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## SPECIAL ARTICLE

# Legal indexing

**Abstract:** This is an edited version of an article by A.R. Hewitt which first appeared in *The Indexer* in Autumn 1963 and was re-published in *The Indexer* in 2014. The editor of LIM felt that the article deserved a wider audience and is grateful to *The Indexer* for allowing it to be reproduced here\*. Although contemporary indexers do not have to trouble themselves with the layout of index cards, much of the advice contained in it is still applicable a half-century later. It is concerned with English law, but again, many of the principles apply to indexing works on legal subjects for other jurisdictions.

**Keywords:** legal indexing; indexing

\*The Editor of LIM is grateful to Maureen MacGlashan, the Editor of *The Indexer* for permitting this article to be re-printed in LIM. The previous printing of the article can be found in *The Indexer* at: Hewitt, A.R. (2014) 'Legal indexing,' *The Indexer* 32(1), 23–28.

The basic principles of indexing apply to any subject, and a lecture devoted to a specialist field must of necessity be confined to peculiarities associated therewith. In the time available it will not be possible to discuss all the problems which may arise in the task of indexing in the field of law, which is a vast one and has an extensive literature. It is proposed, therefore, to confine these remarks to a survey in general terms of the types of literature to be indexed, examples in the choice of headings and subheadings, and to mention some of the problems to be met.

## CATEGORIES OF LEGAL INDEXING

The indexing of law books may usefully be divided into three categories as follows.

- indexing for the lawyer – that is, the indexing of practitioners' textbooks and works of reference, including the vast legal encyclopaedia, collection of statutes, digests and so on, works which would not normally be used outside the profession (although

there is a tendency to include such works in public reference libraries)

- indexing for a particular class of informed reader
- indexing for the layperson.

Students' works may be included in the first or second of these categories as appropriate.

The expression 'indexing for the lawyer' does not call for any elaboration, except perhaps to point out that practising barristers and solicitors are critical users of indexes. Generally they know what they are looking for and the appropriate headings under which to look. They are often very familiar with a particular book because of constant use or by its reputation, and they know pretty well that it does contain what they need. If the index does not lead them to the point quickly and concisely, then it is a disappointing and inadequate piece of work.

By 'indexing for a particular class of informed reader' is meant the indexing of law books written specially for members of particular callings, persons without legal qualifications or training, such as the law relating to accountancy, companies, contracts, commercial practices and insurance, intended for company secretaries and businesspeople; banking law for bank managers and clerks; law relating to architecture, building, surveying and the

like, intended for architects and surveyors; ecclesiastical or church law for the cleric, and so on. The third category, indexing for laypeople, is self-explanatory; here may be placed the popular books written in an easily understandable style on some particular aspect of the law for the person in the street – law for the householder, the motorist, the shopkeeper and so on.

There is still another class of reader to be mentioned, namely university undergraduates or postgraduates. Their reading ranges over the first two categories, but a number of books are published especially for their use, books written with an academic bias. The indexing of such works does not present any particular problem, and the indexer competent to index works in the first category could quite easily undertake the indexing of academic works.

The indexing of practitioners' law books is a very highly specialized task, and the field is a limited one. It is restricted to certain classes of indexers who must have either legal qualifications (that is, they must be barrister, solicitors or graduates in law) *plus* indexing ability, or persons possessing a sound knowledge of the law and legal terms obtained over a long association with the legal profession. This includes law librarians and persons holding senior editorial positions in the great legal publishing houses. Such persons must also, obviously, be able to index. Generally speaking, the indexer not possessing these qualifications or experience would not be called upon to undertake indexing of books in the first category. Any indexer, however, might well be called upon to index material in the second and third categories.

A few words, by way of further introduction, about the terms 'common law', 'statute law' and 'case law' may assist the would-be legal indexer. The common law of England is the unwritten law: that is, a body of law which has grown out of custom and usage over the centuries. The written law is statute law: that is, laws enacted by the legislature and embodied in Acts of Parliament. Case law, or as it is sometimes called, 'judge-made law', is the judicial interpretation in the courts of both common and statute law, interpretation made necessary because of uncertainty or ambiguity. Many cases become known as leading cases: they are precedents made in the higher Courts, and must generally be followed in lower courts.

A legal work on a specific subject usually deals with every aspect of that subject, and will embrace common law, statute law and case law. Two good examples of subjects that contain much common law are the law of highways and the law of nuisance. There are many others, of course. Some branches of law (which might be designated 'modern' law) have no common-law origin and consist only of statute law and case law, for example the law relating to town and country planning, or income tax.

Another type of law book is that devoted to a single Act of Parliament. The output of Parliament in recent years has reached prodigious proportions, and some Acts are of such complexity and far-reaching effect that the need arises for a work thereon to be published as soon

after the Royal Assent as possible. Such a book consists of the statute itself with annotations, commentary and index. It is usually waiting to be rushed out in the shortest possible time, and once again, the indexer is expected to prepare the index in quicker than the shortest time. Here the indexer can do a lot of preliminary work by using the final draft of the bill presented for the third reading.

Some works are devoted to commentaries on collections of leading cases in specific fields, but they do not present indexing problems different from other law books.

To conclude these introductory remarks, mention must be made of the encyclopaedic work, namely the comprehensive legal encyclopaedia covering the whole body of the law, the collection of Statutes of the Realm, the mammoth Digest of Cases or the collection of Forms and Precedents, each running perhaps to 20, 30 or even 40 volumes, each volume needing an individual index, to be followed by a comprehensive index of the whole work.

A counsel of perfection for learner indexers is that the work to be indexed should first be read through before putting pen to slip (or card). This might be possible in the case of a small popular work for the layperson or student, but is quite out of the question if you have in front of you a standard practitioners' book running to upwards of 1,000 pages. You should, of course, thumb through the work so as to familiarize yourself with the subject and its peculiarities, as well as with the arrangement or sequence adopted by the author or editor in its compilation. Having done this and placed at your elbow a good law dictionary, you are ready to commence work.

## REFERENCE TO CASES AND STATUTES BY NAME

Law books for the practitioner and the informed non-lawyer will contain many references to Acts of Parliament by title and to reported cases by name. Such references are in fact the authorities cited by authors and editors, and normally appear in footnotes. Footnotes are of course to be fully indexed, but the short titles of statutes or the names of cases are not included in the index (except in unusual circumstances which it is not proposed to consider here). These citations are listed in separate tables, known as the 'table of cases' and the 'table of statutes'. They normally appear at the beginning of the book in the following forms (this is an extract, not a full list, which would typically be much longer):

<i>Table of cases</i>	<i>Page</i>
Abbott v. Stratton (1846) 9 I.Eq.R. 233; 3 Jo. & Lat. 603; 39 Digest 57, 685	238(e)
Abbott v. Sullivan [1953] 1 K.B. 189; [1952] 1 All E.R. 226; [1952] 1 T.L.R. 133	8(e)

A berdeen Rail. Co. v. Blaikie Bros. (1854), 2 Eq. Rep. H.L.; 23 L.T.o.s. 315; 1 Macq. 461	191
Bailey v. Macauley (1849), 13 Q.B. 815; 14 Jur. 80	230
Baines v. Ewing (1866), L.R. 1 Exch. 320; 4 H. & C. 511 ; 35 L.J. Ex. 194	209 (m)
Chapman v. Smith [1907] 2 Ch. 97 ; 76 L.J.Ch.394; 96 L.T. 662	236
<i>Table of statutes</i>	
15 & 16 Viet. –	
c. 76 Common Law Procedure Act, 1852	2, 33
s. 13	33
s. 18	7
c. 79 Inclosure Act, 1852	301
s. 17	18
16 & 17 Geo. 5 –	
c. 7 Bankruptcy (Amend.) Act, 1926	245
c. 11 Law of Property (Amend.) Act, 1926	
s. 7	376
Sch.	376
25 & 26 Geo. 5 –	
c. 24 Finance Act, 1935	
s. 15	463

The indexer is sometimes asked to compile such tables but more often than not this work is undertaken in the publisher's office, or the author's or editor's professional chambers.

## CHOICE OF HEADINGS AND SUBHEADINGS

If you are indexing a work devoted to a single subject, such as contracts, copyright, executors, mortgages and many other obvious titles, then the use of the actual subject word as a main heading must be avoided, except in a most general way. That advice may appear trite, but one does meet a number of indexes containing dozens of entries under the subject word of the title of the book whereas the subheadings thereunder should have been used as main headings. One of the best illustrations of what might appear appropriate subheadings but which should be used as main entries is the law of contract.

The indexer must pick out and use as main headings such words as:

assignment  
breach  
consideration  
discharge  
frustration  
illegality  
performance  
rescission

and not use them as subheadings under the main entry of 'contract'. There must of course be some entries under the word 'contract', such as historical development or origin, and other general entries.

You may have, on the other hand, a work dealing with a specific branch or field of law containing a number of subjects, such as commercial law, in which case you would then need to use such words as subheadings under Contract. Some, however, would quite properly be used as subheadings *as well*: for example 'breach', which could be used as a subheading under Contract and as a main heading in its own right because, in such a general work as the one mentioned, the word 'breach' could apply not only to breach of contract but to breach of covenant, of duty, of trust, of warranty and so on.

## SINGULAR AND PLURAL OF WORDS

Normally you would not use as index headings both the singular and plural forms of a word – either but not both. An excellent rule, but one which does not apply in legal indexing. In law the singular word often has a meaning quite different from the plural, and care must be exercised to avoid their combination into what could result in misleading and ridiculous group of entries. The point will be readily appreciated if we consider the words 'damage' and 'damages' – words each with a different meaning. Other examples (and there are many) are:

equity    equities  
security    securities  
custom    customs  
pleading    pleadings

If both singular and plural forms are used in their different meaning, then both must go in the index.

## DOUBLE MEANINGS

Unless you are familiar with the subject or have some knowledge of the law, or have the ability to recognize legal terms, a trap exists in the use of words with two or more meanings. Here we can take as an example the word 'attachment'. Apart from its general meanings it possesses two quite different legal interpretations. The first, 'attachment of debts', is a process which enables

creditors to obtain satisfaction of their debts from money belonging to debtors which is in the hands of a third party. Next, 'attachment of persons' refers to a process whereby a person is brought before the court for contempt and for ultimate committal to prison. So as to ensure there is no confusion in the index, the safest entries are 'attachment of debt' and 'attachment of persons', each in full, and not:

attachment –  
debt, of  
persons, of

Other examples which come to mind are election, fine, franchise, information, issue and ward.

The word *election* means choice – the election of a person to office, particularly to Parliament or to the council of a local authority. The use of the word in equity, although it means choice, has a different implication and is found mostly in the interpretation of wills. It is difficult to define briefly but it may suffice to explain that beneficiaries sometimes have to decide between two devices; they are not permitted to take both, so they must 'elect' which of the benefits they will accept.

*Fine* is a word with a number of meanings. Generally it means a penalty or punishment, but it also means a penalty not in the criminal sense, and also the discharge of an obligation by means of payment.

*Franchise* has the obvious meaning – the right to vote – but it also means 'liberty' or the enjoyment of rights other than to vote.

*Information* in one sense means 'knowledge' and in another it is a certain legal process.

*Issue* means child or a legal proceeding.

*Ward* could mean part of a local government area or an infant under guardianship. Enough examples have been mentioned to demonstrate how important it is to understand the words used in index headings.

## PHRASES AS HEADINGS

Phrases are frequently used at length in legal indexing; they are recognized legal expressions and it would appear to the lawyer somewhat absurd if you attempted to break them down in the index, although it would not be technically incorrect. After all you must have constantly in mind the needs of the user of the book. As examples there are such terms as 'tenant for life' (not tenant, life, for); 'notice of motion' (not motion, notice of); 'notice to quit' (not quit, notice to); 'execution of judgment' (not judgment, execution of).

## MAXIMS AND LATIN AND FRENCH PHRASES

As you will know, the law of England contains much inherited from Roman law, so that Latin maxims

frequently occur in textbooks. Again, until the 17th century the language of the courts was French, and expressions and terms in that tongue are still used. The following are examples of such maxims and terms: *caveat emptor*; *estate pur autre vie*; *profit a prendre*; *quantum meruit*; *ratio decidendi*; *rex nunquam moritur*. No attempt should be made to translate them, each must appear in the index as it stands.

## PREPOSITIONS

It may sound superfluous advice to stress that the use of prepositions at the beginning of subentries should be avoided, but clumsy entries of this nature are frequently met. The following is an extract from the index of a published work:

### COSTS

assisted cases, in,  
bill of –  
costs of preparation, disallowance,  
lodging,  
deposit in court pending appeal,  
fixed  
High Court scale  
in administrative actions  
garnishee proceedings  
liability of guardian ad litem  
next friend, undertaking by,  
of appeals to Court of Appeal  
application for private sale  
discovery  
expert witnesses  
interrogatories  
recovery  
sale of goods seized to pay  
sales of –  
certificate for award on different  
counsel's fees  
discretion where none prescribed  
garnishee proceedings  
in remitted proceedings  
security for –  
appeals to Court of Appeal  
by trustee in bankruptcy  
discovery, of,  
new trial

You will notice the use of the words 'in' and 'of' at the beginning of some of the subentries. In each case the entries should appear not under 'i' or 'o' but under the main word, for instance:

administrative actions, in,  
discovery, of,  
interrogatories, of,  
trustee in bankruptcy, by,

Again, you should avoid the use of prepositions in the body of the entry where it is not strictly necessary: for instance 'total income, husband and wife, of', where the word 'of' is not essential. On the other hand proper use must be made of prepositions, and in the correct places, if without them ambiguity would result. As an example, the text might refer to the grant of a licence by an author to an editor or publisher to use their work, in which case the index entry should read:

Author  
licence by, to publish

and not:

Author  
licence to publish by,

The different interpretations attaching to these examples will readily be appreciated.

## DEFINITION OR MEANINGS

Acts of Parliament contain, usually in one of the last sections, interpretations of words and terms used throughout the Act. Again, the result of many an action in the courts depends on the judicial interpretation of a word. For these reasons you will find law books full of definitions, and they must be included in the index. The appropriate entry usually reads:

embezzlement  
meaning (or meaning of)

In some very large practitioners' works these interpretations also appeared grouped together alphabetically under some such heading as 'definitions' or 'words and phrases'. A point to be stressed here is that in the case of a definition of a *phrase* or *clause*, the entry should appear under the first word thereof, and it should not be inverted, for instance 'earned income' under 'earned', 'lien on share in company' under 'lien' and not 'share' or 'company'. The definition is of the whole phrase as used or written – a word out of context has frequently quite a different meaning.

## REPETITION IN THE INDEX OF LAW IN THE TEXT

You frequently meet index entries which in themselves provide the answer to the point being searched for by the user. An index is not a digest, and this should be avoided. Readers should be directed to the relevant page on which to find the answer; they do not expect the answer actually to be in the index. (In any case the indexer might have misread the paragraph and thereby made an incorrect statement.) The following is an actual entry in a published index and is a good example of what not to include in a legal index:

husband, presumption that wife entitled to pledge credit for household necessities

Apart from any other consideration it is a clumsy entry. It should have read:

husband  
wife, pledge of credit for necessities by

There are always exceptions to rules, and occasionally it is difficult to avoid making a statement of law or fact if the law or fact is negative. An example is 'There is no common law right on the part of a member of a corporation to vote by proxy.' Here the entry should read:

proxy, vote by, absence of common law right to

Note the use of the word 'absence', rather than 'there is no'. You should avoid if possible the use of 'no', 'none' and 'not'.

## BREVITY

Brevity in a law index is just as desirable as in any other type of index. Rambling entries not only look ragged and untidy but are irritating to the reader.

In a work on election law this entry appears:

service, right to apply to be treated as absent voter by reason of

On the page referred to, the relevant sentence (under a general heading of 'Absent voters') reads, 'A person registered as a service voter may apply.' The index entry contains no less than 13 words and refers to a sentence in the text containing only nine words. The entry would be better written as:

service voter, absent, application for treatment as

Another example of unnecessary length has already been given above – 'pledge of husband's credit'.

## CROSS-REFERENCES

The adequate use of cross-references is essential, and the extent of your use of them naturally depends on your knowledge of the subject. There is a distinct difference in the use of *see*, *see also* and *see under*. Such a reference as 'deed, separation see separation deed' needs no explanation.

*See* is a straightforward reference to another heading used by the indexer as better expressing the sense of the entry, for example 'testamentary disposition see will', the latter being a heading in more general use. *See also* is used to refer to additional or related headings, for example 'negotiable instruments see also bills of exchange and cheque'; 'borough council see also local authority'. *See under*

is used in a somewhat different sense in that searchers are told that the subject word for which they are looking is actually used under another heading, for example 'taxation of costs see *under costs*'. That is, the word 'taxation' is used as a subheading under the heading 'costs' as follows:

Costs  
   county court  
   high court  
   scale of  
   taxation of

In most cases a comprehensive law dictionary will help in the selection of allied words or terms even if the book being indexed does not.

### ALPHABETIZATION

You will of course be familiar with the two methods of alphabetization – the word by word arrangement and the all-through (letter-by-letter) arrangement. These lead to:

New Zealand  
 Newfoundland

or

Newfoundland  
 New Zealand

In legal indexing there is no hard-and-fast rule, but it is a general practice to adopt the word by word sequence, and it is the arrangement preferred. So for example 'ex parte' and 'ex turpi' would be placed before 'examination' and 'executor', and 'in camera' and 'in transitu' would come before 'incapacity' and 'inclosure'. In the case of

hyphenated words, however, it is usual to follow the all-through method, as in:

Sub-agent  
 Submission  
 Sub-mortgage  
 Subrogation  
 Sub-tenant

### LAYOUT OF SLIPS

Some indexers feel that the layout of an index is not their concern – a point of view not generally shared. The way in which you write your slips will materially help the printer, especially in legal indexing, where headings are frequently used which in turn must be subdivided, sub-subdivided and even sub-sub-subdivided.

An example of such entries, taken from a published law-book index, is given in [Figure 1](#). Specimen A would necessitate a single column index, and the result is most unsatisfactory. Specimen B gives exactly the same set of references but in a manner easy to read and quick to consult.

### FINAL COMMENTS

The standard of legal indexing does of course vary, as in other fields but perhaps not quite so much. The foremost law publishers realize that practitioners' books need good and adequate indexes. One house will enjoy a reputation for good indexes to their books and will themselves engage the services of competent legal indexers. Another house will not undertake indexing arrangements, with the result that authors or editors are obliged to compile the index themselves or employ an indexer, but once a standard work has the reputation of possessing a good index then succeeding editors usually ensure the

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Specimen A (*not recommended*)

COUNTY COURT, remitted proceedings, contract or tort, order as to, appeal against,  
 application for,  
 discretion of court,  
 effect of,  
 counterclaim, delivery of statement of,  
 further particulars,  
 interpleader proceedings,  
 under execution order,  
 transmission of documents,  
 venue,

Specimen B (*preferred layout*)

<p>COUNTY COURT          remitted proceedings –          contract or tort –          order as to –            appeal against,            application for,            discretion of court,            effect of,</p>	<p>counterclaim –            delivery of statement of,            further particulars,          interpleader –            proceedings,            under execution order,            transmission of documents,            venue,</p>
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Figure 1: Two examples of layout

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continuance of that standard by obtaining the services of an experienced indexer. Some publishing houses which only occasionally publish law books do not always appreciate to the same extent the needs of their readers, and then we meet the all too common example of poor and inadequate indexing.

It is hoped enough has been said to demonstrate some of the problems to be met in legal indexing. It is a

difficult task but one which can, with patience and industry, be learned after a fairly long apprenticeship.

## ACKNOWLEDGEMENT

This article derived initially from notes of a lecture delivered at the North-Western Polytechnic.

## Biography

A. R. (Reg) Hewitt (1907–2005) was a librarian by profession, who turned to part-time indexing in 1924 (with the sorting and alphabetizing of his medical librarian father's manuscript slips), and continued for some 70 years until, as he phrased it, the use of computers put a stop to his work. A founder member of SI, he was its first chairman from 1958–59, the first chairman of The Indexer editorial board, and first chairman of the board of assessors for the Register of Indexers. He continued to be active in SI until shortly before his death. An informative obituary was published in *The Indexer* 24(4), 228.

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# Current Awareness

Compiled by Katherine Read and Laura Griffiths at the Institute of Advanced Legal Studies

This *Current Awareness* column, and previous *Current Awareness* columns, are fully searchable in the *caLIM* database (Current Awareness for Legal Information Managers). The *caLIM* database is available on the Institute of Advanced Legal Studies website at: <http://ials.sas.ac.uk/library/caware/caware.htm>

The 'Cardiff Index to Legal Abbreviations' is available at <http://www.legalabbrevs.cardiff.ac.uk/>

## CATALOGUING AND CLASSIFICATION

Alan Danskin 'Implementing RDA at the British Library' (2014) April *CILIP Update* 40

Kristen M. Hallows 'It's All Enumerative: Reconsidering Library of Congress Classification in U.S. Law Libraries' 2014 106 *Law Libr. J.* 85

## COPYRIGHT

Simone Aliprandi and Andrea Mangiatordi 'Content Production and Perception of Copyright: An Analysis of Habits and Beliefs of Internet Users' 2013 4 *European Journal of Law*

*and Technology* <<http://ejlt.org/article/view/257>> accessed 29<sup>th</sup> April 2014

Angela Kretschmann 'Copyright and Movements of Access: Business is Business but Friends are Friends' 2013 4 *European Journal of Law and Technology* <<http://ejlt.org/article/view/163>> accessed 29th April 2014

Helen Norman *Intellectual Property Law Directions* (2<sup>nd</sup> edn, Oxford University Press 2014)

Shireen Smith 'Copyright in Website Images' (2014) *May-June I.N.L.* 1

Simon Stokes 'The Future of Digital Copyright' (2014) *May-June I.N.L.* 5

Barbara Stratton 'Copyright Exceptions and Limitations at a Diplomatic Impasse' (2014) June *CILIP Update* 28

## EUROPEAN UNION

Paul Craig 'A General Law on Administrative Procedure, Legislative Competence and Judicial Competence' 2013 *EPL* 503