LAW OF NONPROFIT ORGANIZATIONS

Brooklyn Law School
Spring 2013
Professor Dana Brakman Reiser

Syllabus

COURSE OVERVIEW: This is a three-credit upperclass elective. It will meet every Wednesday and on alternating Mondays throughout the semester, from 2:00-3:50 p.m. in Room 503. 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 (4th ed. 2010) [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: This syllabus is intended to cover our entire class. If necessary, however, I will make changes to it in response to our progress and provide you with a revised version. 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 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.

RECORDING: Students are not permitted to make recordings of this class. Upon request, I will arrange to record class if multiple students will be unable attend due to a common conflict.

GRADING: Grades for this class will be calculated based on two components: a traditional in-class final exam (60%) and a group project (40%). The group projects will include a paper component and a ten to fifteen minute in-class presentation. Each group project will address a topic covered in the day's class in which the presentation is given, and students will need to submit an outline and/or slides from the presentation on that day. Presentations will begin on January 28 and conclude on April 15. The group paper will be due one week following the class at which the group's presentation is given. The group paper will be fifteen to twenty pages long and should discuss the state of current law and its shortcomings, a proposal for reform, including the counterarguments to the reform proposal, and a discussion of how the reform proposal would impact a particular nonprofit organization. The presentation should focus primarily on the proposal for reform, and the pros and cons of its adoption. Each student will be required to take ownership of either the presentation or one component of the paper; his or her performance on this component will make up of half of his or her project grade. The other half will be based on the group's performance as a whole. More details and a sign-up sheet for topics will be available in class.

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 804. 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
January 9, 2013

FISHMAN & SCHWARZ, pp. 1-19, 28-30 (skim), 30-37.
Revised Model Nonprofit Corporation Act § 13.01.

Assignment 2 – Nonprofit Theory Continued; Intro to Organizational Issues
January 14, 2013

FISHMAN & SCHWARZ, pp. 37-38; Supplemental Reading for Assignment 2 (to be distributed at first class); FISHMAN & SCHWARZ, pp. 39-40, 48-58.
Prepare Introductory Problem on p. 45 and Problem 1 on pp. 62-63 (except for research on NY nonprofit law).

Assignment 3 – Introduction to Income Tax Exemption and Exemption Theory
January 16, 2013

FISHMAN & SCHWARZ, pp. 41-44, 294-313, 315-17.
Internal Revenue Code [hereinafter IRC] § 501(c)(3).

Assignment 4 – Other Tax Benefits: Property Tax Exemption and Deductible Contributions
January 23, 2013

FISHMAN & SCHWARZ, pp. 313-14, 440-45, 807-12, 817-23, 828-29 (stop at "International Giving"), 835 (¶ on "Form and Timing"), 837-45, 858-59 (stop at "Gifts of Capital Gain Property"). IRC § 170(c).

PART II: REGULATION OF NONPROFIT ORGANIZATIONS AND THEIR ACTIVITIES

Assignment 5 – The Public Policy Limitation; Charitable Purpose Requirements
January 28, 2013

FISHMAN & SCHWARZ, pp. 63-67, 369-89, 396 (Note 9), 72-79, 319-29.
Treas. Reg. §1.501(c)(3)–1(d)(2).

Assignment 6 – Educational, Religious and Other Charitable Purposes
January 30, 2013

FISHMAN & SCHWARZ, pp. 398-431.
Treas. Reg. §1.501(c)(3)–1(d)(3).

Assignment 7 – Limits on Commercial Activity
February 6, 2013

FISHMAN & SCHWARZ, pp. 67-72, 567-77, 584-91, 667-84, 591-96 (skim).
Treas. Reg. §1.501(c)(3)–1(e).
Prepare Problem on p. 72.

Assignment 8 – Unrelated Business Income Taxation (UBIT)
February 11, 2013

FISHMAN & SCHWARZ, pp. 596-605, 613-31, 635-39.
Review Problem on p. 72 considering the entity's eligibility for tax exemption under IRC § 501(c)(3), and prepare Problem 1(f) on p. 641.

Assignment 9 – Hybrid Forms and Social Enterprise
February 13, 2013
Review FISHMAN & SCHWARZ, pp. 28-30.
Supplemental Materials on Hybrid Forms and Social Enterprise

Assignment 10 – Dissolution (I)
February 25, 2013

FISHMAN & SCHWARZ, pp. 79-82 (read only through Note 1), 90-96 (stop at Barnes), 85-90, 105-13.

Assignment 11 – Dissolution (II)
February 27, 2013

FISHMAN & SCHWARZ, pp. 96-105, 113-22.
Prepare Heye Problem
[*Note:* Please be sure to comprehensively prepare the Problem, to which significant class time will be devoted.]

PART III: REGULATION OF NONPROFIT ACTORS

Assignment 12 – Introduction to Fiduciary Duty; Duty of Care
March 6, 2013

FISHMAN & SCHWARZ, pp. 123-58, 158-63 (skim only).

Assignment 13 – Duty of Loyalty
March 11, 2013

FISHMAN & SCHWARZ, pp. 163-89.
Prepare the United Way Problem.

Assignment 14 – Advanced Issues in Fiduciary Duty
March 13, 2013

FISHMAN & SCHWARZ, pp.189-96, 202-21, 454-58, 199-202.

Assignment 15 – Enforcement of Fiduciary Duty
March 20, 2013

FISHMAN & SCHWARZ, pp. 221-39.

Assignment 16 – Tax Regulation of Nonprofit Actors: Private Benefit, Inurement, § 4958
April 1, 2013

FISHMAN & SCHWARZ, pp. 445-54, 458-60, 249-56~~9~~, 460-74.
IRC § 4958
Prepare Problems 1(a), (c) & (e) on pp. 471-74.

PART IV: ADVANCED ISSUES IN NONPROFIT REGULATION

Assignment 17 – Political Restrictions: "Substantial" Lobbying, Campaign Activity
April 3, 2013

FISHMAN & SCHWARZ, pp. 474-97, 508-20.
Treas. Reg. § 1.501(c)(3)–1(c)(3); IRC § 4955.

Assignment 18 – Political Restrictions: Lobbying under § 501(h); Affiliated Structures
April 10, 2013

FISHMAN & SCHWARZ, pp. 497-508, 532-37.
IRC §§ 501(h), 4911; Treas. Reg. §§ 56.4911.
Prepare Problems 1(a), (b) and (e) on pp. 506-09. [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 19 – Regulation of Charitable Solicitation
April 15, 2013

FISHMAN & SCHWARZ, pp. 243-49, 256~~9~~-78, 284-89.

Assignment 20 – Private Foundations: Introduction and Classifications
April 17, 2013

FISHMAN & SCHWARZ, pp. 703-04, 711 (Note), 721-25, 739-50.
IRC §§ 509(a)(1)-(3); Treas. Reg. §§ 1.170A-9T; 1.509(a)-3T.
Prepare Problem on p. 750. [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 21 – Private Foundations: Excise Taxes and Alternatives
April 24, 2013

FISHMAN & SCHWARZ, pp. 728-36, 715(start at "Community Foundations")-21.