

Chapter 3

Commercial Transactions (Commercial Affairs) and Legal Consequences

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Key focus: Articles 1–3, 4–5/A, 6–10, 19, 1530

In business life, “commercial” is not just a label.
It can change interest, liability, evidence, and even the steps
before you can sue.

What you will learn today

- Explain why the “commercial vs ordinary” label changes real outcomes
- Find the right source: statute → commercial custom → general private law
- Classify an act as a commercial affair under TCC Art. 3
- Use presumptions in TCC Art. 19 (merchant debts; relative commerciality)
- Predict key consequences: limitation rules, joint liability, surety, interest, late-payment rules
- Recognize commercial cases (Art. 4), competent courts (Art. 5), and mandatory mediation (Art. 5/A)

Class tip: We will use supply-chain examples (invoices, delivery, payment terms, guarantees).

I. Why “commercial” matters (classification is power)

In practice, the first question is often not “Who is right?” but “Is this commercial?”

1) Classify

Commercial affair? (Art. 3)
Presumptions? (Art. 19)

2) Pick rules

TCC + special statutes
Custom (Art. 1–2)

3) Apply consequences

Interest (Art. 8–10)
Joint liability (Art. 7)

4) Dispute path

Commercial case? (Art. 4)
Mediation? (Art. 5/A)

Typical business questions that depend on the label:

- Can I charge commercial interest without an explicit clause?
- If two people sign, can I claim the full amount from either one?
- Is an invoice accepted if nobody objects within 8 days?
- Which court is competent, and do I have to try mediation first?

Three key labels: provision, affair, case



Commercial provision (ticari hüküm)

A rule that counts as “commercial law”.

Includes:

- TCC rules
- Special rules in other statutes about a commercial enterprise

(Art. 1)



Commercial affair (ticari iş)

A transaction/act connected with commercial life.

Commercial if:

- regulated in the TCC, OR
- concerns a commercial enterprise

(Art. 3)



Commercial case (ticari dava)

A dispute treated as “commercial” for courts and procedure.

Matters:

- related to both parties’ enterprises, and
- specific “absolute” categories

(Art. 4–5)

Think: a “commercial affair” triggers commercial consequences; a “commercial case” triggers a commercial court + procedure.

II. How to apply legal sources (Art. 1)

Turkish commercial law is a “layer” on top of general private law.

1

1) Written commercial rules

TCC + special statutes about a commercial enterprise

2

2) Commercial custom (ticari örf ve âdet)

Used when there is no written commercial rule

3

3) General rules of private law

Civil Code + Code of Obligations (as the background)

Why this method matters

- Many “commercial” rules are outside the TCC (banking, insurance, transport, IP).
- Markets change faster than statutes → custom can fill gaps.
- But custom is not automatic; it has legal conditions (next slide).

Business tip

If your contract is short (common in logistics), practice + documents (invoices, emails) often decide the case.

III. Commercial custom vs. trade usage (Art. 2)

The law distinguishes “binding custom” from “mere habit”.

Commercial custom (örf ve âdet)

- Can act like law when there is no written rule (Art. 1).
- Must be accepted as “commercial custom” (not just repeated behavior).
- Can bind non-merchants only if they know or should know it (Art. 2/3).

Trade usage / practice (teamül)

- By itself, it is not the basis of judgment unless it becomes custom.
- But it can help interpret what the parties meant (Art. 2/1).
- Very important for short contracts + repeated shipments.

Priority rules (Art. 2/2): sector or local custom > general custom; if parties are in different regions, custom at place of performance applies (unless agreed otherwise).

How custom/usage affects contracts (simple examples)

In logistics, contracts are often “framework + practice”.

Example A (interpretation):

A contract says “delivery by end of week”. In your sector, this may mean “Friday 17:00” or “before the next working day”.

Example B (gap-filling):

A contract is silent on who books the return transport for pallets. If there is a stable, accepted practice in that market, it may fill the gap.

Evidence that matters:

- previous dealings
- invoices
- emails/WhatsApp
- standard forms
- expert opinions

Important limits

- 1) A practice becomes “custom” only if the market treats it as binding.
- 2) Courts do not apply custom against non-merchants unless they knew/should have known it.
- 3) Mandatory law still wins (custom cannot override mandatory rules).

IV. What is a “commercial affair”? (Art. 3)

Art. 3 has two “doors”. If either door is open, the affair is commercial.

Door 1: Subject-matter

If the matter is regulated in the TCC, it is commercial by definition.

Examples:

- unfair competition
- negotiable instruments
- maritime trade & insurance

Door 2: Enterprise connection

Transactions and acts “concerning a commercial enterprise” are commercial.

This often pulls Code of Obligations contracts into a commercial context:

- office lease • procurement • bank loan • service contracts

Key idea: “Commercial” may add extra consequences (interest, liability, procedure) even if the main contract rules come from the Code of Obligations.

How to test “enterprise connection” (practical)

Ask a functional question: “Was this done to run, support, or protect the enterprise?”

Helpful indicators

- Economic purpose: linked to business operations?
- Regularity: repeated / part of normal workflow?
- Documentation: issued under company name, invoiced, booked in accounts?
- Role of the party: acting as a business operator or privately?
- Risk and management: who decides and bears the risk?

Example: usually commercial

A logistics firm leases a warehouse, buys pallets, takes a working-capital loan, and signs a service-level agreement (SLA).

Example: usually NOT commercial

The owner buys a personal phone for family use and clearly keeps it outside the business (facts matter).

Quick check: commercial or ordinary?

Try to classify before we give the answers.

1. A company buys forklift batteries on 60-day credit.
2. A merchant signs a lease for a warehouse used for storage and dispatch.
3. A merchant buys a sofa for their living room (no business use).
4. A company signs a bank loan to buy delivery vans.
5. A private person sells a used bicycle to another private person.

Answer pattern (don't memorize): "regulated in TCC" OR "connected to enterprise" → commercial. For natural persons, check Art. 19 exceptions.

V. Presumptions of commercial character (Art. 19)

Presumptions simplify daily business: they set the default and shift the burden of argument.

Art. 19(1): Merchant debts are commercial (default)

If the debtor is a merchant (tacir), the law assumes their debts are commercial.

Exception (only for natural persons): the debt can be “ordinary” if:

- the merchant clearly said at the time it is NOT related to the enterprise,
- OR
- the circumstances are not suitable for commercial character.

Practical shortcut

- Companies usually do not have a “private life” → their obligations are almost always treated as commercial.
- For a person-merchant: look for clear personal purpose + clear communication.

Best practice for a natural person-merchant who wants the transaction to be non-commercial:

Put a clear sentence in writing (contract/email) at the time of contracting: “This transaction is not related to my commercial enterprise.”

Art. 19(2): “Relative commerciality” for contracts

If a contract is commercial for one party, it is commercial for the other too (unless a special law says otherwise).



Important exception idea

A special law can override this. Example: consumer protection rules may apply when the “other party” is acting as a consumer.

VI. What follows from commercial character?

Commercial law aims to support trade: speed, reliability, and credit.

Time limits (Art. 6)

Statutory limitation periods in commercial provisions cannot be changed by contract (unless the code allows).

Suretyship (Art. 7)

Commercial surety is strengthened; default interest against surety requires notification.

Late payment B2B (Art. 1530)

Extra protections in supply of goods/services between commercial enterprises (automatic default in many cases).

Joint liability (Art. 7)

If multiple debtors sign in a commercial context, joint and several liability is presumed (unless agreed otherwise).

Interest (Art. 8–10)

Rate freedom, narrow compound interest, and clear start rules tied to maturity/notice.

Procedure (Art. 4–5/A)

Commercial court competence and, for many monetary claims, mandatory mediation before filing.

1) Time limits and Art. 6 (why clauses can fail)

Commercial life needs predictable time horizons for accounting and risk management.

Rule (Art. 6)

If a statute sets a limitation period as a “commercial provision”, parties cannot change it by contract unless the law allows it.

What this means in practice

- Some “short time bar” clauses may not work as intended.
- But notice obligations (e.g., “notify defects in 2 days”) can still be valid if they do not illegally change limitation periods.

Example clause to discuss (class):

“All claims must be filed within 6 months, otherwise they are time-barred.”

Question: Does this try to change a statutory limitation period set by commercial provisions?

2) Joint and several liability (Art. 7)

In commercial matters, the law protects the creditor by default.

Trigger

Two or more persons become debtors due to a transaction that is commercial for at least one of them.



Default result (unless law/contract says otherwise):

Joint and several liability (müteselsil): creditor can claim the full amount from any one debtor.

Example (logistics):

Two companies sign as “buyers” for a long-term transport contract. If the invoice is unpaid, the carrier can sue either company for the full amount (unless the contract clearly makes liability several).

Managing joint liability risk (simple drafting tips)

If you want to **AVOID** joint liability

- Say it clearly: “Each debtor is liable only for its own share.”
- Define the shares (e.g., 60/40).
- Avoid ambiguous signing blocks (who signs as co-debtor, who signs as representative?).

Why clarity matters:

Without a clear clause, Art. 7 presumption may apply.

If you are the creditor

- Ask for co-debtors or strong security.
- Check authority (signature, representation).
- Document delivery and invoice receipt.

If you are a manager signing

- Make sure you sign “on behalf of the company” when intended.
- If you sign personally as co-debtor or surety, you may be liable for the whole debt.

3) Suretyship in commercial context (Art. 7)

Suretyship (kefalet) supports credit. In commercial settings, the law treats it as stronger security.

Key idea

For commercial debts, Art. 7 extends the “joint liability logic” to the relationships:

- principal debtor ↔ surety, and
- surety ↔ other sureties.

Result: creditors can often proceed more directly.

Notice protection

Default interest cannot be charged against a surety unless the surety is notified that the commitment/payment was not performed.

Practical takeaway for logistics managers:

If you sign as surety for a fleet loan or a long-term supply contract, assume the creditor will use the surety fast. Ask for clear information on default and keep copies of notices.

4) Interest in commercial affairs (Art. 8–10): basics

Two common types of interest

- Principal interest (anapara faizi): price for using money over time
- Default interest (temerrüt faizi): runs after payment is due and unpaid

What the TCC adds

- Freedom to set the interest rate in commercial affairs (Art. 8/1)
- Strict limits on compound interest (Art. 8/2)
- When interest starts: maturity or notice (Art. 10)
- Statutory interest details come from other legislation (Art. 9)

Business meaning

Interest is not “boilerplate”.
It changes pricing and cash-flow planning.
Clear payment terms reduce disputes.

Art. 8: rate freedom + limits

Art. 8/1 (simple)

In commercial affairs, the parties may freely determine the interest rate.

Consumer law reminder

Rules on consumer protection are reserved. A merchant dealing with a consumer cannot “escape” consumer protections by calling the deal commercial.

Common drafting choices (B2B)

- State maturity (e.g., “30 days from invoice receipt”).
- State default interest rate or formula (avoid uncertainty).
- State how notices are sent (email/KEP) and keep evidence of delivery.

Art. 10: When does interest start?

The start date matters a lot in late-payment disputes.

Default rule (Art. 10)

- If there is a maturity date → interest runs from the end of maturity.
- If there is no fixed maturity → interest runs from the date of notice (ihtar).

Example (invoice-based maturity)

Invoice issued: 1 March

Payment term: 30 days from invoice receipt

Receipt proven: 3 March

Maturity ends: 2 April

→ Interest starts: 3 April (unless a different agreement exists).

Compound interest: allowed only in narrow cases (Art. 8/2)

“Interest on interest” can grow fast, so the TCC allows it only with safeguards.

Valid only if ALL are true:

- 1) It is a current account (cari hesap), OR a loan that is commercial for BOTH parties
- 2) Compounding period is at least 3 months
- 3) The parties are merchants (non-merchants are protected)

Risk message

If you see a compounding clause in a B2B finance document, check whether it matches Art. 8/2. If it does not, the interest operated in violation is null.

VII. Late payment in B2B supply (Art. 1530)

Art. 1530 targets a common problem: powerful buyers delaying payment.

Core effects (simplified)

- Applies to supply of goods/services between commercial enterprises (B2B).
- In many cases, default happens automatically when the payment period ends (no extra notice needed).
- Interest can accrue even if the contract is silent.

Documentation becomes “legal”

Your operational records can decide the default date:

- proof of delivery (PoD)
- invoice receipt time
- acceptance reports
- emails about defects/returns

Rule-of-thumb timeline (often used):

Delivery + invoice → payment period (e.g., 30 days) → automatic default → interest + costs

VIII. Commercial cases & courts (Art. 4–5)

Commercial affairs affect procedure: which court and which steps come first.

Art. 4 (simplified)

A dispute is a commercial case when:

- it arises from matters related to BOTH parties' commercial enterprises, OR
- it falls into “absolute” categories listed in Art. 4 (many TCC matters).

Practical point: some disputes are commercial even if one party is not a merchant.

Art. 5 (court)

Commercial Court of First Instance (Asliye Ticaret Mahkemesi) hears commercial cases.

If there is no separate commercial court locally, the civil court may hear it.

Why this matters for business people:

Wrong route = delay. You need correct forum + correct “pre-steps” (mediation) before litigation.

IX. Mandatory mediation before suit (Art. 5/A)

For many commercial money claims, you must apply to a mediator before filing a lawsuit.

Scope (simplified)

Applies to commercial cases (Art. 4 and other laws) where the claim is:

- payment of money (receivable), or
- compensation, and related actions (e.g., cancellation of objection).

Timing

Mediator finishes in 6 weeks; may extend up to 2 weeks in mandatory cases (Art. 5/A).

Practical workflow for a company claim

Collect documents → calculate claim → apply to mediator → (settle or final report) → file lawsuit if needed

X. A simple analysis checklist (use in exams & work)

When you see a business dispute, follow these steps.

- 1) Is it regulated in the TCC? (If yes → commercial.)
- 2) If not, does it concern a commercial enterprise? (Art. 3)
- 3) Do presumptions apply? (Art. 19: merchant debts; relative commerciality)
- 4) Which consequences activate? (Art. 6–10; 1530; plus contract terms)
- 5) Is it a commercial case? (Art. 4) Which court? (Art. 5)
- 6) Is mediation mandatory before suit? (Art. 5/A)

Think of it as: label → consequences → dispute path.

Case study 1: Late payment for transport services

Scenario

CarrierCo transports goods for RetailCo every week. Delivery is completed and the invoice is emailed the same day. The contract says “payment within 30 days from invoice receipt” but says nothing about interest. RetailCo pays 90 days late.

Questions

- Is the relationship a commercial affair? Why?
- Can the carrier claim interest even if the contract is silent?
- Before suing for payment + interest, is mediation required?

Answer (teacher notes)

- 1) Yes. It concerns the commercial enterprises of both parties (Art. 3 enterprise connection; also B2B service).
- 2) Likely yes: default interest can run under general commercial interest rules (Art. 8–10, 9) and, if conditions fit, Art. 1530 may strengthen the claim in B2B supply/services.
- 3) Yes for monetary receivable claims that are commercial cases: apply to mediator first (Art. 5/A).

Case study 2: Merchant with “two hats”: personal purchase

Scenario

Ayşe operates a small wholesale business (she is a merchant). She buys a family car on installments for private use. The seller later sues for unpaid installments and argues the debt is commercial.

Questions

- What is the default under Art. 19(1)?
- How can Ayşe rebut the presumption?
- What other body of law might also matter?

Answer (teacher notes)

- 1) Default: a merchant’s debts are commercial (Art. 19/1).
- 2) As a natural person merchant, she may rebut if she clearly informed at the time that it is not related to her enterprise, or if circumstances show it is unsuitable to be commercial (purely personal).
- 3) Consumer protection rules may apply if she acted for non-professional purposes (special law can override Art. 19/2 logic).

Case study 3: Two signatories on a fleet lease

Scenario

FleetLease Ltd. leases trucks to FastShip Ltd. The contract is signed by FastShip and also by its parent company as “co-debtor”. FastShip defaults. FleetLease demands the full debt from the parent company.

Questions

- Does Art. 7 apply?
- What can the parent do if it pays?
- How could the parties have limited this risk in drafting?

Answer (teacher notes)

- 1) Yes, if the debt arises from a commercial transaction for at least one debtor, joint and several liability is presumed unless the contract says otherwise (Art. 7).
- 2) If it pays, the parent typically has recourse against FastShip based on their internal relationship (group agreement, contract, etc.).
- 3) A clear clause stating several liability only (and defining shares) could exclude Art. 7 presumption.

Case study 4: Surety and default interest notice

Scenario

A bank loan for warehouse expansion has a surety. The principal debtor misses payments. The bank waits 8 months and then sues the surety for principal + default interest, without any earlier notice to the surety.

Questions

- Which point in Art. 7 matters?
- What is the result for default interest?
- What should a surety do in practice?

Answer (teacher notes)

- 1) Art. 7 says default interest cannot be charged against sureties unless they are notified that payment was not made or obligation not fulfilled.
- 2) The surety can argue default interest should not run (or should not run for the period before notice) due to lack of required notification.
- 3) Ask for prompt notice clauses, monitor the debtor's performance, and keep written records.

Case study 5: Forum and mediation check

Scenario

Two companies dispute an unpaid invoice for warehousing services. The creditor files directly in court without mediation. The defendant says: “This is a commercial case, you must mediate first.”

Questions

- Is it a commercial case?
- Which court is generally competent?
- What happens if mediation was skipped?

Answer (teacher notes)

- 1) Yes: it arises from matters related to both parties' commercial enterprises (Art. 4).
- 2) Commercial Court of First Instance is generally competent (Art. 5).
- 3) For many monetary commercial claims, mediation is a condition of litigation under Art. 5/A; skipping it can cause procedural rejection/delay until the condition is met.

MCQ 1: Concept check

If there is no written commercial rule for a commercial matter, what is the next source the court applies?

- A) General provisions directly
- B) Commercial custom
- C) International trade law automatically
- D) Only the contract text

MCQ 2: Concept check

Which statement is correct under Art. 2?

- A) Any repeated practice is automatically binding custom
- B) Trade usage can never be used in court
- C) A convention can help interpret intent even if it is not binding custom
- D) Local customs always lose to general customs

MCQ 3: Concept check

Under Art. 3, which is a “commercial affair”?

- A) Only acts between two merchants
- B) Only acts written in the TCC
- C) Matters regulated in the TCC AND acts concerning a commercial enterprise
- D) Only acts that create profit

MCQ 4: Concept check

Art. 19(1) says a merchant's debts are commercial. Which merchant can rebut this presumption?

- A) A legal entity merchant
- B) A natural person merchant, in limited cases
- C) Any merchant without explanation
- D) No one can rebut it

MCQ 5: Concept check

Art. 19(2) mainly aims to:

- A) Split one contract into two regimes
- B) Make the contract commercial for both parties if it is commercial for one
- C) Remove all consumer protections
- D) Apply only to tort claims

MCQ 6: Concept check

In a commercial context with two or more debtors, Art. 7 creates a presumption of:

- A) Several liability only
- B) Joint and several liability
- C) No liability unless written
- D) Strict criminal liability

MCQ 7: Concept check

A compound interest clause is valid only when:

- A) The creditor wants it
- B) It is a current account or a loan commercial for both parties AND at least 3 months period
- C) It is written in any invoice
- D) One party is a consumer

MCQ 8: Concept check

If a commercial debt has no fixed maturity, interest generally starts from:

- A) The contract signing date
- B) The invoice printing date
- C) The notice date (ihtar)
- D) The delivery date, always

MCQ 9: Concept check

Which statement best describes a “commercial case” in Art. 4?

- A) Any dispute involving money
- B) Only disputes between merchants
- C) Disputes related to both parties’ enterprises, plus certain listed “absolute” categories
- D) Only disputes about shipping

MCQ 10: Concept check

For many monetary commercial claims, before filing a lawsuit the claimant must:

- A) Apply to a mediator
- B) Apply to the Chamber of Commerce
- C) Send a notarized warning always
- D) Open enforcement proceedings only

Wrap-up: 6 takeaways for logistics professionals

- 1) Start with classification: commercial affair (Art. 3) + presumptions (Art. 19).
- 2) Sources follow an order: written rules → commercial custom → general law (Art. 1–2).
- 3) Commercial label can change liability (Art. 7) and interest (Art. 8–10).
- 4) Late payment rules (Art. 1530) make documentation (invoice/PoD) legally crucial.
- 5) Commercial cases go to commercial courts (Art. 4–5).
- 6) For many money claims, mediation is not optional (Art. 5/A).

Next: we will connect these ideas to specific contract types (sales, carriage, agency, negotiable instruments).