

Legal Textbook Indexing: An Evergreen Business

by Enid L. Zafran

In the last few years, I have indexed a number of new editions of law school textbooks. Typically the publishers have told me to follow the work of the previous edition's index, adding entries for any new subject areas, deleting entries for omitted material, and mostly changing page numbers. While this procedure sounds routine, I have found the challenge comes from the inconsistent job done previously. It is as if no standard exists and the indexers approached the material as it suits them. Hopefully, this article can simplify the process of law textbook indexing by setting out some guidelines.

Textbook Industry

First, however, a short aside on the textbook industry: Textbook publishing is big business. In 2001, *Business Week* reported that U.S. law schools had more than 120,000 students enrolled. That means a crop of approximately 40,000 new students enter each year. In order to ensure that they purchase new books (and ostensibly have the latest cases to study), the publishers need to put out a new edition every few years. Unlike legal treatises that use section numbers for index references, textbook indexes are done to page numbers. Section numbers could potentially stay the same from one edition to another, but page numbers always change. Students have to buy the new edition to be on the same page, even when changes from one edition to another are minimal. For indexers, new editions mean a never-ending workflow, so a textbook specialty can bring self-renewing work — or what is called *an evergreen business*.

While students are the major users of the indexes, they are not the ones making the decision to adopt the text for teaching purposes. Here, the most important index users are the law professors. Faculty choose textbooks for their classes, and without these adoptions the books do not sell. Publishers

have frequently told me that professors peruse the indexes and tables as part of their evaluation process. They do not like to see a skimpy index. Sometimes, in fact, I have been asked to pull out case cites from the principal case extracts to beef up the table of cases (normally you do not pick up any cites from within these cases and articles since they are not really covered by the author's treatment), so the professors would consider a book more complete and more comparable with other existing works. Textbook selling is a very competitive field, and finding aids and indexes receive their fair share of attention. Once the adoption has been made, the publisher will want to capitalize on it with future editions that will come as almost "automatic" renewal business. Thus, the indexer is serving two masters in the textbook market: the sophisticated professor and the novice student.

Structure of Legal Textbooks

These books have a well-defined structure that makes the indexer's task straightforward. Usually a chapter opens with some author-written text on the subject, then reprints of some cases, followed by notes or problems or both. There may also be reprints of law review articles, the American Law Institute's Restatements which offer succinct principles of common law, and sections of statutory law or uniform codes like the Uniform Commercial Code (UCC).

The indexer may be responsible for creating tables and other finding aids in addition to the subject index. Sometimes the publisher does the tables in-house or assigns them to another freelancer. It is important for the indexer to know what other types of finding aids will be included. For example, if there are no separate tables of Restatement numbers or case names, then they may need to be picked up in the index. On the other hand, even when there are such tables that record

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all occurrences of a citation (like every time UCC 3-103 is mentioned whether in text or in a footnote), the index may still include references for the main discussion areas, placing them into a subject context rather than just a numerical list. See Example A below.

Note: In the Table below, the Restatements are alphabetized by the topic, so Agency precedes Torts. Within the Restatements, the various editions are ordered chronologically (i.e., First, Second, Third). Also, "cmt." indicates comment and is made a separate entry from the section which is the subject of the comment.

TORTS – TABLE

Italics indicate principal excerpts and page numbers on which they start.

Restatement (Second) of Agency

§ 1 . . . 536

Restatement (First) of Torts

§ 20 . . . 660, 680

§ 55 . . . 660

§ 71 . . . 699, 705, 729, 730, 731

Restatement (Second) of Torts

§ 1 . . . 11, 604

§ 24 . . . 291, 302, 319

§ 24 cmt. b . . . 616

§ 26 . . . 302, 319, 794

TORTS – INDEX

- **Products liability**, 437-520
 - bases of liability, 438-439
 - defenses based on plaintiff's conduct, 473-481
 - failure to instruct and warn, 481-500
 - obviousness of danger, 485-486
 - Restatement (Second), 481-482
 - goods and services, 464-466
 - liability, theories of
 - negligence, 437-438
 - strict liability, 454-457
 - policy supporting, 454-455
 - Restatement (Second), 452-455, 493-495
 - prima facie case, 438-439
 - causation, 467-468
 - Restatement (Third), 455-458

Example A

The structured pattern that the author establishes should guide the indexer through the book. First, for each chapter subject make an entry that is the page range for the chapter. Under it place any subsection breakdowns. If the subsection includes cases, then the page range for the subsection topic should encompass the case pages. Do not just give the page number where the discussion starts. This is deceptive to index users. They will think it is a one-page discussion and superficial. By giving the range, you make it clear that the author has fully treated the topic and indicate to users that here lies the bulk of the material on a given topic as opposed to passing mentions (which are typically one-page references). See Example B below.

Chapter 2. Actual Causation 101	
A. Did the Defendant Do It?	
Specific Causation	102
<i>Hoyt v. Jeffers</i>	102
<i>Smith v. Rapid Transit Inc.</i>	105
The Law-Fact Distinction: Circumstantial Proof of Causation	108
B. Does Defendant's Activity Cause Injury in a General Way?	
General Causation	110
Problem 2	115
The Partisan Expert Witness	117

Example B

Index entries for chapter 2, parts A and B, would be:

- **Causation**, 101-120
 - expert witnesses and, 117-120
 - general, 110-120
 - law-fact distinction and, 108-109
 - specific, 102-109
- **Circumstantial evidence**
 - causation and, 108-109
- **Expert witnesses**, 117-120
- **General causation**, 110-120
- **Specific causation**, 102-109

After the cases, the author may provide notes and/or problems. For problems, remember that they are not included in the index. When the initial page range was done for the chapter as a whole, they were included in that range, and that takes care of them. (See Example B above which shows Problem 2 in part B of the chapter. The indexer would create entries for General causation with a range from 110-120 so the range encompasses the problem.) The table should not pick out cites from the problems either. But the notes present a possible challenge.

Typically the notes contain much indexable discussion. It is here that the authors undertake to explain the holdings of the principal cases and to update them with newer court holdings. Terms of art that appeared in the cases are defined and links are made to other cases or discussions in the book. However, sometimes these notes include questions or problems, especially for books that omit separate problem sets. Indexers should not index the questions. Just as they ignore problems, so they should bypass the questions and problems embedded in the notes. Watch out for authors who create phony cases for the students to use in these exercises. I have seen these nonexistent citations included in tables of cases!

Index Entries

When creating index entries in law textbooks, use neutral wording. For example, the holding may be that a particular action is unconstitutional, but in a few cases later that very holding may be reversed and the action is now ruled to be constitutional. A wise indexer has not locked into the court's finding but rather written the entry based on the subject without announcing any judgment. This prevents students from relying too heavily on the index which can be as dangerous as

relying on case annotations in a statutory code. The index merely directs users to the topic location and allows them to draw their own conclusions.

Do not phrase entry: "Fourteenth Amendment, not applicable to states"
Instead use neutral phrasing: "Fourteenth Amendment, applicability to states"

Example C

Unlike other legal works, such as practice manuals, which avoid including names in the subject index, a law school book should have names of famous commentators in the index. A tort index without Prosser or a contracts index without Corbin would be deficient. However, I prefer not to make the commentator's name its own heading but instead post it only under the topic of discussion. This treatment matches how I handle Restatement analysis in the index. See Example A, above.

Terms of art are very important to law students. They are learning a new language for their profession and when studying, they want quick access to the terminology. Any time the text says a concept is "known as," "called," or "commonly referred to," then the phrase or word that follows must be in the index as a main heading. Most likely it will be double-posted as a subheading in a broader category too, but it needs to be very easy to locate so that requires the main-level entry. For example, in a civil procedure index you will include entries for Long-arm statutes and Personal jurisdiction with that same phrase as a subentry.

Table Entries

For the tables, it is necessary to distinguish principal cases, law review excerpts, and statutes. (See the caption in the Example A table.) A principal case is set off in the text. See Example D below.

<i>A. Did the Defendant Do It? Specific Causation</i>	
Hoyt v. Jeffers	
30 Mich. 181 (1874)	
[Text of case reprinted]	

Example D

It is not just any quotation from a case, statute, or article, even if other excerpts take a page or more and constitute a large block quote. The principal ones are set off by an

Education Indexing

introductory phrase such as a case name, citation of law, or article title, appearing in a different font or bold type or centered on the page. When students turn from the table to this page, there is no question where they need to look to find the material as it will immediately catch their eye.

The indexer italicizes the name of the principal case and the page numbers on which it starts. Page ranges are not used for cases. If at other times the author refers to the principal case, say in the notes, then those pages numbers are added in regular font so the user can distinguish the case reprint from passing mentions. (See the caption in the Table as part of Example A, above.) This same approach is taken with reprinted laws, Restatements, and law review articles. When it is a principal reprint of the material, the title is italicized as are the page numbers. A good quality check is to make sure every italicized case name has at least one italicized page

number to accompany it. I use the following procedure in Cindex™:

1. compress the file so that all page numbers are consolidated in one record;
2. do a pattern find for italics in the case name, law review article title, etc.;
3. do a find for not italics in the page field;
4. entries remaining on the screen have a problem – either the indexer improperly italicized them or the indexer neglected to italicize the page number.

Then do a similar check to find italicized page numbers but without matching italicized text. These too would be incorrect in the final table. For every italicized page number, there must be an italicized case or article name.


Need for Standards

We can make the job of indexers easier and more profitable if we try to standardize our approach to these books. Such matters as when to use a range vs. a starting page number need not be decided on a book-by-book

basis. When I have asked editors why one book used one style and the next book another, they were not even aware of such inconsistencies. It is unlikely that they will be the ones to impose standards on indexers. This article hopes to have given some guidance so that such needless variation can be avoided and the usability and quality of these indexes improved.

Consistency moreover will help the end-users – the professors and students – as well. They can master the conventions and analytical frameworks of this genre and become confident users of our products.

Note: Examples in this article have been made up and are not meant to represent any actual book.

For more on indexing legal textbooks, see the chapter by Mauri Baggiano in *Indexing Specialties: Law* (ITI 2001). 

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