Modern codification of property law and contract law. The Dutch experience

Hijma, Jacob

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The former Dutch Civil Code (Burgerlijk Wetboek) became effective in the year 1838. It was largely a translation of the French Civil Code, with a number of adaptations and additions. After roughly one hundred years of service this codification, in the opinion of many, began to show signs of obsolescence. A government committee was appointed to correct the inaccuracies and to fill the gaps. At this stage, the idea was simply to develop `repair-legislation'. The committee operated slowly. This got on the nerves of one of the leading scholars – in fact: the leading scholar – of that day, E.M. Meijers, professor at the University of Leiden. Meijers published a list mentioning as much as one hundred defects of the existing Civil Code, and added that he could quite easily show another hundred shortcomings. He criticised the inertia of the committee. On the other hand, he stated that the committee really did not have much of a chance, because patrimonial law is a coherent system and it is hardly feasible to repair some isolated parts while the rest of the Code remains as it is. Meijers argued that the only sensible solution was the development of a whole new Civil Code. This idea caught on. In 1947 Meijers himself was appointed as government commissioner with the assignment to write a new Code. In all probability he could have accomplished this enormous task on his own, but unfortunately Meijers died in 1954. He was succeeded by a group of lawyers, which obviously complicated matters. Since then a lot a time has leaked away, for different reasons. It was not before the first of January of 1992, that the New Dutch Civil Code (Nieuw Burgerlijk Wetboek) (below: DCC) came into force. Even on this very moment a few parts are not ready yet, but we are getting close. The texts are accompanied by an elaborate government commentary, the total length of which amounts to one meter

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Civil law, or civilian law, is a legal system originating in Europe, intellectualized within the framework of Roman law, the main feature of which is that its core principles are codified into a referable system which serves as the primary source of law. The purpose of codification is to provide all citizens with manners and written collection of the laws which apply to them and which judges must follow. The codification typical of modern civilian systems did not first appear until the Justinian Code. The political ideals of that era was expressed by the concepts of democracy, protection of property and the rule of law. Those ideals required certainty of law, recorded, uniform law. So, the mix of Roman law and customary and local law gave way to law codification. Many rules of contract law are simply presumptions, based on experience and tradition, as to what the parties ordinarily intend; if they clearly intend otherwise, the rules are not mandatory. Problems of interpretation frequently arise with respect to the particulars of a given agreement; thus the court seeks to determine what the parties actually had in mind. The effort to ascertain intention may encounter difficulties arising from the law of evidence. Modern commercial practice relies to a growing extent on arbitration to handle disputes, especially those that arise in international transactions. There are several reasons for the growing use of arbitration. The procedure is simple, it is more expeditious, and it may be less expensive

than traditional litigation. Civil law, or continental law, is the predominant system of law in the world, with its origins in Roman law, and sets out a comprehensive system of rules, usually codified, that are applied and interpreted by judges. Modern systems are descendants of the nineteenth century codification movement, during which the most important codes (most prominently the Napoleonic Code and the Bürgerliches Gesetzbuch (BGB) came into existence. However, codification is not an essential characteristic of a civil law system. For example, the civil law systems of Scotland and South Africa are not codified, and the civil law systems of Scandinavian countries remain largely not codified.