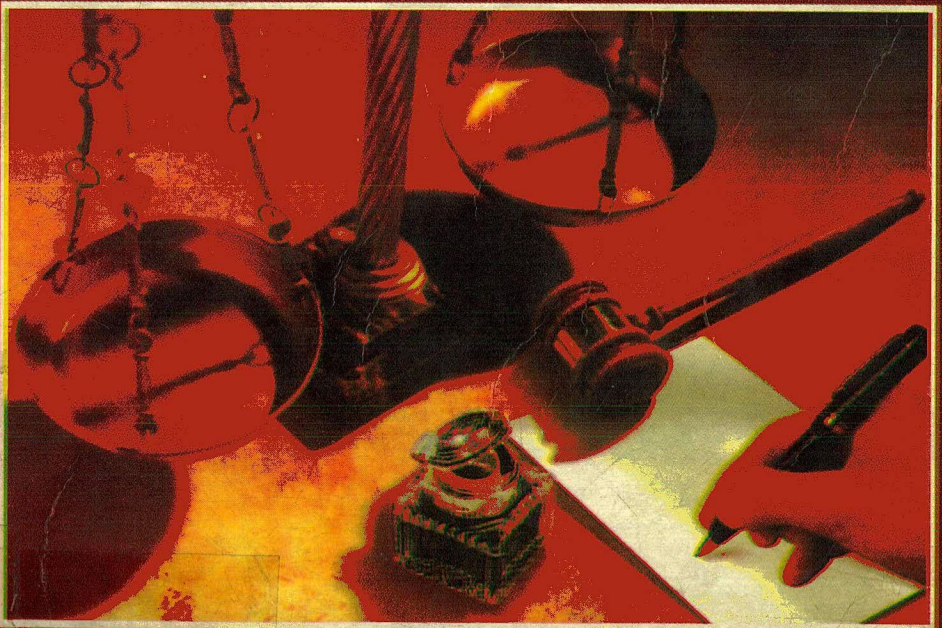


EQUITY, TRUSTS AND SPECIFIC RELIEF

along with a chapter on Fiduciary Relationships

B.M. Gandhi



Third Edition

Eastern Book Company

EQUITY, TRUSTS AND SPECIFIC RELIEF

along with a chapter on
FIDUCIARY RELATIONSHIPS

by

B.M. GANDHI

B.A., LL.B.(Bom), LL.M.(Guj)

Former Principal, Law College, Modasa

Author : 'Law of Torts'

Revising author : 'Landmarks in Indian Legal
and Constitutional History'

EASTERN BOOK COMPANY
LUCKNOW

EASTERN BOOK COMPANY

34, Lalbagh, Lucknow-226001

Phones: (0522) 226517, 223171

Fax: (0522) 224328

E-mail : sales @ebc-india.com

Website : www.ebc-india.com

EASTERN BOOK CO. (Sales)

1267, Kashmere Gate,

Old Hindu College Building,

Near Corporation Office Main Gate,

Delhi—110 006

Phones: (011) 3917616, 3921656

Fax: (011) 2945956

MANAV LAW HOUSE

8/10, M.G. Marg,

Opp. Bishop Johnson School,

Allahabad—211 001

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PREFACE TO THE THIRD EDITION

The third edition of this book with two reprints is a mark of its popularity among the student world.

This edition brings case law on various points up to date.

The aim and object of Equity and its role as explained in *Manju Bhatia case, 1997* and *A.P. Financial Corporation case, 1994* have been taken note of. In cases arising out of contract, equity steps in and takes over and imposes liability upon the defendant for unquantified damages for the breach of duty owed by the defendant to the plaintiff. The principles of justice and conscience are thus the basis of equity jurisdiction (Ch. II, para 6) and equity has a role to play in the field of tort too.

Principles of promissory estoppel have been brought up to date showing that the doctrine is applied in various fields to do justice. However parties playing foul with equity cannot avail of its benefits [Ch. III, Maxim 3(b)(vi)].

Trusteeship is an institution of elasticity and generality; even an advocate becomes a trustee of his client's papers and documents (Ch. XIV, para 8).

All important decisions relating to specific performance of contract (e.g. "readiness & willingness" to perform; time is the "essence of a contract" or not) have been taken note of (Ch. XXIII).

A separate chapter on Fiduciary Relationships is designed to meet the new requirements laid down by the Bar Council of India.

Recent decision of the Gujarat High Court (1998) interpreting "an act of dispossession" (Ch. XXIV) is remarkable and elaborates that a casual unnoticed user of plaintiff's land cannot be considered as an exclusive possession by the defendant and therefore it cannot amount to an act of dispossession necessitating the claim for possession by the plaintiff as contemplated by Section 34 of the Specific Relief Act.

I am thankful to the Eastern Book Co., the publishers and the ever enthusiastic Shri Surendra Malik and his editorial staff for their judicious accuracy and meticulous assiduousness in bringing out this edition.

—BHANU PRASAD M. GANDHI

PREFACE TO THE FIRST EDITION

Principles of equity are the very essence and kernel of a legal system. It is these principles that reduce the brittleness and rigidity of law. Legal principles when they can no longer serve the purpose and fulfil their station require to be amended or replaced either by interpretation or by amendment and enactment because anything static must droop and die and law is no exception. It is the art of interpretation tempered with equitable principles that is put to work in removing the gangrenes of injustice in a system. Principles of equity are thus an instrument of this nature but the instrument has to be kept constantly sharpened to meet novel situations or else it also becomes blunt with the passage of time: time being the greatest killer—कालाय तस्मै नमः. It was for this reason that in England the House of Lords very recently refused to follow some of its own decisions where they were productive of injustice; moreover it is unwise to perpetuate a mistake. In India this feeling found its exposure from Justice Bhagwati of the Supreme Court in *Minerva Mills case*, (1980) 3 SCC 625, 681. (See Chapter 1, p. 35 *infra*).

In the words of John G. Fleming a book should be "more function-oriented than many of its competitors, more concerned with the effect and operation of legal rules, with their aims and reason, than with mechanistic problems of internal consistency of decisions within the framework of any given system. . . ."

Keeping this in view this book is an attempt to state the principles of equity in a lucid and pointed way and to introduce the topics in a systematic and somewhat elaborate manner without tending to depart from the central idea.

The book is divided into four parts and twenty-five chapters, each chapter having its own synopsis. Part I deals with the nature of Equity, its history, courts and important maxims in action, Part II with specific equities, equitable doctrines and equitable rights—the area wherein these principles were introduced and tested, Part III with principles of trusts with special reference to Indian Trusts Act, 1882 and Part IV with principles of specific performance and other equitable remedies with special reference to the Specific Relief Act, 1963 in India.

To make this book more useful many points that escaped discussion in certain books have been considered and discussed with reference to prevailing situation in society. Amendments wherever necessary have been pointed out. Elaborate subject index and table of cases add to the utility of the book.

I shall feel amply rewarded if the style and presentation of the subject meet the requirements of the readers.

I do claim to be original in all that I have written. I have depended on several authorities which are mentioned in the Bibliography and I am indebted to them.

I am thankful to the Eastern Book Company, the publishers, and the everready Mr. Surendra Malik and his editorial staff for their constant vigilance and enthusiasm in bringing out this edition.

In the end I am no less obliged to my friends, Professor G.M. Patel and Librarian Shri Surendra Desai, both of Bhagat and Sonavala Law College, Nadiad and Mr. Kanchanlal Patel, Librarian of N.S. Patel Law College, Modasa. I thank them all.

—BHANU PRASAD M. GANDHI

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