

**University of Washington School of Law
Winter, 2021
Nonprofit Corporations, Law E 514
3 credits
Class meets Tuesday/Thursday 3:30-5:00**

Instructor: Kyle Richard

Office Hours: By appointment

SYLLABUS

Class Description

This course is intended to introduce students to nonprofit organizations and the legal issues that an attorney representing nonprofit organizations are likely to face.

These issues include, but are not limited to: income tax exemption requirements, state and federal laws that govern the formation and dissolution of nonprofits, the duties of care and loyalty that directors and trustees owe, and operational or “business” issues faced by nonprofits, including those related to the distribution and receipt of grants and the prudent investment of organizational funds.

Issues will include the requirements to obtain exemption, private inurement, private benefit, Unrelated Business Income Tax (UBIT), the Johnson Amendment, and intermediate sanctions and loss of exemption that can occur for failure to comply with those requirements.

The class will follow a hypothetical non-profit organization from formation through dissolution. Students will be expected to submit a final paper by **Monday, March 15 at 5:00 PM Pacific Time**. Papers may be submitted via email to me at kylerichard1@gmail.com.

Students will be expected to conduct an in-depth examination of a particular non-profit legal concept, trend in non-profit law, or recent legal issue faced by a non-profit organization. Two opportunities to submit drafts for instructor feedback will be available during the quarter. Additional opportunities to discuss the substance of your paper with classmates will also be available.

Learning Objectives

Students will learn the different forms of non-profit (and tax-exempt) organizations, the requirements for forming a non-profit organization, the requirements for federal tax-exemption, and the consequences of seeking different forms of federal tax-exemption.

Textbook

1. **Nonprofit Organizations Cases and Materials (Text)**, by James J. Fishman and Stephen Schwarz, Fifth Edition (The Foundation Press, Inc. 2015).
2. **Supplemental Reference Materials** (Available on Canvas)
 - a. C.F. Mueller Co. v. Commissioner, 190 F.2d 120 (3rd Cir. 1951);
 - b. Washington Charitable Solicitation Act (RCW 19.09);
 - c. Washington Nonprofit Corporation Act (RCW 24.03);
 - d. Washington Prudent Management of Institutional Funds Act (RCW 24.55);
 - e. Lindmark v. St. John's University
 - f. AHS v. Town of Morristown
 - g. Fields v. Trustees of Princeton University
 - h. NJ Center on Nonprofits Amicus Brief in Fields v. Trustees of Princeton University

Grading

Grading will be in accordance with the UW School of Law Grading Policy (available at: <https://www.law.washington.edu/students/academics/grading.aspx>).

The course will be curved if required by UW School of Law policy.

Final Paper

This course will be graded based on a final paper, which will be submitted **by Monday, March 15 at 5:00 PM Pacific Time. Papers may be submitted via email to me at kylerichard1@gmail.com. I will send you an email confirmation once your paper has been received. If you have not received email confirmation, please follow up with me and/or re-send your paper by the due date.**

As noted on the syllabus, I will answer any question submitted to me by the last day of class by the following day (i.e, the Friday before the paper is due). I will answer any questions submitted to me Friday, Saturday, Sunday, or Monday in the order received, and will endeavor to answer them as quickly as possible. I will guarantee answers prior to the due date to all such questions submitted by **Friday, March 19 at 11:59 PM Pacific Time.**

Class Participation/Expectations

My expectation is that students will attend class, come prepared and participate in a meaningful way. Please let me know if you will be absent. Students will be called on in class. Consistent, thorough preparation and meaningful participation may raise a grade by up to 25%.

Course Evaluation

Course evaluations are open online during the last week of classes. Class time will be made available on Thursday, March 11 for filling out your evaluation. Please bring a laptop or mobile device to class on this date to participate in the evaluation.

Review Session

Thursday, March 11 will be reserved for final review and questions regarding the final paper.

Cell Phones (Computers)

Students may use computers in class. Students are expected to be prepared to answer questions in class, but cellphone use is not otherwise prohibited. Please keep cellphones on

silent and leave the room if the need to make or receive a call arises. In addition, the Law School's policy on exams, paper and use of computers on exams is set out here: <https://www.law.washington.edu/students/academics/exams.aspx>

Guests and Visitors

Guests and visitors are welcome if notice is provided at least 24 hours prior to class. Guests and visitors are not permitted to view class recordings.

Law School Attendance Policy

Under changes to ABA Accreditation Standard 304, adopted in August 2004, a law school shall require regular and punctual class attendance. At any time after the fifth week of a course (halfway through a summer session course), a student who has been determined by the instructor to have attended fewer than 80 percent of the class sessions in any course will be required to drop the course from his or her registration upon the instructor's so indicating to the Academic Services Office.

An instructor may also impose stricter attendance standards or other sanctions for nonattendance, including lowering of a grade, provided that students are informed at the start of the course of the instructor's attendance rules and possible sanctions.

Access and Accommodation

Your experience in this class is important to me. If you have already established accommodations with Disability Resources for Students (DRS), please communicate your approved accommodations to me at your earliest convenience so we can discuss your needs in this course.

If you have not yet established services through DRS, but have a temporary health condition or permanent disability that requires accommodations (conditions include but not limited to; mental health, attention-related, learning, vision, hearing, physical or health impacts), you are welcome to contact DRS at 206-543-8924 or uwdrs@uw.edu or disability.uw.edu. DRS offers resources and coordinates reasonable accommodations for students with disabilities and/or temporary health conditions.

Reasonable accommodations are established through an interactive process between you, your instructor(s) and DRS. It is the policy and practice of the University of Washington to create inclusive and accessible learning environments consistent with federal and state law.

Religious Accommodations

Washington state law requires that UW develop a policy for accommodation of student absences or significant hardship due to reasons of faith or conscience, or for organized religious activities. The UW's policy, including more information about how to request an accommodation, is available at Faculty Syllabus Guidelines and Resources. Accommodations must be requested within the first two weeks of this course using the Religious Accommodations Request form available at <https://registrar.washington.edu/students/religious-accommodations-request/>.

Class Meetings

Part I: Introduction to the Nonprofit Sector, Tax Exemption, and Legal Regimes

1. January 5: Developing a Framework for Nonprofit Organizations

Text: 3-19, 21-34

Supplemental Materials:

- RCW 24.03.005: Definition of “Corporation”, “Non-Profit Corporation”, and “Public Benefit Non-Profit Corporation”

Commented [KNR1]: Formation dissolution and restructuring

2. January 7: Formation and Purpose of Nonprofit Organizations

Text: 43-71; 291-299

Commented [KNR2]: Choosing a legal entity type; Charitable purposes, public policy; 65-71 is comparison to legal definition of charity in England

3. January 12: Income Tax Exemption and Income Tax Exemption Theory

Text: 33-39; 271-290; 649-57; 702-703

Internal Revenue Code (26 U.S.C., hereafter “IRC”) § 501(c)(3)

Treasury Regulations (26 C.F.R., hereafter “Regs”): § 1.501(c)(3)-1(a)-(c)

Regs 1.503(c)-(2) (distribution of earnings), 1.503(d)(1)(i) and (ii) (exempt purpose in general)

Regs 1.503(c) (3)-1 (b) (organizational test); (c) (1) (operational test)

Commented [KNR3]: Organizational and operational tests

Commented [KNR4]: Federal tax taxonomy

Commented [KNR5]: More federal tax taxonomy

4. January 14: Definition of Charitable Purpose

Text: 299-317; 344-69;

- IRC 501(c) (3) (charitable purposes listed)
- IRC 501(r)(1)
- Regs. 1.501 (c) (3)-1(d) (1) (i) and (ii) (exempt purposes in general), (2) (charitable defined), (3) (educational defined).

Commented [KNR6]: Hospitals

Commented [KNR7]: Bob Jones University

5. January 19: Charitable Purposes, Continued

Text: 320-42

Supplemental Materials:

- o C.F. Mueller Co. v. Commissioner, 190 F.2d 120 (3rd Cir. 1951)

Commented [KNR8]: Look for more examples in book

Commented [KNR9]: Public interest law firms; low-income housing; environmental

6. January 21: Specific Charitable Purposes

Text: 371-411

Commented [KNR10]: Educational organizations; religious organizations; amateur athletics

Part II: State Law Regulation of Non-Profit Corporations

7. January 26: Operation and Governance of a Nonprofit Corporation under State Law (Duty of Care)

Text: 109-22; 127-49

Supplemental Materials:

- RCW 24.03.127 (Duties of Directors)

Commented [KNR11]: Operation and governance (including NRA v Fitzgerald)

Commented [KNR12]: Duty of Care (trust standard, corporate standard)

8. January 28: Operation and Governance of a Nonprofit Corporation under State Law (Duty of Loyalty, Duty of Obedience)

Text: 149-178; 181-184

9. February 2: Prudent Investment and UPMIFA

Text: 184-98

Supplemental Materials:

Commented [KNR13]: Could use additional substance

- RCW 24.55.015 (UPMIFA Standard for Managing and Investing Institutional Fund)
- RCW 24.55.025 (UPMIFA Appropriation for expenditure or accumulation of endowment fund—Rules of construction)
- RCW 24.55.045 (UPMIFA Release or modification of restrictions on management, investment, or purpose)
- Lindmark v. St John’s University

10. February 4: State Tax Exemption

1st In-Class Paper Discussion

(Optional) Due Date for Draft/Paper Outline Review by Instructor

Text: 411-416

Supplemental Materials:

- AHS v. Town of Morristown (P. 9-19; 40-62; 81-84; 87-88)
- Princeton Univ. Press v. Borough of Princeton
- Fields v. Trustees of Princeton University
- NJ Center on Nonprofits Amicus Brief in Fields v. Trustees of Princeton University, (P. 24-32)

Part III: Federal Regulation of Tax-Exempt Organizations

11. February 9: Public Charity Status

Review of Private Foundation vs. Public Charity status and discussion of qualification for Public Charity status

Text:

- 665-72; 682-89; 691-701
- Review: 649-57
 - IRC: 509(a)(1)-(2)
 - IRC: 170(b)(1)(A)(i), (ii), (iii), (v)
 - IRC: 170(b)(1)(A)(iv)
 - IRC: 509(a)(3)
 - Regs: 1.509(a)-1 – 1.509(a)-4
 - Regs: 1.170A-9(f)(3)

Commented [KNR14]: Private foundations

Commented [KNR15]: More federal tax taxonomy

Commented [KNR16]: Public charities

12. February 11: Private Foundation Excise Taxes, Self-Dealing, Charitable Distribution Requirements and Taxable Expenditures

Text: 705-743

IRC: 4940-4943; 4945

13. February 16: Limits on Commerciality: Unrelated Business Income Tax

Text: 560-586; 588-594; 595-613

14. February 18: Limits on Commerciality: Unrelated Business Income Tax

2nd In-Class Paper Discussion

Text: 620-632; 636-643; 544-546, note 2

15. February 23: Charitable Contributions

Text: 766-767; 772-782; 793-799; 810-813; 823-830

- **IRC:** 170
- **RCW:** 19.09.065 (Registration); 19.09.097 (Use of Commercial Fundraisers); 19.09.100 (Conditions Applicable to Solicitations); 19.09.275 (Penalties for Violations)

16. February 25: Private Inurement, Private Benefit and Intermediate Sanctions

Text: 416-24, 429-31, 226-33, 432-42

Statutes:

- **IRC:** 4958 (taxes on excess benefit transactions);
- **Treas. Reg.:**
 - 1.501(c)(3)-1(f)(1)(2)(i) and (ii) and (iii) (interaction between 501(c)(3) and 4958);
 - 1.501(c)(3)-1(c)(2) (distribution of earnings); (d) (1) (ii) (public benefit required).
 - 53.4958-1 (taxes on excess benefit transactions);
 - 53.4958-2(a), (1) & (2) (applicable organizations);
 - 53.4958-3 (definition of disqualified person);
 - 53.4958-4 (excess benefit transactions);
 - 53.4958-6 (rebuttable presumption);
 - 53.4958-7 (correction).

Commented [KNR17]: Combine with/move to state law duties

17. March 2: Lobbying and Political Activities

Text: 445-61; 463-501

Statutes:

- **IRC** 501(c) (3); 501(c)(4); 527 (a), (e) (1) & (2) (political organizations); 4955 (a), (b), (c), (d) (1), (f) (2) and (3) (taxes on political expenditures)
- **Treas. Reg.** 1.501(c) (3)-1(c) (1) (operational test primary activities) and (3) (i), (ii), (iv) and (v) (action organization).

Part IV: Dissolution and Winding Up

18. March 4: Cy Pres

Text: 73-80

RCW: 24.03.220-RCW 24.03.302 (Dissolution of a Nonprofit Corporation)

Treas. Reg.: 1.501(c) (3)-1(b) (4) (distribution of assets on dissolution).

19. March 9: Deviation, Dissolution, and Restructuring

Text: 81-107

20. March 11: Final Paper Review Day (Optional)

Because this course is graded on the basis of a final paper, rather than a final examination, class will not be formally held today, but I will make myself available to answer questions regarding final papers via Zoom all day until 5PM and via email until

11:59 PM (i.e., I will answer your emailed question by March 12 if submitted to me by 11:59 PM on March 11).