

PACE UNIVERSITY SCHOOL OF LAW

Law 735 Nonprofit Organizations
2-3 credits
Fall 2012
Tuesday 5:00-6:00

Professor James Fishman
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Course Requirements

This is a 2 credit course with a final examination. Class participation will be 10 percent of the grade.

During meetings of the class 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, the 2012 Student Update Memorandum, and the statutory citations indicated in bold at the beginning of sections of the casebook, which are in the Statutory Supplement.

The Three Credit Option

Students who wish to fulfill the upper level writing requirement may register for a third credit under guided research. Students who elect the extra credit to write a paper will have a one question mini-examination. The research paper will count for 75 percent of your final grade. The mini examination will count for 15% of your grade and class participation for 10%. 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. A student who registers for a third credit and changes his/her mind can drop the extra credit in accordance with the rules of the Registrar. A student who chooses the 2 credit option cannot change their mind and registrar for a third credit after the second week of the semester.

You must select your paper topic by the third meeting of the class, September 11th. 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.

Selecting a Paper Topic

A useful approach to selecting a paper topic is to go through the casebook and find something that interests you. Then, explore the subject in more detail to see if it is sufficiently narrow and still 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 will be due the eleventh week of the semester, November 13th. I will review, comment, and correct that draft and offer feedback. The paper is due no later than two weeks

after the examination. I do not give incompletes. I highly recommend Fajans and Falk, *Scholarly Writing for Law Students*, on reserve in the Library, which will assist you in how to go about your research.

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Law 735 Nonprofit Organizations
Fall 2012
Tuesday 6:00-8:00

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Syllabus

Required materials are James J. Fishman and Stephen Schwarz, Cases and Materials on Nonprofit Organizations (Foundation Press, 4th ed. 2010); and Nonprofit Organizations-Statutes, Regulations and Forms (Foundation Press, 2010), and Fishman, Schwarz and Mayer, 2012 Student Update Memorandum, which is on the TWEN site (referred to in syllabus as Update Memorandum).

Office Hours: Monday 3:00-4:00, 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. Page numbers refer to the casebook. TWEN refers to the course web page. The citations are located under "Course Materials" on the TWEN page. Except where indicated, we will cover all problems after a section.

Week 1 Chapter 1. An Overview of the Nonprofit Sector

pp. 2-17
Update Memorandum, pp. 1-2
pp. 18-30
Update Memorandum, pp. 3-5
pp. 30-40
Update Memorandum, p. 5
“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
“Is PBS Necessary?” TWEN
“PBS and Taxpayer Subsidies,” TWEN

Chapter 2. Formation Dissolution and Restructuring

- A. Choice of the Legal Form of a Nonprofit Organization
 - B. Basic Statutory Approaches to the Nonprofit Corporation
- pp. 47-67

Week 2 C. Purposes and Powers of Nonprofit Corporations

 D. Dissolution and Distribution of Assets

 pp. 67-72, 440-445

 Update Memorandum, p. 14

 pp. 72-94

 Update Memorandum, p. 6

 pp. 95-102

 Update Memorandum, pp. 6-7

 pp. 102-105

 Problems 1-4 on pp. 104-105

 pp. 105-113

Week 3 F. Other Nonprofit Restructuring

 pp. 119-122

 Update Memorandum, pp. 7-8

Chapter 3. Operation and Governance

 A. Introduction

 B. Boards of Directors and Trustees

 C. Fiduciary Obligations

 pp. 123-128, 134-158

Week 4 C. Fiduciary Obligations (continued)

 pp. 162-166, 171-198

 Problems (a), (b), (c), (e), (g), (h) on pp. 198-199

 pp. 199-211

 Update Memorandum, pp. 9-10

 pp. 211-221

Week 5 D. Enforcement of Fiduciary Obligations

 pp. 221-240

Chapter 4. Regulation of Charitable Solicitation

 A. Introduction

 pp. 243-259

p. 288 Problems 1(a), 1(b)

- B. Constitutional Restrictions on Regulation
pp. 259-272
Update Memorandum, pp. 11-12
pp. 272-289
Problem 1(c)

Week 6

Chapter 5. Tax Exemption: Charitable Organizations

- A. Introduction

pp. 294-297

- B. The Rationale for Charitable Tax Exemption

pp. 297-302

- C. Affirmative Requirements for Charitable Tax Exemption

Organizational and Operational Tests, Application for § 501(c)(3)
Exemption, Meaning and Scope of Charity

pp. 315-319
Update Memorandum, p.13
pp. 319-323

Hospitals and Other Healthcare Organizations

pp. 323-344

Public Interest Law Firms and Other Legal Services

pp. 344-351

Week 7

- C. Requirements for Charitable Tax Exemption (continued)

The Public Policy Limitation

pp. 369-397
Problems (a) to (g) on p. 397

Educational Organizations

pp. 398-414
Problems (b) to (f) on pp. 414-415

Religious Organizations

pp. 415-427

Update Memorandum, pp.13-14

pp. 428-431

Problems (a), (b), (d) on pp. 430-431

Week 8

D. Inurement, Private Benefit and Intermediate Sanctions

pp. 445-454

Update Memorandum, pp. 14-15

454-471

Problems 1(a), (c), on pp. 471-472 Consider only the Intermediate Sanctions Issues

Week 9

E. Limitations on Lobbying and Political Activities

pp. 474-497, 508-526

Update Memorandum, p. 16

pp. 526-536, 543-545

Problems (a), (b), (c), (d), (e), (i) on pp. 536-537

Politics and Charity, TWEN

Groups Shield Political Gifts of Business, TWEN

Election Year Activities for 501(c)(4) Social Welfare Organizations, TWEN

Politics and the Pulpit, TWEN

F. Procedural Issues

pp. 545-551

Update Memorandum, p. 16

Week 10

Chapter 8. Charitable Contributions

pp. 807-812, 817-829, 835-845, 861-865

Problems (c), (d), (f), (g), (h), (i), (j), (m) on pp. 865-867

Week 11

Chapter 6. Commercial Activities and Unrelated Business Income Tax

A. Introduction

B. Impact of Commercial Activities on Exempt Status

pp. 567-586
Problems (a), (b), (c), (e) on pp. 590-591

C. The Unrelated Business Income Tax: History and Policy

pp. 591-596

D. The Nature of an Unrelated Trade or Business

pp. 603-613, 615-627
UBIT at Colleges, TWEN
Problems 1(a), 1(e), 2(a), 2(b), 2(c), on pp. 633-635

Week 12

Chapters 9. Special Problems of Membership Associations

A. Private Membership Associations

pp. 952-956

D. Expulsion of Members

pp. 959-962, 965-971

E. Admission of Members

pp. 971-979

F. Private Associations and the Constitution

pp. 979-1002
Update Memorandum, pp.25-26

Chapter 7. Private Foundations

pp. 703-733