The Structure and Challenges of the Law on Commercial Space (summary)

Souichirou KOZUKA
Professor of Law, Gakushuin University

With the advent of commercial activities in the outer space, in particular, those by the initiatives of global tech giants, the "law on commercial space" has recently attracted the lawyers' attention. It comprises of three or four layers, each with legal rules of different nature. The underlying layer is the framework constituted by the pubic international law, including the United Nations Outer Space Treaties and the Radio Regulations of the International Telecommunications Union. The second layer is the national space legislation to implement the U.N. Outer Space Treaties by licensing and supervising the space activities of non-governmental entities. The third layer is the commercial law rules of general nature, for example the law on contracts, financing, corporations and dispute resolution, applied to commercial space activities. These are not unique to space activities, but make up the most important part of the work for commercial lawyers engaged in space. Finally, there is the fourth layer being formed by voluntary norms among industry members, which may be labelled as "soft law".

Among the national space laws, which belong to the second layer of the law on commercial space, the earlier statutes have a narrow focus of just implementing the outer space treaties. However, more recent legislation introduces incentives for commercial entities, most typically by providing the government indemnification for damages arising from the space activities or limiting the government's right of recourse against the commercial entity that gives rise to the state liability under the Outer Space Treaties. A transition to yet another generation of national space legislation has not occurred, pending the developments of framework to control the space traffic as well as to govern the environmental aspects of commercial space activities to secure the long-term sustainability of the outer space.

Against these backgrounds, there has not been many debates over the conflict of law rules. As regards the law of torts for accidents in the outer space, the *lex delicti* rule faces challenges because of the basic principle that no state can claim territorial sovereignty for any part of the outer space. Some argue that the law of the state on whose registry the damaged object is carried may be applied, inspired by the conflict of law rules for a colli-

sion of vessels in the High Seas. Still, the idea should be carefully examined, given that the space objects are different from vessels in that they do not bear the nationality. For the law of contract, the limitation of liability of the operator of commercial space tourism against the passenger raises an interesting issue. While the passenger may qualify as a consumer and its interest may require consideration under the conflict of law rules of certain jurisdictions, the jurisdiction where the operator is located may have a municipal law providing for the limitation of the operator's liability, which can be evaluated as the governmental interest. Finally, there are larger difficulties with the law of property, for which the *lex rei sitae* cannot be identified in the outer space which is the territory of no state. It could be argued that the law of the state on whose registry the space object is carried may be the governing law, in line with the rule that such a state exercises the jurisdiction and control over the space object. Alternatively, under some legislation, such as Article 9 of the Uniform Commercial Code in the United States, the perfection of security interests may be made independently from the actual place where the property is located. All these issues are still open for academic debates in the future.