LEGAL INDEXING

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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 sub-headings 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:—

1. Indexing for the lawyer—that is to say the indexing of practitioners’ textbooks and works of reference, including the vast legal encyclopaedia, collection of statutes, digests, etc., works which would not normally be used outside the profession (although there is a tendency to include such works in public reference libraries);
2. Indexing for a particular class of “informed” reader;
3. Indexing for the layman.

Students’ works may be included in categories 1 or 2 as appropriate.

The expression “indexing for the lawyer” does not call for any elaboration, except, perhaps, to point out that the practising barrister or solicitor is a critical user of indexes; generally he knows what he is looking for and the appropriate headings under which to look. He is often very familiar with a particular book because of constant use or by its reputation and he knows pretty well that it does contain what he needs—if the index does not lead him to his 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, e.g. the law relating to accountancy, companies, contracts, commercial practices, insurance, etc., etc., intended for company secretaries and business men; banking law for bank managers and clerks; law relating to architecture, building, surveying, etc., intended for architects and surveyors; ecclesiastical or church law for the cleric, etc. The third category, “indexing for the layman”, 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 man in the street—law for the householder, the motorist, the shop-keeper, etc.

There is still another class of reader to be mentioned, namely, university undergraduates or post-graduates. Their reading ranges over both categories 1 and 2, but a number of books are published especially for their use, books written with an

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academic bias. The indexing of such works does not present any particular problem and the indexer competent to index works in category 1 could quite easily undertake the indexing of "academic" works.

The indexing of practitioners' law books is a very highly specialised task and the field is a limited one. It is restricted to certain classes of indexers who must have either legal qualifications (that is to say they must be barristers or 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 and here is included 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 2nd and 3rd 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 to say, a body of law which has grown out of custom and usage over the centuries; the written law is the statute law, that is to say, 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 which 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, etc.

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 of 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 shortest time; but here one 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 layman or student but quite out of the question if you have in front of you a standard practitioners’ book running to upwards of a 1,000 pages. You should, of course, thumb through the work so as to familiarise 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:

Table of Cases

<table>
<thead>
<tr>
<th>Case</th>
<th>Year</th>
<th>Vol.</th>
<th>Page</th>
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<tbody>
<tr>
<td>Abbott v. Stratton</td>
<td>1846</td>
<td>I.Eq.R. 233; 3 Jo. &amp; Lat. 603; 39 Digest 57, 685</td>
<td>238(e)</td>
</tr>
<tr>
<td>Bailey v. Macauley</td>
<td>1849</td>
<td>Q.B. 815; 14 Jur. 80</td>
<td>230</td>
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<tr>
<td>Baines v. Ewing</td>
<td>1866</td>
<td>L.R. 1 Exch. 320; 4 H. &amp; C. 511; 35 L.J. Ex. 194</td>
<td>209(m)</td>
</tr>
<tr>
<td>Chapman v. Smith</td>
<td>1907</td>
<td>2 Ch. 97; 76 L.J.Ch. 394; 96 L.T. 662</td>
<td>236</td>
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Table of Statutes

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<th>Act</th>
<th>Year</th>
<th>Title</th>
<th>Page</th>
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<tbody>
<tr>
<td>c. 76</td>
<td>Common Law Procedure Act, 1852</td>
<td>2, 33</td>
<td></td>
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<tr>
<td>s. 13</td>
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<td>s. 18</td>
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<td>7</td>
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<td>c. 79</td>
<td>Inclosure Act, 1852</td>
<td>301</td>
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<td>s. 17</td>
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CHOICE OF HEADINGS AND SUB-HEADINGS

If you are indexing a work devoted to a single subject, e.g. 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 sub-headings thereunder should have been used as main headings. One of the best illustrations of what might appear appropriate sub-headings 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
- etc., etc.,

and not use them as sub-headings under the main entry of “Contract”. There must, of course, be some entries under the word “Contract”, e.g. 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, e.g. commercial law, in which case you would then need to use such words as sub-headings under Contract. Some, however, would quite properly be used as sub-headings as well: for example, “breach”, which could be used as a sub-heading 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 one 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 one considers the words “damage” and “damages”—words each with a different meaning. Other examples (and there are many) are:

- Equity
- Security
- Custom
- Pleading

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

DOUBLE MEANINGS

Unless one is familiar with the subject or has some knowledge of the law or has the ability to recognise legal terms then a trap exists in the use of words with two or more meanings, and here one may 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 a creditor to obtain satisfaction of his debt from money belonging to his debtor which is in the hands of a third party. Next, “attachment of persons”, 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, 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 a beneficiary sometimes has to decide between two devises; he is not permitted to take both, so he must “elect” which of the benefits he 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 recognised 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, but after all one 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 à 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 sub-entries 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
etc., etc.

You will notice the use of the words “in” and “of” at the beginning of some of the sub-entries. In each case the entries should appear not under “in” or “of” but under the main word, for instance—
administrative actions, in,
discovery, of,
interrogatories, of,
trustee in bankruptcy, by,
etc., etc.

Again, one should avoid the use of prepositions in the body of the entry where it is not strictly necessary—“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 his 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 be readily 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, e.g. "earned income" under "earned"; "lien on share in com-
pany" 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

One frequently meets 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. The reader should be directed to the relevant page on which he
will find his answer—he does not expect the answer to be actually in the index
(in any case the indexer may 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
necessaries"

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

husband
wife, pledge of credit for necessaries 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, for example—"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"—one 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 turning to the page referred to, at the relevant sentence (under a general heading
of Absent Voters) one 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 9 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, see under. Such a reference as "deed, separa-
tion" see "separation deed" needs no explanation. See is a straightforward refer-
ence to another heading used by the indexer as better expressing the sense of the
entry, e.g. "testamentary disposition" see "will", the latter being a heading in
more general use. See also is used to refer to additional or related headings, e.g.
“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 the searcher is told that the subject word for which he is looking is actually used under another heading, e.g. “taxation of costs” see under “Costs”, that is to say the word “taxation” is used as a sub-heading under the heading “Costs”, as follows:

COSTS

county court,
high court,
scale of,
taxation of,
etc., etc.

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

ALPHABETISATION

You are, of course, familiar with the two methods of alphabetisation—the “word by word” arrangement and the “all through” (i.e. letter-by-letter) arrangement, e.g.—

New Zealand or Newfoundland
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.

Ex parte In camera
Ex turpi, etc. In transitu
before before
Examination Incapacity
Executor Inclosure

In the case of hyphenated words, however, it is usual to follow the “all through” method, e.g.—

Sub-agent
Submission
Sub-mortgage
Subrogation
Sub-tenant

LAY-OUT OF SLIPS

Some indexers feel that the lay out 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 one frequently uses headings which, in turn, must be sub-divided, sub-sub-divided and even sub-sub-sub-divided. An example of such entries, taken from a published law-book index, is given in the appendix. 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 realise 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 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.

APPENDIX

LAY-OUT

Specimen A
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
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,

“Something has gone rather badly wrong with the index”, writes James Laver, reviewing British portrait miniatures by Daphne Foskett (Methuen) in The Sunday Telegraph of June 9th, 1963.

In the same issue we are told by the Marquess of Anglesey that “a model index adds much to the usefulness” of The Royal Arsenal by Brig. O. F. G. Hogg (O.U.P.).