

ISTANBUL UNIVERSITY
Department of Transport and Logistics
Commercial Law
NAME.....SURNAME.....
ID.....

Exam Instructions and Rules

1. The exam consists of 5 questions.
2. Each question is worth 20 points, making the total score 100 points.
3. The exam will be conducted between 15.00 and 16.00 on 24/06/2024
4. You will have 60 minutes to complete the exam.
5. Students are allowed to use their textbooks during the exam. Printouts of presentations, other notes, and papers are all allowed.
6. Carefully read all instructions on the question paper and listen to any verbal instructions from the invigilators.
7. No talking or exchanging of materials with other students. Ensure your eyes remain on your own work.
8. Use your time effectively. Monitor the clock and pay attention to any time warnings provided by the invigilators.
9. Stop writing immediately when the end of the exam is announced. Continuing to write after time is called may result in penalties.
10. Ensure your name, student ID, and any other required information are on all answer booklets and sheets.
11. If you have any questions or need clarification during the exam, raise your hand, and an invigilator will assist you.
12. Do not discuss the exam content with peers immediately after the exam

CASE QUESTION 1 (25 POINTS)

Three friends, **A**, **B**, and **C**, decide to open a hotel together in **Datça**:

- **A** owns an **empty building** and allows it to be used for the hotel.
- **B** agrees to **pay for all renovation costs**.
- **C**, who is an **architect**, handles the **renovation**, and it is agreed in writing that **C will not be liable for any damages**.

C signs a contract with a construction company for **800,000 TL**, but **B** objects to the cost afterward.

The hotel opens, earns a **profit of 150,000 TL**, and **C** divides the profit equally among all three.

A and B object:

- **A** says he brought the building.
- **B** says he paid all the money.

Later, **C** wants to see the partnership records, but **A** and **B** say he is not really a partner.

C's creditor, K, collects **C's** share through **compulsory enforcement**, and claims he is now a **partner**.

A and **B** disagree and continue the business by themselves.

QUESTIONS

1. Do **A**, **B**, and **C** have a valid **ordinary partnership (adi ortaklık)**?

- What are the **elements** of an ordinary partnership?
- Has each person contributed something?
- Is profit-sharing agreed?

2. Was **C** allowed to **sign the 800,000 TL construction contract** on behalf of the partnership?

- Is the partnership responsible for this debt?
- Can **B** object after the contract was made?

3. Can **K**, as **C's** personal creditor, become a **partner** by collecting **C's** share?

- What does the law say about creditors and partner shares in an ordinary partnership?
- Can **A** and **B** refuse to continue with **K**?

ANSWERS:

1. Do **A**, **B**, and **C** have a valid **ordinary partnership (adi ortaklık)**?

Answer:

Yes, a valid **ordinary partnership** exists.

- Elements of an ordinary partnership:
 - Mutual agreement,
 - Contribution (money, goods, labor),
 - Joint operation of a commercial activity,
 - Intention to share profits and losses.

In this case:

- A contributed the **building**,
- B provided **money**,
- C provided **labor (renovation)**,
- They agreed to **share profits** (even if orally or implied).

So, all legal elements are present.

2. Was C allowed to sign the 800,000 TL construction contract on behalf of the partnership?

Answer:

Yes, C could sign if he was **acting with implied or express authority** as a partner.

- In ordinary partnerships, **each partner** has the right to **manage and represent** the partnership unless restricted.
- There is **no evidence** that C's authority was limited.
- Therefore, the partnership is **bound by the contract** with the construction company.

B cannot object afterward, because C acted within the **scope of partnership affairs**, and partners are jointly responsible for obligations.

3. Can K, as C's personal creditor, become a partner by collecting C's share?

Answer:

No, **K cannot automatically become a partner**.

- In an ordinary partnership, shares **cannot be transferred** to third parties without **unanimous consent** of other

partners (Turkish Code of Obligations Art. 640).

- K may request the **monetary value** of C's share (liquidation), but **not the status of a partner**.

A and B are legally allowed to **refuse to continue the partnership with K**.

CASE QUESTION 2 (25 POINTS)

İris Giyim' is a commercial business headquartered in **Istanbul**, with a store in **Bodrum**. It appoints **T** as a manager to run the **Istanbul store**. T is authorized to handle all affairs of the Istanbul store, and this **limitation is registered and announced** in the **Commercial Register**.

Despite this, **T signs a sales contract in Bodrum** with merchant **B**, using the stock of the **Bodrum store**. B pays the full price in advance, but **İris Giyim (A) refuses delivery**, claiming T was not authorized to sell goods from the Bodrum store.

Later, **A sells both stores (Istanbul and Bodrum)** to merchant **D** under a contract that:

- (i) excludes the **name "İris Giyim"**, and
- (ii) excludes **debts incurred before the transfer**.

This sale was **registered and published on 11 December 2023**.

Meanwhile, **C**, who sold fabric to **A** on **8 September 2023**, has still not been paid. On **4 January 2024**, **C starts enforcement proceedings against D** to collect the unpaid amount.

QUESTIONS

1. What is the legal relationship between (A) and (T)? Was (T) allowed to sell from the Bodrum store's inventory?

Answer:

- T is a **commercial representative (ticari mümessil)** authorized only for the **Istanbul store**.
- This **limitation was registered and published**, so it can be enforced **against third parties**.
- Since the contract with B concerns the **Bodrum store**, T **exceeded his authority**.
- Therefore, A is **not legally bound** by the contract with B.

2. Can the business name “İris Giyim” be excluded from the transfer? Is it legal?

Answer:

- "İris Giyim" is a **commercial (trade) name** (ticaret unvanı).
- Normally, when a commercial enterprise is transferred, the trade name is **included** unless **otherwise agreed**.
- In this case, the contract clearly **excludes the trade name**.
- Since the exclusion is **in writing** and the transfer was **registered and announced**, it is **legally valid** to **exclude the trade name** from the transfer.

3. Can (C), the fabric seller, collect the unpaid debt from (D), the new owner?

Answer:

There are **two views** on this:

- **First view (majority opinion):**
Under **Civil Code Art. 202**, when a commercial enterprise is transferred, the **new owner is responsible for prior debts** even if the contract excludes them — **unless the creditor was notified**.
→ So, **D may still be responsible** to C for the unpaid fabric.
- **Second view:**
Since the contract **excluded old debts** and the transfer was **registered and published**, **C cannot claim** the debt from D.
→ C must pursue A instead.

Students can defend either view with reasoning. Full points for explaining both positions.

TEST QUESTIONS (2.5 POINTS EACH)

1. Which of the following is *not* a book (division) of the Turkish Commercial Code?

- a) Negotiable Instruments Law
- b) Insurance Law
- c) Commercial Enterprise Law
- d) Maritime Law
- e) Law of Obligations

2. What is the foundational system adopted by the Turkish Commercial Code?

- a) Freedom of contract
- b) Mixed system
- c) Objective system
- d) Subjective system
- e) Commercial entity model

3. Which of the following best reflects a characteristic of a commercial enterprise?

- a) Engaging solely in manufacturing
- b) Operating for at least one year
- c) Aiming to make profit
- d) Creating innovative products
- e) Having public ownership

4. Which of the following is *not* a requirement for a unit to qualify as a branch of a commercial enterprise?

- a) Separate bookkeeping
- b) Smaller than the head office
- c) Independent in external affairs
- d) Operated under the same ownership
- e) Located at a different address

5. Who among the following may act as the pledger in a movable pledge agreement under commercial law?

- a) A real person merchant
- b) A self-employed professional
- c) An agricultural cooperative
- d) A tradesperson
- e) All of the above

6. Which of the following is *not* a legal consequence of conducting a commercial business?

- a) Application of joint liability rules
- b) Interest may be demanded without prior agreement
- c) Legal interest rate is higher
- d) Merchants may charge compound interest
- e) Merchants are presumed to be more credible in court

7. In what way is interest in commercial transactions different from interest in non-commercial transactions?

- a) Legal default interest rate is higher
- b) Contractual interest must be in writing
- c) Interest cannot exceed the principal
- d) Interest only accrues upon default
- e) Parties are restricted in setting rates

8. Which statement is correct regarding the classification of commercial business?

- a) All acts by a merchant are presumed to be commercial
- b) Only registered activities are considered commercial
- c) A court decision is required to define a business as commercial
- d) TCC does not regulate classification
- e) Tax status determines commerciality

9. Which legal source is *third* in the hierarchy for resolving commercial disputes?

- a) General provisions of the law
- b) Mandatory statutory rules
- c) Parties' contractual terms
- d) Provisions of the Turkish Commercial Code
- e) Commercial customs and usages

10. At what point is a natural person legally considered a merchant under Turkish law?

- a) Upon trade name use
- b) Upon registry announcement
- c) Upon operation of a commercial enterprise
- d) Upon certification of trade books
- e) Upon registration in the chamber

11. When does a commercial company officially acquire the status of "merchant"?

- a) When it commences business
- b) When it is entered in the trade registry
- c) When it holds a general meeting
- d) When its name is publicly announced
- e) When its business plan is approved

12. Which of the following *cannot* be considered a merchant under Turkish commercial law?

- a) Association
- b) Foundation
- c) State-owned enterprise
- d) University
- e) Married woman

13. Which is *not* a legal obligation arising solely from being a merchant?

- a) Duty to act honestly
- b) Duty to act as a prudent businessman
- c) Obligation to register in the trade registry
- d) Being subject to bankruptcy
- e) Commercial presumption of transactions

14. Which document is typically issued to confirm verbal contractual agreements made by phone or in person?

- a) Invoice
- b) Remittance advice
- c) Formal notice
- d) Confirmation letter
- e) Offer letter

15. What is the primary method for entering records into the trade registry?

- a) By court order
- b) By public officer's discretion
- c) Upon written application
- d) Upon notification
- e) As part of official audit

16. Which of the following serves to differentiate one merchant from another?

- a) Trademark
- b) Industrial design
- c) Trade name
- d) Patent
- e) Business license

17. Which condition is *sufficient* on its own to establish unfair competition?

- a) Presence of damage
- b) Competitor's fault
- c) Risk of harm
- d) Abuse of commercial competition rights
- e) Intent and fault

18. Which is *not* a requirement for a merchant's books to be used as evidence in their favor?

- a) Opposing party must also be a merchant
- b) Transaction must be commercial for both sides
- c) Mandatory books must be duly kept
- d) Records must corroborate each other
- e) Books must be kept personally by the merchant

19. Which of the following is considered an *independent commercial assistant*?

- a) Commercial representative
- b) Sales agent
- c) Transportation broker
- d) Employee
- e) Marketer

20. Which activity can a commercial agent perform *without* special authorization from the principal?

- a) Sale of immovable property
- b) Taking a loan
- c) Drawing bills of exchange
- d) Performing routine commercial acts
- e) Filing lawsuits

21. What is the statute of limitations for bringing an unfair competition lawsuit?

- a) 2 years from awareness, 10 years in total
- b) 1 year from awareness, 3 years from the event
- c) 1 year from awareness, 20 years in total
- d) No statutory limitation applies
- e) 1 year from awareness, 21 years in total

22. Which of the following defines a commercial enterprise under the TCC?

- a) Public institution conducting economic activity
- b) Entity formed by seven or more people
- c) Independently operated business aiming for income above the craftsman threshold
- d) State-supervised organization
- e) Firm not aiming to profit but conducting continuous activity

23. Which statement is *incorrect* about current accounts and limitation periods?

- a) Account terminates upon bankruptcy or notice
- b) Lien on account balance can trigger termination
- c) Claims expire after 5 years from termination
- d) Account cannot be settled at agreed closing time
- e) Death in fixed-term agreements allows 10-day notice termination

24. Which statement correctly reflects the legal nature of a commercial enterprise?

- a) Incidental activity does not negate commercial status
- b) Losses prevent classification as a commercial enterprise
- c) Only full-time operations qualify
- d) Revenue must exceed national average
- e) Business must be incorporated

25. Which company type is most commonly found in simple or everyday commercial relations?

- a) Joint-stock company
- b) Ordinary partnership
- c) Limited partnership
- d) General partnership
- e) Unlimited liability company

26. Which of the following transactions may a commercial representative carry out *only* if they have been granted *explicit* authority by the merchant?

- a) Concluding a service agreement
- b) Entering into foreign exchange obligations
- c) Leasing movable or immovable assets
- d) Transferring ownership of immovable property
- e) Appointing another commercial agent

27. Who holds the legal authority to appoint a commercial representative under the Turkish Commercial Code?

- a) Judges of the competent commercial court
- b) The individual who operates the commercial enterprise
- c) The Board of Representatives
- d) A legally appointed guardian
- e) The Ministry of Trade

28. The fact that commercial companies possess a legal personality distinct from their shareholders—such as having their own nationality, domicile, and legal capacity—becomes effective upon which of the following events?

- a) Upon the execution of the company agreement by the partners
- b) Upon notarization of the partners' signatures in the company contract
- c) Upon registration of the company in the trade registry
- d) Upon obtaining incorporation approval from the Council of Ministers
- e) Upon mutual agreement of the partners to establish the company

Q. No	Correct Answer	Explanation (Brief, if needed)
1	e) Law of Obligations	Not a book of the TCC (It's under the Turkish Civil Code system)
2	c) Objective system	TCC adopts the objective system to define commercial acts
3	c) Aiming to make profit	Fundamental trait of commercial enterprises
4	c) Independent in external affairs	A branch must act under the control of the main office
5	e) All of the above	Movable pledge law allows a broad pledging party scope
6	e) Merchants are presumed to be more credible in court	This is not a legal consequence under TCC
7	a) Legal default interest rate is higher	Under TCC, interest rates in commercial transactions are higher
8	a) All acts by a merchant are presumed to be commercial	Legal presumption under TCC Art. 19
9	d) Provisions of the Turkish Commercial Code	Third in hierarchy after mandatory rules and contract
10	c) Upon operation of a commercial enterprise	Merchant status arises by conduct, not registration
11	b) When it is entered in the trade registry	Legal personality begins with registration
12	d) University	Public universities cannot be merchants under law
13	c) Obligation to register in the trade registry	Not all merchants are obligated to register (e.g., tradesmen)
14	d) Confirmation letter	Used to formalize oral agreements
15	c) Upon written application	Main method under the Trade Registry Regulation
16	c) Trade name	Legally distinguishes one merchant from another
17	d) Abuse of commercial competition rights	A single act of abuse is sufficient
18	e) Books must be kept personally by the merchant	May be kept by others; not a condition for evidentiary value
19	c) Transportation broker	Independent auxiliary to a merchant
20	d) Performing routine commercial acts	Does not require special authority
21	b) 1 year from awareness, 3 years from the event	TCC Art. 60 governs unfair competition time limits
22	c) Independently operated business aiming for income above the craftsman threshold	Definition of commercial enterprise under TCC Art. 11
23	d) Account cannot be settled at agreed closing time	Incorrect; settlement is due at agreed closure date

Q. No	Correct Answer	Explanation (Brief, if needed)
24	a) Incidental activity does not negate commercial status	Even minor activity may qualify as commercial
25	b) Ordinary partnership	Common form of informal company
26	d) Transferring ownership of immovable property	Requires express written authorization under TCC Art. 547
27	b) The individual who operates the commercial enterprise	Only the merchant may appoint a commercial representative
28	c) Upon registration of the company in the trade registry	Legal personality begins upon registration (TCC Art. 36)