

EQUITY, TRUSTS, SPECIFIC RELIEF. By DURGA DAS BASU. (Fifth Edition) [New Delhi: Prentice-Hall of India. 1983. xxiv+336 pp. Paperback Rs. 39.00]

THIS book provides a comparative analysis of equitable doctrines in English and Indian law. Although equitable remedies seem to have been largely supplanted or altered in India by statute, particularly in relation to the transfer of property in which the distinction between legal and equitable rights has been destroyed (Transfer of Property Act mentioned on p. 9), Indian courts must still "in the absence of specific law or usage in any matter... act according to the principles of equity, justice and good conscience" (pp. 8-9). After a general review of the history and nature of principles of equity as they exist in England and India (including a summary of election, liens and mortgages the last of which is eminently lucid and readable) the author then goes on to discuss the impact of equity on property and contracts; i.e. trusts and specific relief.

As with the transfer of property generally, the law of trusts in India at least is now governed by statute (Trusts Act). Since there is, according to the author, no such thing as equitable ownership, the beneficiary of a trust in India can be said only to have certain rights against the trustee as defined by statute. However, the beneficiary does in fact have a transferable interest in the property which, along with his statutory rights, is based on and bears many similarities to the English law of trusts (pp. 103-104). The author in a clear, simple and easily readable style explains these distinctions and similarities to the student reader.

An interesting part of this book for the non-Indian reader is the description of types of trust which are peculiar to or are treated substantially differently in India. An example is the Benami Transaction in which property is acquired by one person in the name of another. There is said to be similarities to the resulting trust but a major difference is that the person who holds the property in his name is not a real owner or trustee of the property. The principle of advancement does not apply and property always remains vested in the person who paid for it. At the most the named owner has some obligations of a trustee but few of the protections. This type of transaction is said to be very common in India and is well recognized as conferring no beneficial or other interest in the 'benamidar' or person named in the transaction, nor is he subject to the liabilities and responsibilities of administration which a trustee normally has (pp. 155-157).

Chapter XIV contains a fascinating if brief account of the nature of religious trusts in India. Religious and charitable trusts are excluded from the operation of the Trusts Act and are based on Hindu and Muslim law (p. 194). They differ considerably from Western, Christian trusts, principally in the notion that the property vests directly in the God who is the juridical person which will be recognized under Indian law as the owner of the property. The religious officials who administer the trust for the benefit of the beneficiaries act solely as managers of the trust and do not themselves normally take on the character of trustees.

The book as a whole provides an easily accessible tool in the study of equity largely for the undergraduate student. As a source of information on English law, it relies heavily on well-known sources (editions of texts are not specified) such as Snell, Maitland, Blackstone and Story. The cases referred to are all very dated with nothing apparently more recent than 1970. A 1950 Supreme Court decision is referred to at one point as “recent” (p. 20) which leads one to suspect that this edition has not been updated. Nevertheless it provides a good introductory text for the uninitiated.

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