

Nonprofit Law

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Law 244

Spring 2026 Syllabus

PRELIMINARY; FOR COURSE REGISTRATION SHOPPING PURPOSES ONLY

Prof. Brian Galle

Office: Simon 794

brian.galle@berkeley.edu

Office hours: MW 11-12 or by appointment.

Course Objectives:

- Develop detailed understanding of laws governing nonprofit behavior
- Improve ability to read and understand statutes and regulations
- Understand basic policies justifying favorable treatment for nonprofits
- Establish a base from which to acquire further expertise

Course Description:

This two-credit course is an overview of the state and federal law governing and guiding the behavior of nonprofit organizations. We will study first the state law defining the obligations, liabilities, and powers of nonprofits, their members, and their directors and officers. Our focus will be on general principles, but we will also note important differences between the major jurisdictions. The latter two-thirds of the course deals with federal law conditioning favorable federal tax treatment on certain behavior by the organization. We are generally not interested in tax law per se, but we will learn what our clients can and cannot do consistent with federal demands. For example, can charities lobby or endorse candidates for office? How much can they pay their president or their football coach? Why is the Monterey Aquarium a charity but SeaWorld isn't?

Course Materials:

The primary textbook for this class is Fishman, Schwarz, & Mayer, *NONPROFIT ORGANIZATIONS* (6th ed. 2015), ISBN-13 978-1-64708-107-2. In addition, we will read selections from various state-law materials, including the model nonprofit corporation act (third edition). You will also be required to study various provisions of the Internal Revenue Code, and Treasury regulations and rulings. Most of these materials can be downloaded for free from Westlaw, Lexis, or, in the case of the MNCA, the American Bar Association's web site. They are also collected in a "Selected Sections / Nonprofit Organizations" softcover book, which is available from online sources but isn't especially necessary. Finally, we will read selections from Marion Fremont-Smith, "Governing Nonprofit Organizations." You can download these selections from the bCourses site.

Grading:

Your grade will be based primarily on your final exam. (See below for more details about the final.) I reserve the right to adjust grades upward to reflect strong in-class participation. Therefore, infrequent or unprepared participation, while not directly harmful, may expose you to the risk that others whose exams were not as strong will receive higher grades.

You may also choose to improve your grade by completing a short independent research project. This project must address an open issue in the law covered in this course, either state charitable law or federal tax law pertaining to tax-exempt organizations. The suggested length of the project is 8 – 10 pages (double-spaced). Projects will count towards your grade for the course only if the grade for the project is higher than the grade you would receive based on your exam, and if counted will account for 1/3 of your final grade for the course. To receive credit, the project must be turned in no later than 5 pm on the last day of the exam period.

You must receive prior approval to write a research project. Project proposals should include a complete statement of the research question, and are due no later than 5 pm on Tuesday, March 31. I am available prior to the deadline to provide suggested research topics.

Class Participation:

An important part of the practice of law is communicating your learned view of the law to clients, supervisors, and government officials. Further, there is good data to support the proposition that an individual's understanding of a concept increases when she attempts to explain that concept to someone else. As a result, as you have just seen, I have structured your incentives to encourage you to take part in the class discussion.

While I will generally always accept volunteers, I will also assign approximately one-half of the class each day to be "on call." If you are in the on-call half of the class for that day, you may be called on at any time, unless you inform me before class that you need to be excused from participation that day. Obviously, since we meet two times per week, you can expect to be on call once per week.

Finally, the text includes a number of "problems," many of which I have highlighted in the syllabus. At times I will also post additional problems on Blackboard for your review. We will go over the resolution to most of the problems listed in the syllabus during class, and the on-call panel should expect to lead our discussion.

Final Exam:

We will have an in-class, open-book, three-hour final. You will be welcome to use any written materials. There will be no internet access. There will be a significant overlap between the materials emphasized in class and those tested on the final.

Reading Assignments:

We will cover slightly more than one reading assignment per class. Assignments for the following week will be made at the end of each class session.

Reading Assignments

FSM references are to our textbook, Fishman Schwarz & Meyer (6th ed.). Page numbers for earlier editions are different, and not all materials assigned appear in the earlier editions. In some cases assignments are not in page order; this is because I recommend you read the sections in the order they are listed here.

CCC is the California Corporations Code. NYNfPCA is the New York Not-for-Profit Corporation Act. MNCA is the Model Nonprofit Corporation Act (Third Edition). Res. (3d) Trusts is the American Law Institute's Restatement (3d) of the Law of Trusts. All of these materials (with the exception of the MGL's) are collected in the Fishman Schwarz "Selected Sections" softcover book.

"IRC" is the Internal Revenue Code. You can download code sections, regs., and IRS revenue rulings from Westlaw or Lexis; most are also included in the "Selected Sections" book. The Tax Code is Title 26 of the U.S. Code. Thus, for example, you can find Code § 61 at 26 U.S.C. § 61, and regs § 1.61-1 at 26 CFR 1.61-1. I abbreviate revenue rulings as "RR." You can generally find them on an electronic database by typing "Rev. Rule yy-nn," where yy is the year and nn is the number of the ruling. You also should read other Code sections not expressly listed here but referenced in the text. I may also distribute additional problems at times during the semester, which will be cross-posted to our Blackboard site.

"GNP" refers to the selections from Fremont-Smith, *Governing Nonprofit Organizations*.

I. Introduction

Skim FSM Ch. 1.A., 1.C., pp. 3-12, 25-30

Read Steinberg & Galle, *The Law & Economics of Nonprofit Organizations*, (excerpts on bCourses)

Atkinson, *Three Theories of Charity: A Synthesis* (excerpts on bCourses)

II. Formation, Members, and Choice of Entity

Read GNP 116-18, 127, 130-31, 133-6, 149-53, 158-60

Skim FSM Ch.5.C.8, pp. 411-15; MNCA §§ 2.01-5.01, 6.01-6.30, pp. 115-123, 123-26

Read MNCA §§ 6.40-6.41, 10.01-10.05, 10.20-10.22 pp. 127, 165-68, 168; NYNfPCA§ 515, p. 85

III. Directors and Officers: Fiduciary Duties and the Duty of Care

FSM 3.A., 3.B.1., 3.C1., 2., 3.C.2.b., c., pp. 109-114, 120-22, 127-43

Skim MNCA §§ 8.01-8.25, 8.40-8.41, pp. 135-42, 148; *People by Underwood v. Trump* (excerpts on canvas)

Read MNCA §§ 8.30, 8.42, pp. 143-44, 148-49; GNP 197-99, 207-09 Problems p. 143-44

- IV. Officers II: The Duty of Loyalty; Executive Compensation**
FSM Ch. 3.C.3.a.-b., pp. 149-60, (skip *Deaconess* Part IV), 162-71
MNCA §§ 8.31, 8.60, pp. 144-46, 157-58; MGL CH. 156B §§ 62, 65; GNP 215-25
Problems p. 179-80 a, b, e, f
- V. Oversight and Enforcement**
FSM 3.D.1-7., pp. 199 - 217
MNCA §§ 1.50, 1.53, 1.70, 8.08-8.09, 8.22, pp. 114-15, 137-38, 140
GNP 328, 333-36, 341
Galle, *Design and Implementation of a Charitable Regulation Regime* (excerpts on bCourses)
Probs. p. 217-18
Who to Sue?: An Exercise
- VI. Cy Pres & Deviation**
FSM Ch. 3.C.4., p. 181 - 84; 2.D.1.-4., pp. 73- 89
MNCA §§ 10.01-10.23, 12.03, pp. 165-69, 178; GNP 173-84
UPMIFA § 6 & Comment (on bCourses)
Probs. p. 89
- VII. Overview of Federal Tax Requirements; Procedure for Acquiring Exemption**
FSM Ch. 5.A., 5.C.2., 5.F.1.-2., pp. 271 - 72, 293 - 95, 506 – 11
FSM Ch. 5.C.1., 5.C.3.a., c., e., pp. 291-93, 296-99, 320-25, 333-37
IRC §§ 501(a), 501(c)(2)-(7); 508(a)-(c); 6033(a), (b); 6104(a)(1)(A), (C); 6104(b), (d); 6652; 7428
Skim Form 1023, p. 1099 et seq.
Problems pp. 325-26, 337
- VIII. Operated?: Commercial Activities**
FSM Ch. 6.A., 6.B., pp. 527-47
Probs. p. 547-48
- IX. Operated?: Educational Organizations**
FSM Ch. 5.C.5., pp. 371-86
Problems p. 386-87
- X. “Public Policy”**
FSM Ch. 5.C.4., pp. 344-70
Problems p. 370-71
- XI. Private Inurement & Private Benefit; Executive Compensation Revisited**
FSM Ch. 5.D., 3.C.6., pp. 416-42
IRC § 4958, 4960
Regs § 53.4958-3; Notice 2019-09 (excerpts on bCourses)

Probs. p. 443-44 #1(a)-(f)

XII. Private Foundations & Public Charities: What is a Private Foundation?

FSM Ch. 7.A.1., 7.B.1.-2., 7.C.2.-3., 4.a., 7.C.5.

pp. 649-56, 666-71, 682-92, 702-03

XIII. Effects of Private Foundation Status

FSM Ch. 7.C.1., 7.C.6, 7.D.2., 5. - 6., pp. 679-82, 704, 708-18, 731-41

IRC §§ 4940-46

Problems pp. 718-19 1.a-f, h, 2; Bonus Problems on Disqualified Persons

XIV. Nonprofits and the Political Sphere I: Lobbying Limitations

FSM 5.E.1.-4., pp. 445-76

Galle, *The LDS Church, Proposition 8, and the Federal Law of Charities*,

<http://colloquy.law.northwestern.edu/main/author-galle-brian/>

XV. & XVI. Limits on Participation in Campaigns for Public Office

read FSM Ch. 5.E.4.-5., pp. 463-94, 508-10; skim FSM 5.E.8., pp. 502-06

RR 2007-41

Spot the Violation!: The Game