

Oregon Law & Practice - A New Practitioners' Tool

INTRODUCTION

West Publishing Company, the granddaddy of legal publishing (the National Reporter System, American Digest System etc.) has now entered the realm of Oregon practitioners' tools, with the Fall 2003 publication of the Oregon Law & Practice (OLP) series. This series pulls together the text of statutes, commentary, leading cases, forms, and reference resources for a variety of practice areas. The series begins with two titles, Business Organizations and Evidence, and West has plans to add titles in civil procedure, criminal law and procedure, family law, and probate, estates, and trusts. This review will discuss the organization of the two titles released thus far and comment on their utility to your practice.

INTERNAL ORGANIZATION

Both Business Organizations and Evidence begin with an identical Foreword describing the concept of the tool and the general organizational features common to each title. The front matter includes volume contents and abbreviations. Each Oregon Revised Statutes (ORS) Chapter included is preceded by a detailed outline of the statutory provisions. The substance of the series is the statute text followed by commentary. Tables of Cases and Indexes complete the two titles.

The text of each statute is reprinted, followed by Commentary, consisting of one or more of Practice Commentary, Leading Cases, Forms and Checklists, and Research References. Probably the feature that lawyers will turn to most in this series will be the Practice Commentary because, as noted in the Foreword, this discusses:

- circumstances underlying the adoption or amendment of the statute;
- significant issues which have been resolved by judicial interpretation or which have yet to be resolved; important trends in the case law;
- significant relationships between different statutes or court rules;
- practice pointers and suggestions regarding the drafting of pleadings and transactional documents; and strategies and tactics related to litigation, transactions, and negotiations.

Leading Cases is just what it says it is - not an exhaustive listing but extensive for many statutes. It includes not only Oregon cases, but some federal cases as well as cases from other states, each accompanied by a short summary. Forms and Checklists is a listing of useful forms and practice checklists which are printed in separate appendices. In the case of the Evidence title, many uniform jury instructions, both civil and criminal, are reproduced. Research References directs the researcher to law

review articles, Oregon State Bar materials, American Jurisprudence, Corpus Juris Secundum, American Law Reports annotations, West's Key Number Digest, and more.

BUSINESS ORGANIZATIONS: Private Corporations, Partnerships and Limited Liability Partnerships

Business Organizations was authored by Professor Robert Art. A professor of corporate law at Willamette University College of Law, he also teaches business organizations, securities, corporate finance, and mergers and acquisitions. He received his J.D. from DePaul University and his LL.M. from Columbia University. Professor Art was heavily involved in drafting the legislation that became the current corporation and partnership acts included in these volumes.

Private Corporations -

Volume 1 of Business Organizations begins with ORS Chapter 60 - Private Corporations. The statute sections are laid out as they are in Oregon Revised Statutes with the same headings, subheadings, and section titles. However, before the researcher actually gets to the text of the first statute, a very good introduction places the Oregon Business Corporation Act in context of the Model Business Corporation Act (M.B.C.A.). The Oregon Act is based on the revised version of the M.B.C.A. as adopted by the American Bar Association in 1984. References to case law from other states adopting the M.B.C.A. provisions are useful when Oregon case law is sparse. There is also some background on the legislative history behind the current ORS Chapter 60 and the role of the Business Law Section and the Business Corporation Act Task Force of the Oregon State Bar in drafting that legislation.

Also included in the Introduction to ORS Chapter 60 is contact information for the Corporation Division of the Oregon Secretary of State's office, including web site addresses for the Business Registry Home Page, Oregon Business Guide, Uniform Commercial Code home page, and Oregon Blue Book. There is also practical information on accessing forms, and on submission of and fees for corporate filings. Finally there is some advice on choice of state of incorporation and why one might choose to incorporate in Delaware versus Oregon.

The statutory text of ORS Chapter 60 and Commentary follow the Introduction. The Practice Commentary lists the corresponding section of the Model Business Corporation Act on which the Oregon statute is based, followed by an explanation of the differences in the two. The Corporations Forms and Checklists for ORS Chapter 60 are compiled as Appendix A, which begins in volume 2. This appendix is quite extensive, covering over 700 pages. A very small percentage of these forms is reproduced from the Oregon Secretary of State's Corporation Division web site and bear the state seal. While it is convenient to have these forms included, the researcher may want to check the web site for the most recent versions as the forms have been updated since the publication of this series - a reality of print versus online resources. The Research References includes many of the same sources as in West's

Oregon Revised Statutes Annotated (WORSA) Library References, which follow statutory provisions, but they are by no means identical.

Partnerships and Limited Liability Partnerships -

ORS Chapter 67 on Partnerships and Limited Liability Partnerships begins in volume 1 and concludes in volume 2. As with ORS Chapter 60, there is a very helpful introduction informing the researcher that the Oregon Revised Partnership Act is based on the 1994 version of the Uniform Partnership Act (commonly referred to as the Revised Uniform Partnership Act (R.U.P.A.)), promulgated by the National Conference of Commissioners on Uniform State Laws (NCCUSL). There is some general discussion about differences among general partnerships, limited liability and limited partnerships, and joint ventures. There is also brief legislative history of the Act, which stems from legislation proposed by a task force of the Business Law Section of the Oregon State Bar and enacted in 1997. Also included is a discussion of the differences between the current Act and R.U.P.A., and prior iterations of the Oregon Act. Again, there is practical information concerning the Corporation Division of the Oregon Secretary of State's office. The Practice Commentary also includes references to the NCCUSL's Official Comments to R.U.P.A.

Appendix B includes forms and checklists for ORS Chapter 67. Among the offerings are some forms from the Secretary of State's web site. Again, the researcher will find these helpful but should check the web site for the most current version. Following Appendix B in volume 2 are a Table of cases and Index for both volumes.

EVIDENCE

Evidence (volume 3 of OLP) was authored by Professor Leroy J. Tornquist, professor of law at Willamette University College of Law, teaching civil procedure, evidence, negotiation, and trial advocacy. He received his J.D. from Northwestern University School of Law, and writes in the areas of evidence, negotiation and trial diplomacy.

This volume consists of ORS Chapters 40 through 45. It is organized along the same lines as volumes 1 and 2, with text of statutes followed by Commentary; an appendix of forms and jury instructions, a Table of Cases, and an Index complete the volume.

There is not a discrete introduction to these chapters but the Practice Commentary to ORS 40.010 explains that the Oregon Evidence Code encompasses Rule 100 to Rule 1008 (ORS 40.010 to ORS 40.585), and tracks the Federal Rules of Evidence adopted in 1975. Because the Oregon Evidence Code is based on the Federal Rules of Evidence, it follows that federal case law plays a huge part in the interpretation of the Oregon Code. To that end, there is liberal citation to federal case law as well as to case law from Oregon and other states. There are Trial Tips liberally interspersed throughout the Practice Commentary for ORS Chapter 40, giving the practitioner even more specific assistance.

The Practice Commentary makes reference to federal case law, other related Oregon statutes, legislative commentary, and court rules. The Leading Cases have subheadings for Oregon cases and federal cases to aid in browsing. Within the main text, the Forms and Checklists section lists and describes applicable forms including motions, orders, and jury instructions, which are reproduced in Appendix A toward the end of volume 3. Many of the forms are taken from Oregon's Uniform Criminal Jury Instructions and Uniform Civil Jury Instructions published by the Oregon State Bar. However, some of the criminal jury instructions have been revised and renumbered since the publication of Oregon Law & Practice, and the researcher is advised to check the most recent UCrJI manual, along with the conversion tables, for changes.

Both the civil and criminal instructions have been developed through the years by two separate jury instruction committees of the Oregon State Bar Association which meet regularly to evaluate and develop jury instructions for use at trial. These are not preapproved by the Oregon Supreme Court and there is nothing sacred about any particular set of instructions. In particular, the User's Guide in the UCrJI manual states:

“The uniform instructions . . . do not have the force and effect of a statute. There is no statutory requirement that instructions be given in uniform jury instruction form. The uniform instructions are only a framework for building a set of instructions.”

CRITICISMS

As noted above, the text of each statute is followed by Commentary. Although not every statute includes every Commentary feature, the organization is consistent throughout; i.e. Practice Commentary, Leading Cases, Forms and Checklists, and Research References are always denoted by either “:1, :2, :3, :4” following the statute citation. This arrangement is sometimes confusing because of overlapping visual cues the editors have chosen, for example the Commentary headings are bolded and indented in the same manner as the statute headings. If the researcher is quickly thumbing through the book looking for only the text of the statutes, the eyes do not immediately differentiate between statute headings and Commentary headings. A different font or perhaps not bolding Commentary headings would make it easier to quickly move from statute to statute.

Even more confusing is the Evidence Code (ORS Chapter 40), where Trial Tips are added as a subheading under Practice Commentary. This subheading uses italicized, bolded font, but indentions and font size are inconsistent within the subheading, making it difficult to differentiate the flow of material. See, for examples ORS 40.035:1 and ORS 40.410:1.

West recently published Oregon Revised Statutes Annotated. I would have expected all or most of the “leading cases” in OLP to appear in the Notes of Decisions of WORSAs, but this was often not the case. If a case is sufficiently relevant to be considered a leading case, it makes sense to include it in the case annotations of a related work by the same publisher. For instance, the researcher could compare the following statutes in both OLP and WORSAs regarding listing and overlap of Oregon state cases:

ORS 60.261: OLP - 10 cases; WORSAs - 1 case; 0 in common.

ORS 60.367: OLP - 8 cases; WORSAs - no annotations.

ORS 60.661: OLP - 15 cases; WORSAs - 9 cases; 6 in common.

ORS 67.090: OLP - 5 cases; WORSAs - 4 cases; 1 in common.

ORS 67.155: OLP - 3 cases; WORSAs - 6 cases; 2 in common.

ORS 40.025: OLP - 19 cases; WORSAs - 40 cases; 6 in common.

ORS 41.660: OLP - 12 cases; WORSAs - 8 cases; 2 in common.

ORS 45.250: OLP - 6 cases; WORSAs - 17 cases; all 6 in common.

There are several statutes where the leading cases in OLP were more numerous than the case annotations in WORSAs. See, for example ORS 60.261 and ORS 41.660. Also, it is curious that neither OLP nor WORSAs makes reference to the other as additional research sources. A possible explanation might be that different divisions of Thomson-West are involved in the publication of OLP and WORSAs.

Another criticism I have is that there is no table of contents or index to the forms in the appendices. The researcher would find a particular form only through serendipity while thumbing through the appendix or by reference to the Forms and Checklists section of the Commentary following each statute. In the case of Appendix A for Business Organizations, 700+ pages of forms is a lot to thumb through.

UPKEEP AND COST

Business Organizations (volumes 1 & 2) cost \$205; Evidence (volume 3) cost \$110. West plans annual updating through pocket parts.

CONCLUSION

Despite these criticisms, the substance of this series looks quite promising. It should be very useful for the practitioner, courts, academic law library, county law library etc, to have this series in their collections as it pulls together materials on these subject matters that are not consolidated anywhere else.

About the Author:

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