Chapter XV

Cross-Border Court Jurisdiction and Economic Law Application in Electronic Commerce

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ABSTRACT

The purpose of this chapter is to examine international jurisdiction and choice of law for e-commerce involving economic legal issues. International jurisdiction and choice of law will be determined under private legal principles, but as e-commerce involves economic law as a law to ensure national economic stability, the court may consider economic law with both private and public legal functions. At that time there may be some conflict of law involving state economic policy, and it must be considered how to coordinate the conflict and create a universal legal structure for non-territorial cyberspace. This chapter will propose three layers of legal structure for e-commerce: the private law layer, the economic law layer, and the criminal law layer, all of which have perspectives for borderless cyberspace.

INTRODUCTION

The more international transactions have been increasing, the more international disputes have been brought to courts. International civil cases include two main preliminary issues—international court jurisdiction, in which a court should have the jurisdiction to the international case, and choice of law, in which a law should be applied to the case. For both issues, in principle, the most appropriate court and law should be chosen to settle the dispute. As the rules to decide which court and law is appropriate are different from state to state, many authors have pointed out the inconvenience that there are no unified rules internationally. However, as opposed to
criminal and administrative cases, the exercises of the civil jurisdiction have rarely been protested by another state, because they belong to private legal issues.\(^1\)

However, recent private law has reflected economic policies of a state and the number of economic laws\(^2\) involving those policies has been increasing in many states. These statutes are competition law, financial transaction law, intellectual property law, and others. There are different views concerning which character the law has, public or private. However, originally, economic law intends to control private transactions from the viewpoints of public interests. Therefore, economic law naturally includes both public and private law functions, which should be emphasized on the basis of the position of each provision included in each statute. Of course, the dichotomy of public and private law is peculiar to continental law and not seen in common law countries. And, basically, if law is a system to ensure justice in a society, the difference between a dispute which should be settled privately and that which should be intervened publicly is relative and can not be always divided clearly. However, in order to divide the categories of public and private law for this chapter’s analysis, one possible criterion can be whether it is a rule for prosecution or private lawsuit.\(^3\)

Japanese economic laws are divided into three categories, depending on the criterion mentioned. First, laws with more public functions include antitrust law, foreign exchange and foreign trade law, and prize expression law. An offender against these laws is prosecuted according to their penalty clauses. Second, laws with more private functions, include unfair competition prevention law, consumer protection law, specific commercial transaction law, product liability law, and intellectual property law. These laws are basically quoted at civil cases though they are enacted to ensure proper economic transactions from public standpoints. Third, laws with public and private functions equally, includes financial law, for example, securities exchange law and investment law, and labor law, which have many penalty clauses as well as private contract provisions.

This section targets the second category and analyzes the characteristics concerning the decision of jurisdiction and choice of law when the economic law is applied to civil cases and the difference from the application of purely private laws. Because over-jurisdiction or biased choice of law may occur when economic law with specific state policy is applied, though in civil cases proper court and law most related to the case should be chosen for the dispute settlement as well as private autonomy being permitted. At that time, public order at the forum, such as protection of its residents and maintenance of legal order may be considered rather than impartial settlement of private transaction disputes. Then, recognition of jurisdiction is closely related to choice of economic law as applicable law at the forum because of its public character (Campbell, D., & Woodley, S., 2002\(^4\)).

As for normal transactions, we can see many achievements in such fields as product liability or consumer protection. Then, this section focuses on international e-commerce, which is expanding in the aspects of geography and the participants. In e-commerce, by electronic tools like the Internet, everyone can deal with other people worldwide. Therefore, both service providers and customers may have a transaction with insupposable kinds of persons. For these uncertain transactions, economic law may be significant to maintain legal order and protect nationals at the forum, and it is necessary to examine how the mentioned consideration affects the decision of international jurisdiction and choice of law.

From these standpoints, the next section will examine how the U.S., Europe, and Japan deal with the cases in relationship with economic law in a normal transaction. It will mainly discuss consumer protection law, product liability law, privacy and personality law, unfair competition prevention law, and intellectual property law as
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