DE GRUYTER
SAUR

*Elizabeth M. Moys*

# MOYS CLASSIFICATION AND THESAURUS FOR LEGAL MATERIALS

5TH EDITION

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# Moys Classification and Thesaurus for Legal Materials

Fifth edition

Revised and expanded by
Diana Morris
Helen Garner
Sarah Wheeler



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# Editorial Board

**Diana Morris, BA(Hons), MCLIP:** was Librarian and then Research Services Manager at Slaughter and May (solicitors in the City of London) from 1985 to 2007, having previously worked on contract in Zimbabwe for two years and held posts in public and commercial libraries in London. Since then she has worked freelance abstracting journal articles for a legal database. Publications include a research index for the Prime Minister's Scientific Liaison Office in Harare, co-ordination of the Zimbabwean contributions to *Periodicals in Southern African Libraries*, and more recently a part chapter on cataloguing and classification in the *BIALL Handbook of Legal Information Management*. She was a member of the Editorial Board for the 3rd edition of *Moys Classification and Thesaurus for Legal Materials*, published in 1992.

**Helen Garner, BA(Hons), PGDip:** has been the Information Resources Librarian at the Bodleian Law Library since August 2004, having previously worked for over ten years at Freshfields Bruckhaus Deringer in London. She started her professional career as a cataloguer at the Foreign and Commonwealth Office before moving to the Royal Institution of Chartered Surveyors. Helen is a member of the BIALL Publications Committee.

**Sarah Wheeler, MA:** has been Assistant Librarian at the Supreme Court of the United Kingdom since it opened in 2009, with responsibility for cataloguing. Previously she worked at the Ministry of Justice Library before gaining an MA in Library and Information studies from University College London in 2009.

**Additional corresponding members:**

**Jacqueline Elliott, BA, Dip. Ed(Tas), LLB(Hons) (Adel), ALAA:** was Court Librarian at the High Court of Australia from 1985 to 2005. Previously she worked as Law Librarian at the University of Papua New Guinea (UNPG) 1982–85; was Deputy Law Librarian, University of Adelaide, 1974–82; and Assistant Law Librarian, University of the West Indies (Cave Hill Campus, Barbados), 1970–73 (where she initiated the use of Moys). During her years at UPNG she made two collecting trips to the Pacific Islands to gather material to start up the Pacific Law Collection in the Law Library at UPNG, Port Moresby. She maintained her contacts with the Pacific jurisdictions until her retirement in 2005 and for many years was Coordinator of the Pacific Twinning Project of the Australian Law Librarians' Group (now ALLA). Ms Elliott edited *Australian Law Librarian* 1993–95 and published

*Pacific Law Bibliography* (2nd edn., Hobart: Pacific Law Press) in 1992 and *Papua New Guinea Statutes in Force as at 31 December 1991* (UPNG Library) in the same year. She also wrote several articles on Pacific legal bibliography and was a member of the Board of the International Association of Law Libraries for five years. During her time at the High Court of Australia she conducted a number of Moys seminars in all states of Australia and after her retirement continued to do so until 2010. She was also a corresponding member of the Editorial Board for both the 3rd and 4th editions of *Moys Classification and Thesaurus for Legal Materials.*

**Gail Griffin, NZLA Cert.:** has been a cataloguer at Russell McVeagh (private law firm in Auckland, New Zealand) since 1991. Previously she was a cataloguer at the Secondary Teachers' College Library, University of Auckland Library, Business Archives, and an independent contractor for mainly small specialist government and private collections. Publications include indexes for New Zealand photographic journals. She has run seminars/workshops for new Moys users, including *Moys Classification – An Introduction*, and *Moys Classification – How You Can Use It*, which included a practical classification component.

# Introduction

This is the first edition to be prepared under the auspices of BIALL after the sad passing of Betty Moys in 2002. I was an Editorial Board member for the 3rd edition published in 1992, but apart from the continuing help from Jacqueline Elliott (formerly of the Australian High Court Library) as a corresponding member, a new Board was assembled for this edition.

I have retained much of Betty's introduction from the previous edition, including the first two sections of the Introduction to the first edition, reprinted on request from librarians in Australia and New Zealand, with a few minor changes. Naturally, some of what was said there is now out of date, as are some of the bibliographical references.

I have also left unchanged Betty's explanation of the scheme's facet structure, reproduced below.

## Facet structure

The secondary materials for each modern system are divided first into public and private law, a distinction which is almost universally known. Broadly, private law is concerned with the relations between persons, natural or corporate, while public law concerns relationships between the individual and the state.

Public law falls conventionally into three main groups: constitutional, administrative and criminal law. Each of these is divided by its own criteria of the rights, duties, topics and procedures which are involved. Criminal procedure is a sub-class of Criminal law and procedure.

Private law is arranged into groups of topics, following conventions which are fairly generally accepted by common lawyers, and not usually too different from the conventional classification of Civil lawyers. Thus, contract and tort (or obligations in the Civil law) and property are almost universal areas of legal activity. The growing body of law dealing with broadly social matters, such as health, education, labour law and social welfare have been placed alongside certain other matters affecting the legal position of the individual under the class heading Persons and Social Laws. One group of topics where there may be less agreement between lawyers in the United Kingdom and the United States is that of commercial law. In this scheme, topics are grouped by subject area, rather than by the sources of the legal rules governing them, so the topics of commercial law, such as company law, monopolies, sale of goods, insurance, banking, investment, transport and communications (now including computer law in general) are all in the main

class Commercial law. Civil and general procedure form another class, at the end of the Private Law group of classes.

Common tables have been provided for use at any required point. Those for Courts (Table V) and Persons (Table VII) should *not* be used where the court or the type of person is the main topic of the book, but rather where the court or person is one part only of a complex subject. Further explanation of the use of the tables can be found below.

Criminology, being strictly a sociological rather than legal study, is assigned to the Appendix. The schedule there can be used on its own, if required, or used at the end of one of the main classes, as instructed in the Appendix and in the relevant places in the schedules.

## Index-Thesaurus

The Index-Thesaurus is presented in a format similar to that of the previous edition, expanded to include more references.

## Updating

Many readers will already be aware of the email list *lis-moys-users*, which has been in operation for several years. The list provides a forum for anyone interested to make suggestions for amendment and improvement of the scheme, as well as being a general discussion forum. Its current address for sending messages is: lis-moys-users@jiscmail.ac.uk

Diana Morris
June 2012

## Postscript

The preparation of this edition was eased immeasurably by the help, support and encouragement of Sarah Spells, Chair of the BIALL Publications Committee, who died suddenly after a short illness in September 2012. She will be greatly missed by all who knew her.

# Introduction to the First Edition

## Part 1: Principles of Library Classification for Law Books

In compiling a library classification for any special subject, whether it be law, engineering or literature, the general rules of classification, such as the exclusiveness of categories and the comprehensiveness of the sum total of categories, must be observed. The nature of the particular literature and the way it is used in libraries assume great importance, and must be thoroughly studied before any attempt is made to establish the basic outline of a classification scheme. The way specialists in the subject classify it themselves must also be studied, although a classification scheme for books will not necessarily be identical as other factors, such as form of publication, must be taken into account.

The classification of law itself has long been a subject of controversy. It is virtually impossible to divide the subjects of law into neat watertight compartments, as there is inevitably a great deal of overlapping of different aspects of subjects. For example, the law of insurance can be treated as a subject in its own right, or it can be regarded as an aspect of contract law, commercial law, tort, maritime law, the law of inland or air transport or criminal law. It is partly for this reason that legal practitioners, both in England and America, have tended to resist the introduction of subject classification in their libraries. As recently as 1955, an American survey showed that at least 39 per cent of law school libraries in the United States used no subject classification [Jennett, C. Subject classification in law libraries – a survey – 1955. 49 *Law Lib. J.* 17–20].

The advantages of subject classification for law libraries are similar to those for general libraries, namely that it improves the usefulness of the books to the reader by enabling him to find information on a particular topic, even if the specific volumes he asks for are not available, and that the strength and weaknesses of a library's bookstock are immediately apparent, so that a well rounded collection can more easily be developed. Lawyers frequently know the author of the books they want, or think they want, but if the books are arranged alphabetically by author, readers are likely to miss other, possibly more recent, books on the subject which might be helpful to them. Alphabetical order is, in any case, less simple than is usually supposed. For example, Clarke, Hall and Morrison's *Law relating to children and young persons* could be shelved at Clarke or Hall or, according to the present editor, at Morrison. A subject number, such as 347.42 or KN176, is safer, and more meaningful.

There are, of course, limitations to the advantages to be gained by classifying law books, most of which are inherent in all library classification. One of the most obvious is that no shelf arrangement can fully bring out all aspects of all the

books. However good the classification scheme used, the individual book can be put in only one place on the shelves. It will be alongside books which are similar in some respects and widely separated from others which are similar in different respects. A good subject catalogue is essential to bring out all useful aspects of a book's contents. Once it is agreed that a collection of law books should be classified, the principles underlying the arrangement to be adopted should be examined. There are two main types of library classification scheme: the traditional, enumerative kind exemplified by the Dewey Decimal Classification and the Library of Congress Classification, and the more modern faceted kind, such as the Colon Classification of S.R. Ranganathan. Whether a law library classification scheme is to be enumerative or faceted, it should follow certain general principles, which are discussed below.

### The legal system

Library users almost invariably approach the study of a subject of law in the context of the law of a particular jurisdiction, and only very rarely from the point of view of comparative law. Therefore, the classification approach usually adopted for many other main subjects, namely giving primacy to various subjects and sub-arranging them either by traditional sub-division methods or by facet analysis, is inappropriate for law. This principle is reinforced by the fact that, apart from some very general books and philosophical and comparative works, law books are concerned with particular individual systems of law, such as English law, French law, Brazilian law, Indonesian law, Egyptian law, Roman law or Hindu law. There are two chief types of legal system: national systems and non-national systems.

The term "national system: is not strictly correct here, but is used throughout to mean the system of law applicable to a particular modern jurisdiction. A jurisdiction frequently coincides with a nation state, but does not necessarily do so. For example, the United Kingdom, although not a federal state, contains three separate jurisdictions: England and Wales, Scotland and Northern Ireland. The United States, as at present constituted, contains 51 jurisdictions – the federal nation state and the fifty constituent States. A wider jurisdiction can also exist when there is no sovereign federal government, as in East Africa, where the East African Common Services Organisation has jurisdiction in certain matters without sovereignty.

By "modern" jurisdiction is meant one that has existed since about 1800 AD, although it is not necessarily still extant, or may have been divided or merged into other jurisdictions. For example, legislation was passed over a period of many years applicable to Afrique Occidentale Française and, although this jurisdiction

no longer exists, a place must be available for these volumes in a classification scheme. On the other hand, it seems logical that books on the law of Serbia or Montenegro before 1919 should be treated as belonging to the history of modern Yugoslav law.

The second category, non-national legal systems, consists of subjects such as international law, Hindu law, Islamic law and other systems which do not coincide with modern national boundaries, such as classical Roman law, medieval Germanic law, and the special Dutch developments of Roman law in the seventeenth and eighteenth centuries.

The usual classification practice is to place general subjects before specialised subjects, and general books before specialised books. Therefore, very general works, books on legal philosophy, comparative works and books on non-national legal systems should be placed at the beginning of any classified arrangement, followed by the books on national legal systems, arranged by system. In other words, the first characteristic of division is the legal system. A regional arrangement of national systems is clearly preferable to alphabetical arrangement, as it can allow for future federations, amalgamations of states or other political developments.

Naturally, the legal systems of countries which share historical links tend to have common features. Many systems of law, from all parts of the world, belong to one or other of two main families: the civil law systems derived from the law of the late Roman empire, and the common law systems derived from the common law of England. [The term "common law" is used here to mean the whole system of law including statutes and equity, developed in England. In the schedules and elsewhere in the introduction, the term usually means the whole family of systems based on the English common law. In the United States, the term "Anglo-American law" is frequently used.] In addition to systems which are firmly based on one of these European systems, many others in Asia and Africa have been influenced, in varying degrees, by European law. In fact, according to Professor Lawson, "it is only in a few isolated territories, such as Saudi Arabia and Afghanistan, that nonwestern law remains pure" [Lawson, F.H. *A common lawyer looks at the civil law*. Ann Arbor, University of Michigan Press, 1955].

The civil law systems can be divided into two main groups: those influenced by the French *Code Napoléon* and those influenced by the German *Bürgeliches Gesetzbuch*. The French group includes the Belgian, Italian, Spanish, most Latin American systems and the Egyptian civil law. The German group includes the Austrian, Swiss, many East European systems and Japanese and Turkish civil law. A number of legal systems, which were originally civil law systems, have been subject to outside influences, notably Scots law, Roman law in South Africa, Sri Lanka and Guyana and the laws of Quebec and Louisiana, Puerto Rico, the

Panama Canal Zone and the Philippines. All these have been geographically or politically connected with common law countries and their legal systems have been partially hybridized [Lawson, op. cit.].

It is, no doubt, because "there are considerable differences in the substantive laws of the two main representatives of the civil law world" [Ryan, K.W. *An introduction to the civil law.* Brisbane, Law Book Company of Australasia, 1962] that no known Anglo-American or European classification scheme treats all civil law systems together. There seems no reason why this should be done, although a place must be provided for books on civil law systems as a whole. Nevertheless, a scheme published in South Africa in 1966 provides, in addition to the classes for South African law, two separate foreign law classes, one for common law and one for civil law [Dannenbring, R. *The classification of law books in the University of South Africa library.* Pretoria, University of South Africa, 1965].

### Common law systems

The common law was taken by English settlers or administrators to every continent, and in many places it took root and flourished, not only in countries settled originally by people from Britain, but also in more alien surroundings. The famous Indian Penal Code is a good example, and was subsequently adopted by nine other jurisdictions. Lawyers still feel to a remarkable extent that they serve a common system, whether they are in Accra, Bombay, Idaho, Manchester or Sydney. The legal systems derived from the English common law are therefore generally felt to be more homogeneous than the civil law systems, but because of the large number and variety of systems which have been influenced by the common law, the arrangement of books on the law of the countries concerned presents some considerable problems.

One of the basic features of the common law is that judges determine what the law actually is as well as applying it to particular cases. That "there is, indeed, a sort of general common law" applicable in many countries, is proved by the fact that judges in one country can and frequently do consult decisions from other countries in the system to determine the law applicable to cases before them [Elias, T.O. *British colonial law: a comparative study of the interaction between English and local laws in British dependencies.* London, Stevens, 1962]. In most countries, this is a matter of custom, but the practice is sometimes given statutory force, for example in the Ghana Interpretation Act [Interpretation Act, 1960 (C.A.4) section 17(4)]. Such reference is by no means confined to the use of English cases by overseas courts; it may equally involve reference to an Indian case in deciding a case from New Zealand, [Vajesingji v. Secretary of State for

India (1924) L.R. 51 Ind. App, 357 at 360 applied in Hoani etc. v. Acten District Maori Land Board [1941] A.C. 308 at 324] the application of a Canadian case to a New Zealand case, [Clelland v. Clelland [1944] 4 D.L.R. 703 applied in Joe v. Young [1964] N.Z.L.R. 34], reference to an Australian case by a Canadian court, [Re Farmers' Settlers' Co-operative Soc. Ltd., City Bank of Sydney v. Barden (1908) 9 S.R. (N.S.W.) 41 distinguished in Thoresen v. Capital Credit Corporation Ltd. (1964) 43 D.L.R. (2d) 97], or the citation of a Gold Coast case in an English case [Kwaku Mensah v. R. [1946] A.C. 83 cited in R. v. Porritt [1961] 1 W.L.R. 1372]. This process was greatly assisted in the Commonwealth by the work of the Judicial Committee of the Privy Council.

Not all the countries concerned have adopted the common law wholesale. Generally speaking, this happened only in those countries whose population consisted at the relevant time of British settlers. In African and Asian countries, the parts of the common law system relating to economic activity and the criminal law have usually been adopted, while the local customary law of landed property and family law has often been retained. In some countries the legal mixture contains elements of still further systems. For example, the civil law of Sri Lanka is based on Roman-Dutch law, considerably influenced by English law, together with some elements from Islamic, Hindu and Sinhalese law, while the criminal law is fundamentally English; the law of Uganda is a mixture of local legislation, various African tribal laws, common law as applicable in England in 1902, and certain British and Indian legislation specifically adopted in Uganda.

To complicate the problem, the quirks of history have left some pockets of non-common law jurisdiction in the midst of some of the basically common law countries, notably Quebec and Louisiana with their French-based systems in Canada and the United States, and Scotland, the Isle of Man and the Channel Islands, which are more or less within the area of the United Kingdom.

The areas in which the common law is to be found can, therefore, be divided into three main categories:

1. those whose legal systems are entirely, or almost entirely based on the common law, i.e. England, Ireland, Canada, the United States, most of the West Indies, Australia and New Zealand;
2. those whose legal systems consist of a mixture, in various proportions, of the common law and other systems e.g. India, Cyprus, Guyana, Nigeria;
3. those areas within a basically common law jurisdiction which have retained their own non-common law systems, albeit influenced to some extent by the common law, e.g. Scotland, Quebec, Louisiana.

For the reasons outlined earlier, several English and American classification schemes group common law jurisdictions together in some way, separately from

the rest of the world. While the grouping together of common law books can be very useful to readers, especially in any of the countries in the common law sphere of influence, the differences between the three categories of jurisdiction described above present a serious problem: which of these jurisdictions should be included in the common law section of the classification and which, if any, should be excluded? If all three types of jurisdiction are included, any large or medium-sized library will find a considerable number of books which do not deal with common law being placed alongside the common law books. This is undesirable, as it partly defeats the purpose of keeping common law books together, and is likely to be confusing, or even dangerous, for laymen and students starting their studies.

On the other hand, if a strict differentiation is made between books dealing with common law and books dealing with other systems, regardless of geography, the books on the law of countries with mixed systems, notably India and the African states, will be shelved in two or more separate places. This may not be a special disadvantage in other countries, but is hardly likely to be acceptable in the countries concerned. As the present tendency in these countries is for the law to be revised and developed along national lines, it seems probable that their legal systems will gradually diverge further and further from the common law system. Therefore, it seems best to treat the mixed systems as if they were separate national systems, rather than grouping them with the basic common law countries.

There is no ideal solution to the problem. It is understood that the Library of Congress proposes to adopt the simplest solution, disregarding the common features of the system and arranging books strictly by jurisdiction. Any library which prefers to keep common law books together must accept some sort of compromise. The arrangement suggested as avoiding the least desirable results of the two extreme solutions discussed above, while keeping together most of the books which are likely to be used in conjunction by lawyers and research workers, is to define the common law section of the classification as the countries belonging to the first category listed above, leaving books from jurisdictions in the second category to be classified separately by national system.

The two main objections to this proposal are that some important common law books, such as those on Indian criminal law and company law will be excluded, and that some non-common law books, such as those from Quebec, will be included. The first seems to be the lesser objection, as the number of volumes concerned would, in most libraries be small, and their connection with common law could be brought out in the subject catalogue. The other objection, concerning the category three jurisdictions, is more intractable. If, for example, Scots law books were placed in a separate Scottish section, this would not contain the whole law of Scotland, because laws of the United Kingdom as a whole, such as

electoral legislation, apply to Scotland. But Scots law books should not be placed alongside their English or Australian counterparts with no distinction. A possible solution might be to allow books from the category three jurisdictions to remain in the common law section, denoted by special symbols, such as S for Scotland or Q for Quebec, after the standard class mark.

### Sub-division of the legal system

It has been established by reference to both the nature and use of legal literature that the first characteristic of division is the legal system. Within each legal system, the next question is the extent to which division should be, in traditional terminology, by subject, form, geographical area or date or, in the facet formula, how facets such as personality, energy, space and time are to be applied. Again, it is necessary to study the form and use of law books. It is clear that chronology is normally significant only for historical books and for the detailed shelf arrangement of publications such as successive editions of revised statutes, conference proceedings etc. Something like geographical treatment has, by means of defining national legal systems, already been used and although provision will still be needed for local sub-division within the area of a jurisdiction, this is of relatively minor importance.

An examination of the contents of law books leads to an analogy with literature. In one sense, the terms "literature" and "law" refer to abstractions, but in another sense it is true to say that a volume of Shakespeare's plays or Milton's poems is itself literature, and similarly that a volume of statutes is itself law. On the other hand, Dover Wilson's *What happens in Hamlet* is a book about literature and *Chitty on contracts* is a book about law. For convenience, these two basic types of law books are referred to throughout as primary materials and secondary materials respectively. This is not a distinction based strictly on form or on subject, but rather on the special nature of the contents of law books and their use. A simple definition of primary and secondary materials is that the former contain the law itself, are books *of* law and can be quoted in court, and that secondary materials are books *about* law and cannot normally be quoted in court. This is, of course, an over-generalisation and cannot be strictly applied to every volume usually included in either group, but it serves to highlight the basic differences.

At this point, the analogy with literature must be abandoned. Whereas there are few practical difficulties in classifying together both the volumes of Shakespeare's works and the biographies and critical monographs about his work, the same does not apply to legal literature. In all countries, but especially in common law jurisdictions, primary legal materials are very frequently published in

serial form, whereas most secondary materials are in the form of monographs or multi-volume sets of limited dimensions. The idea of trying to place monographs alongside the annual volumes of statutes which contain the legislation referred to is so ludicrous that it is quite obvious that the two kinds of books cannot be mixed. Therefore, primary and secondary materials must be treated separately in any classification scheme.

### Primary materials

Primary materials should be arranged by the form of their contents. They contain two main kinds of texts: legislative texts, whether these are codes, statutes or subsidiary rules and regulations; and reported decisions of courts of law or administrative tribunals. Both types of publication require very full indexing services of various kinds, such as indexes, digests and citators. It is essential for law library readers that these service volumes should always be placed beside the true primary materials to which they relate, and they are therefore included here in the term "primary materials". What exactly constitutes primary materials varies from one jurisdiction to another. It is a special feature of the common law system that much of the law is to be found in the reported decisions of the judges in cases before the courts. On the other hand, in many civil law jurisdictions the law is embodied in detailed codes, which are theoretically intended to provide a certain answer for every eventuality. In these countries, judicial decisions usually have less force than in common law countries. It is interesting to note, however, that in some European countries the position has already changed considerably: "French law has become almost as much a system of judge-made law as English law . . . German judges can be just as daring" [Lawson, op. cit.].

In many common law jurisdictions a consolidation of the statute law is compiled and published at intervals of about ten years or more. The form and arrangement of these compilations, or revised editions of statues vary, but the object is always to provide in a convenient form the total valid legislation of the jurisdiction, i.e. all statutes which are in force, omitting all clauses or complete acts which have been repealed, and incorporating changes made by amending legislation. Arrangement is sometimes chronological, as in the British *Statutes Revised*, but is more usually by subjects alphabetically. If several revised editions are held, they should be arranged in chronological order.

In addition to legislation, both main and subsidiary, a law library is almost certain to contain volumes of parliamentary debates, government gazettes etc., which are necessary for the full understanding and interpretation of legislation. In an independent law library, this material should be placed close to the legisla-