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Book Review of *The Law of Contracts* by John D. McCamus

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competing balance between creators' rights and users' needs. File-sharing, unauthorized use and "access" are discussed briefly in the first two essays. The third essay discusses existing international copyright agreements in which Canada is a participant, including the WIPO (World Intellectual Property Organization) treaties, some also known as the "Internet" treaties.

The essays in Part 2 analyze former *Bill C-60, An Act to amend the Copyright Act*, which had first reading on June 20, 2005 but died on the Order Papers when Parliament dissolved due to a successful non-confidence motion on November 29, 2005. The current government has yet to re-introduce copyright reform legislation. Technological protection measures (TPMs) are discussed and commentary is provided with respect to *Bill C-60* favouring the "rights" of the copyright holders to the detriment of "rights" of the users. *Charter* issues, under s. 2(b) are raised ie. "freedom of...expression" and *Théberge*, [2002] 2 S.C.R. 336 and *Michelin*, 124 F.T.R. 192, and their impact on copyright and rights, are evaluated.

Hackers will be intrigued by the essay by Professor Ian Kerr which discusses anti-circumvention law and its impact on personal privacy. Contractual consent, as set out in *PIPEDA (Personal Information Protection and Electronic Documents Act)* and the need to prohibit the use of DRM (digital rights management) to get around our privacy legislation are key issues for future copyright changes.

The interplay between the issues of libraries and educational institutions is outlined in two of the latter essays in Part 2. A key issue for both is "access" and this is certainly true for libraries questioning interlibrary loan issues and the difference between the "fair dealing" exception s. 29 and the special exemption s. 30.2 of the *Copyright Act*. Many of us still find uncertainty exists with respect to "fair dealing" despite (or because of) the *CCH v. Law Society of Upper Canada*, [2004] 1 S.C.R. 339.

The essays in Part 3 look at the future of reform to copyright legislation. Read Professor Carys Craig's essay devoted to the "fair dealing" defence. The issue of copyright on Internet content, piracy and licensing issues, complete with a very sophisticated Venn diagram to illustrate, are included in Professor Daniel Gervais' essay. The final essay in the book is devoted to Crown Copyright, in Canada and other jurisdictions, which is not a topic addressed by the current copyright reform proposals. However, Professor Elizabeth Judge advocates that crown copyright should be re-prioritized and revisions included in any upcoming copyright reform.

Professor Michael Geist has done an excellent job in pulling together all of these "hot" topic essays which cover the full spectrum of issues relating to Canadian and international copyright issues and reform. One can only hope he is prepared to edit round two in the series of essays that may result from upcoming copyright reform.

Karen MacLaurin
Chair, CALL Copyright Committee

The Law of Contracts. By John D. McCamus. Toronto: Irwin Law, 2005. xxiv, 1094 pp. *Essentials of Canadian Law* series. Includes summary table of contents, detailed table of contents, table of cases, and index. ISBN 1-55221-018-9 (Softcover) \$70.00.

I was excited to review the McCamus text from Irwin Law's *Essentials of Canadian Law* series, *The Law of Contracts* (and this may be the first time I have used "excited" and "law of contracts" in the same sentence). I will disclose up front that Prof. McCamus was my professor for both contracts and restitution too many years ago. Although contracts was not my best subject, I enjoyed his excellent teaching presentation; it was clear that Prof. McCamus not only thoroughly understood but also enjoyed his subject. Reading this text takes me back to 1989 and recalls that experience. I'm quite certain one would not have to be a former student to agree.

The book begins with an Introduction which outlines the plan of the book but also is substantive at times, offering an overview of some of the historical foundations of contract law and its place among other private law topics. The main part of the text is divided into six broad parts, each of which contains several chapters. The six parts cover the formation of agreements, rules for recognizing their enforceability, vitiating factors or grounds for setting aside otherwise enforceable agreements, performance and breach, principles of interpretation of agreements, and remedies for breach. The last part is interesting in that it incorporates the author's academic interest in the law of restitution; it includes a substantial final chapter devoted to the interrelated remedies of restitution and disgorgement in the contractual context. As restitutionary remedies are founded on unjust enrichment rather than contracts, a full chapter on the subject is unusual for a contracts textbook.

As is usual for Irwin Law's *Essentials of Canadian Law* titles, each chapter concludes with a helpful list of further readings. McCamus's lists of references include not only other textbooks, but also numerous articles and, usefully, law reform commission reports on various narrow topics. References in the body of the text chapters are to the longstanding leading authorities in English and Canadian contract law, as well as to other materials which may support past or future modifications in Canadian law.

In the Preface, the author indicates that his approach to the text is to begin by presenting principles of contract law established in English authorities as the law and precedent for the Commonwealth jurisdictions, but also to discuss developments in Canadian contract law which trace a different path than that taken in other Commonwealth jurisdictions. The analysis is restricted to the common law jurisdictions in Canada; no attempt is made to present the law of contract under the civil law system in Quebec. McCamus also notes that his aim was to present a faithful exposition of current understandings of the principles, doctrines, and practice of contract law in Canada. However, he also declares an intent

to offer his own criticisms of current contract law doctrine along with suggestions for future development, keeping these distinct from the exposition.

In my view, McCamus's efforts are successful. The book is thorough, well-organized, and is written in a manner that makes the subject-matter accessible. As well, it contains some extras such as the earlier mentioned chapter on restitution and the very helpful references to resources that are non-traditional but often invaluable sources of further information. At the time of this writing, this book is not offered among Irwin Law's digital editions. Like other titles in the *Essentials of Canadian Law* series, *The Law of Contract* offers good value for its price. In my opinion, this book is even more appealing and, at over 1000 pages, covers the subject-matter in greater depth and breadth than I expected of a title in this series. I consider it a welcome addition to the Canadian literature on contract law and to the collection of any Canadian law library.

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The Law of Contracts. By S.M. Waddams. 5th ed. Toronto: Canada Law Book, 2005. clxxxvi, 589 pp. Includes bibliographic references, table of cases, table of statutes, index. ISBN 0-88804-450-X (hardcover) \$160.00.

This fifth edition of Waddams's text on contract law, written six years after the previous edition and nearly forty years after the first, continues to satisfy expectations. The text is a comprehensive treatment of contract law, but also presents an analytical discourse of various elements of the subject. Rather than merely outlining rules of contract law supported by case or statute authority, Waddams offers a discussion of the origins of legal rules in the context of social forces and historical events. This presentation should make this book an interesting and useful starting point for researchers and serious students of contract law and also support an understanding of the rationales for the development of current contract law principles.

Waddams maintains the structure that has been used in previous editions, but which may be unexpected or non-intuitive to newer readers of the Waddams text. The book's chapters are organized into six parts: Introduction, Enforceability, Contracts and Third Parties, Excuses for Non-Performance, Capacity, Remedies. The Introduction is brief but presents useful substantive information about historical contract law developments and attitudes as well as newer topical issues such as consumer protection legislation and restitution in avoidance of unjust enrichment by defective contracts.

This edition again offers numerous case references, presented in 150 or so pages in the Table of Cases. I was pleased to see the use of the neutral citation standard included among the multiple citations for some newer cases.

The well-organized table of contents and index usefully reference paragraph numbers. I have found this feature quite helpful both for finding the pertinent sections of the text and in referencing them in a memo or factum.

As well, the index has been designed in such a way that the researcher should be able to find discussions pertaining to a chosen topic even if the language in which the topic is described or the place of the topic in the book is different than expected. An example which I noted in a review of the fourth edition of this text continues to be applicable: the index entry for *consensus ad idem*, often considered a basic element of a contract, refers to three paragraphs in the text. However, in two of these paragraphs that phrase is not used at all, although the concepts represented by it are discussed. Thus, the index usefully points the researcher to a discussion of the concept even though it is not expressed in the terms familiar to the researcher.

When comparing the Waddams text with the new McCamus text on contracts (reviewed above), it is clear that, whereas the styles of the books differ, each of these authors brings a deep and intimate understanding of contract law to his work. Both not only outline the principles and their supporting authority, but also delve into the background and policy that influenced their development, and may influence further development.

The Waddams text should belong in any Canadian law library collection of contract law. Students are likely to find it a valuable resource in understanding contract law principle and policy, whereas practitioners may find it of assistance in developing reasoned arguments or opinions on various contracts issues. Researchers from both these groups will be able to use this text to more fully understand the underpinnings of many contracts principles and issues. I myself gained a renewed appreciation for the previous edition when conducting research on several matters last year. Because it does not seem intended to offer the quick, quotable answers which a lawyer may want for a factum, Waddams likely should not stand as a practitioner's library's only contract law text. Nevertheless, it should be an important component of any law library and, in my view, an excellent resource for understanding contract law and its directions.

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Prestatehood Legal Materials: A Fifty State Research Guide. Edited by Michael Chiorazzi and Marguerite Most. New York: Haworth Information Press, 2005. 2 vols. 1500p. Includes index. ISBN 0-7890-2082-3 (Hardcover, v.1) 0-7890-2083-1 (Hardcover, v.2) US \$199.95.

One of the things I have always loved about librarianship is the enthusiasm librarians generally have for their profession. So much of what we do is behind the scenes.