

Commercial Affairs

- Being the focus concept of objective system
- Definition: All matters, subjects regulated in the TCC, as well as acts and transactions concerning the commercial enterprise are commercial affairs.
- Two possibilities:
 - A) all matters regulated in the TCC
 - B) matters not regulated in the TCC concerning a commercial enterprise



1

Presumptions of Commercial Affair

First Presumption: All debts and all transactions of the merchants have the characteristics of the commercial affair

Not absolute presumption for real traders

Absolute presumption for legal entity traders

2

Presumptions of Commercial Affair

Second Presumption: if a contract is a commercial affair for one of the parties, this contract is also considered as a commercial affair for the other party of the contract

Relationship between the parties must arise from a contract

Exceptions may be due to the specific regulations in TCC

3

Special Consequences of Commercial Affair Nature

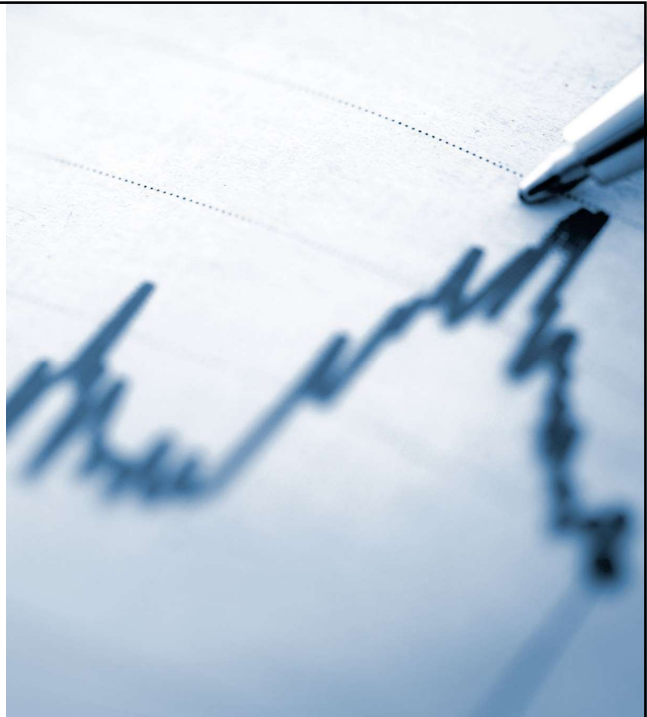
- 1-Presumption of Joint Liability:
- 2-Presumption of Joint Surety / Bail:
- 3- Different Provisions related to Interest in Commercial Affairs



4

1-Presumption of Joint Liability

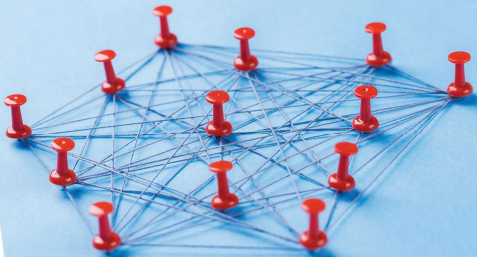
- In commercial affairs:
 - Joint liability is a rule. Ordinary liability is a exception
 - Exeption should be stated in the agreement
- In Non-commercial affairs:
 - Ordinary liability is a rule. Joint liability is a exeption
 - Exeption should be stated in the agreement



5

2-Presumption of Joint Surety / Bail:

- Kind of collateral methods: Surety
- There are two kinds. Ordinary suretyship and joint suretyship.
- Ordinary suretyship: Rule in non-commercial affairs Exception in commercial affairs.
- Joint suretyship: Rule in commercial affairs Exception in non-commercial affairs,
- Exceptions should be decided in the agreements.



6

3-Different Provisions related to Interest in Commercial Affairs

- Interest : Legal return of money debts.
- Types:
 - legal interest - contractual interest,
 - simple interest - compound interest,
 - principal interest - default interest

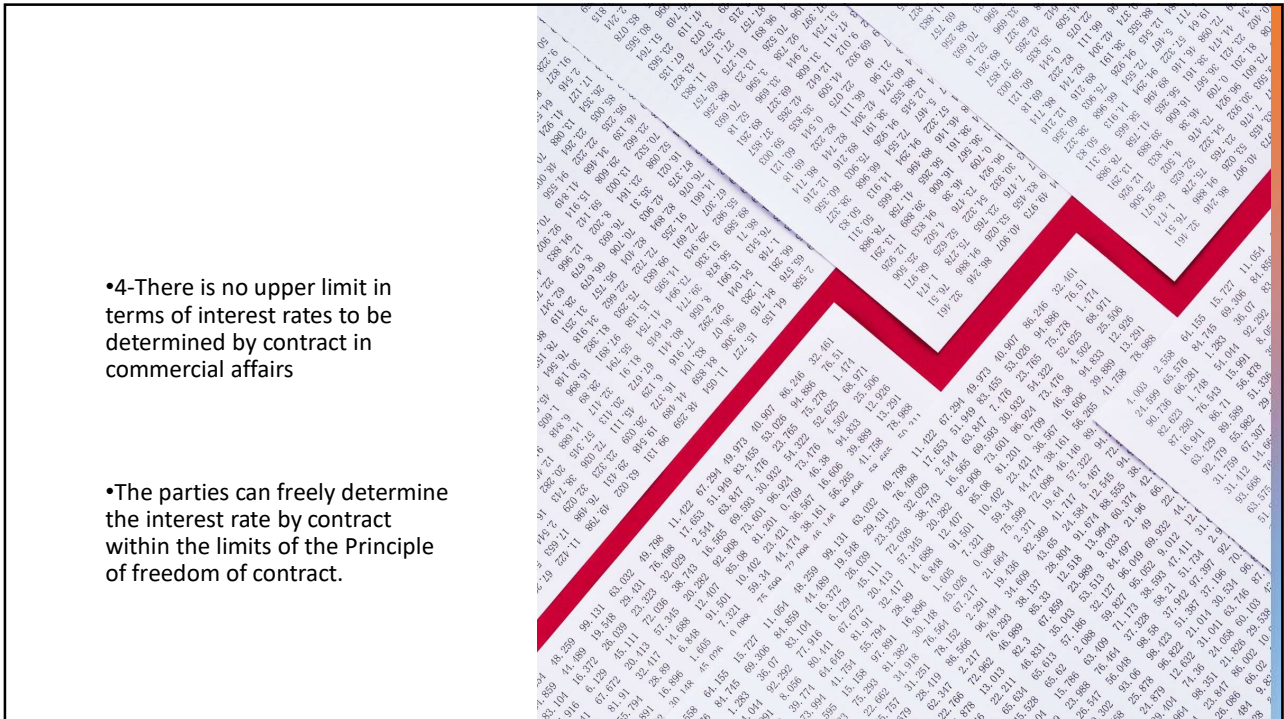


7

- 1-Capital interest is automatically in applied commercial loan agreements
- 2-Rediscount rates may be demanded by the creditors without need to be determined in the agreement
- 3- Compound interest may be applied in commercial affairs in two exceptional cases
 - Commercial loans
 - Checking accounts



8



•4-There is no upper limit in terms of interest rates to be determined by contract in commercial affairs

•The parties can freely determine the interest rate by contract within the limits of the Principle of freedom of contract.



Commercial Provisions / Terms

- Definition:
- All provisions in the TCC
- The provisions in other legislation sources concerning a commercial enterprise

Order of provisions to be applied in commercial cases:



- Mandatory provisions of the laws,
- Contractual provisions that are not contrary to the mandatory provisions of the laws,
- Non-mandatory provisions of the laws.
- Customs and traditions of the commercial life,
- The provisions of the laws which are neither mandatory nor commercial,
- Non-commercial customs,
- The use of the judge's power to create law