce the taxpayer's itemized deductions). Under the proposal, the same $10,000 contribution by the same 35-percent bracket taxpayer would result in a tax savings of only $2,800 (28 percent of $10,000), thus raising his tax liability by $700 (or seven percent (35 percent minus 28 percent) of his $10,000 contribution)."

21. Private Foundations

(If we are pressed for time, I'll just walk you through this regime.)

Note: All 501(c)(3)'s are presumed to be private foundations unless excluded under the rules of I.R.C. § 509. The full ramifications of private foundation status are beyond the scope of this course; just appreciate that being a "private foundation" carries more restrictions than do the "public charity" alternatives. Focus on the four differences between public charities and private foundations:

(i) filing and disclosure requirements (Form 990 vs. Form 990-PF);
(ii) intermediate sanctions (for PCs) versus per se prohibitions (for PFs);
(iii) minimum payout requirement for private foundations; and
(iv) the (low-level) private foundation investment income tax.

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

Supp.: *NBA Player Charities Often a Losing Game*, Supp. at 21-1 through 21-4.

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

(We will finish Assignment 22 next class.)

How do you organize these tax rules? Distinguish among three categories of activities:

Advocacy: not a term used in the Code, and a main purpose of many charities (including churches!).

Activity to influence legislation: (limited lobbying allowed to (c)(3)'s, and the reason many state-law charities must settle for (c)(4) exemption).

Electioneering: participating in political campaigns is verboten to (c)(3)'s; and cannot be the primary activity of other exempt organizations.

> Note that the Supreme Court's 2010 decision in *Citizens United* (which we will not have time to read) is a First Amendment constitutional law, not a tax law, case. It has more implications for (c)(4)'s than for (c)(3)'s. And I'll describe a gift tax issue, which the IRS announced (on July 7, 2011) it was suspending.

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) – see Schedule C to the Form 990.

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

Web: Read *Revenue Ruling 2007-41* (lots of examples classifying activities by (c)(3)'s), at http://www.irs.gov/irb/2007-25_IRB/ar09.html. Skim *Revenue Ruling 2004-6* (advocacy activities by (c)(4)'s, (c)(5)'s, and (c)(6)'s)), at http://www.irs.gov/irb/2004-04_IRB/ar10.html.

For a recent private ruling approving a (c)(3), (c)(4), PAC chain, see http://www.irs.gov/pub/irs-wd/1127013.pdf (April 15, 2011).

> For distinction between 527 and (c)(4)'s in terms of disclosure, here are links to segments of the September 29, 2011 episode of the Colbert Report that is surprisingly accurate but typically profane (send the kids out of the room): http://www.colbertnation.com/the-colbert-report-videos/398530/september-29-

2011/colbert-super-pac---ham-rove-s-comeback and http://www.colbertnation.com/the-colbert-report-videos/398531/september-29-2011/colbert-super-pac---trevor-potter---stephen-s-shell-corporation (watch them in that order). Don't worry if you're not a regular viewer of Colbert or are otherwise not following the plot – I'll explain what's going on in class.

For Alliance for Justice's great chart, "What does *Citizens United* Mean for Tax-Exempt Organizations?," go to http://www.afj.org/connect-with-the-issues/citizens-united-chart.pdf.

Explore the IRS's Political Activities Compliance Initiative (PACI), at: http://www.irs.gov/charities/charitable/article/0,,id=181565,00.html.

For CREW's letter to the IRS complaining about the (c)(4) status of Americans for Tax Reform (Grover Norquist), go to: http://crew.3cdn.net/b468639ed1923001fe_a0m6is857.pdf.

For Fox News' campaign to strip Media Matters of its (c)(3) status, go to http://nation.foxnews.com/media-matters/2011/06/27/want-file-irs-complaint-against-media-matters-click-here.

Supp.: For church electioneering, see Nonprofits, Supp. at 22-1 through 22-15. For links to videos from the proponents of "Pulpit Freedom Sunday" and items from those who with a different perspective, go to http://taxprof.typepad.com/taxprof_blog/2011/10/400-pastors.html. Compare www.pulpitfreedom.com and http://projectfairplay.org/, a website set up by Americans United for Separation of Church and State.

See IRS memo on website links, Supp. at 22-16 through 22-17 (and see Determination Letter 2009-08-050 at http://www.irs.gov/pub/irs-wd/0908050.pdf); 2010 news story on the proposed D.I.S.C.L.O.S.E. Act (which has stalled), Supp. at 22-18 though 22-21.

23. Commercial Activities and the "Unrelated Business Income Tax"

(We will finish Assignment 23, but will not finish Assignment 23 until next class.)

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, excerpts from "Business Activities of Nonprofit Organizations" (2008), at Supp. 23-1 through 23-11; Mullen & Glanton, *Chicago Museums Increasingly Rely on Private, Nighttime Parties for Funding*, at Supp. 23-12 to 23-13.

Web: Skim Smithsonian Institution's 2009 Form 990-T (the first 4 pages), available at http://www.si.edu/About/Tax.
Read Private Letter Ruling 200722028 (no UBIT from sale of breast cancer items), at http://www.irs.gov/pub/irs-wd/0722028.pdf.
For a directory of the Metropolitan Museum of Art's international store locations (Australia, Austria, Japan, Mexico, and Thailand), go to: http://store.metmuseum.org/The-Met-Store-Locations/page/internationalstorelocator. See also the rental opportunities described at http://www.metmuseum.org/ways_to_give/corporate/entertaining#x3.
Explore Colonial Williamsburg's online shop (including reproduction sterling silver flatware), at http://www.williamsburgmarketplace.com.

For the latest IRS statistical UBIT study (based on 2007 returns), go to http://www.irs.gov/pub/irs-soi/11eo07busintaxwinbull.pdf. Read the first few pages (through "Summary").
As you'll see, the amount of UBIT we collect is miniscule. (The Summary reports: "Tax-exempt organizations reported more than $11 billion in gross unrelated business income for Tax Year 2007. Total unrelated business income tax liability increased by 7.7 percent from Tax Year 2006 to $598.6 million.") So why do we keep it? See Brody & Cordes, "The Unrelated Business Income Tax: All Bark and No Bite?," at http://www.urban.org/UploadedPDF/philanthropy_3.pdf.

When might a nonprofit *want* to forgo tax exemption? See Steuerle, *When Nonprofits Conduct Exempt Activities as Taxable Enterprises*, at http://www.urban.org/UploadedPDF/philanthropy_4.pdf.

24. Peer Group Role in Charity Governance

(We will finish Assignment 23, and abbreviate Assignment 24 if necessary to finish today.)

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

For another congressional inquiry that ended in Grassley's invitation to a private watchdog (the Evangelical Council for Financial Accountability) to carry on, go to "Grassley Releases Review of Tax Issues Raised by Media-based Ministries," at http://grassley.senate.gov/news/Article.cfm?customel_dataPageID_1502=30359. From the links at the bottom of the page, skim the Staff Memo to Grassley; the Hinn letter; the November 2007 press release and letters to the six ministries; and anything else that interests you. Explore the ECFA's page "Commission on Accountability and Policy for Religious Organizations," at http://www.ecfa.org/Content/Commission.

For an example of a public/private partnership between a state AG and a state nonprofit association, 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.bbb.org/us/Standards-Charity/ – also, search, e.g., for "Feed the Children"

* Association of Fundraising Professionals Ethics Guides, at http://www.afpnet.org/ethics

* Charity Navigator, at www.charitynavigator.org and read "How Do We Rate Charities?" under Methodology – also, search, e.g., for "American Red Cross," and read the rating and the comments.

* Wall Watchers, at http://www.ministrywatch.com, and read a couple of "Donor Alert Ministries."

Supp.: Bialik, *Charity Rankings*, Supp. at 24-1 through 24-5.

25. Focus on Higher Education and Hospitals ("Eds and Meds"): Federal Tax Exemption

(We'll abbreviate or omit this topic if we're running out of time.)

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

Web: For a skeptical perspective, see the Cato Institute's "Federal Higher Education Policy and the Profitable Nonprofits," at http://www.cato.org/pubs/pas/PA678.pdf.

Supp.: On college endowments, read Supp. at 25-1 through 25-11.

Web: For the questionnaire and the May 2010 interim report (is the final one out yet?!) on the IRS's Colleges and Universities Compliance Check, go to http://www.irs.gov/charities/charitable/article/0,,id=220698,00.html.

On the Health Care Act's requirements in § 501(r), skim Bailey, "New Federal Income Tax Requirements for Tax-Exempt Hospital Organizations," at http://www.foley.com/publications/pub_detail.aspx?pubid=7057; Form 990, Schedule H, at http://www.irs.gov/pub/irs-pdf/f990sh.pdf (just skim instructions, at http://www.irs.gov/pub/irs-pdf/i990sh.pdf).

Note: Because the community needs assessment will be attached to the Form 990, hospitals are worried about disclosing information that could be useful to their competitors; an incomplete picture is also a concern. In commenting on Notice 2011-52 (July 2011), http://www.irs.gov/pub/irs-drop/n-11-52.pdf, Gerald Griffith cautioned, in part:

"9. At first blush it seemed somewhat pointless to require hospitals to address all identified needs in an implementation strategy when the statute contemplates that hospitals will be able to choose (or prioritize) which needs to address. Why develop an implementation strategy for needs that the hospital will not be addressing? . . . It still seems out of place though and may make a hospital look worse in the implementation strategy if it has done a better job in identifying needs than one of its competitors or has fewer resources or areas of expertise.

"10. The flexible approach to defining the 'community served' is a good start, but it still seems to be heavily reliant on geographic factors. By way of example, it does not mention teaching and research activities, the challenges for hospitals that draw patients internationally to U.S. facilities, or that even in rural areas a county may have more than one hospital or no hospitals. I understand the concern about not excluding the underserved and other specific populations, though I have never seen a nonprofit hospital do that in its planning."

26. State Property-Tax Exemption 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.: Brody, notes to appendix to *All Charities Are Property-Tax Exempt, but Some Charities Are More Tax Exempt Than Others*, Supp. at 26-1 through 26-3; DiIulio, *The value of Nonprofits*, Supp. at 26-4 through 26-5; Rezendes, *City Sends "Tax" Bills to Major Nonprofits*, Supp. at 26-6 through 26-8.

Web: See Brody bibliography on property-tax exemption and PILOTs at http://www.urban.org/taxandcharities/Tax-and-Charities-Articles.cfm.

Skim Jack Siegel's postings at http://www.charitygovernance.com/charity_governance/property_taxes/.

Exemption: Read the Illinois Supreme Court's opinion in Provena Covenant Medical Center, upholding denial of exemption for 2002, available at http://www.state.il.us/court/opinions/supremecourt/2010/march/107328.pdf, and Provena's reaction, posted at: http://www.provena.org/covenant/body.cfm?xyzpdqabc=0&id=6&action=detail&ref=2675. Provena is seeking exemption for subsequent years.

PILOTs: Read the first 12 pages (and skim the rest) of Boston Mayor's PILOTs Task Force, Final Report and Recommendations (Dec. 2010), at http://www.cityofboston.gov/assessing/pilot.asp.

Read the executive summary of Kenyon, et al.'s 2010 PILOTs study, at http://www.lincolninst.edu/pubs/dl/1853_1174_PILOTs PFR final.pdf.

27. Exam Practice

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

EXAM

The exam will be on Saturday, December 10, at 1:15 p.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.