

CASE PRACTICE 1

Three friends who decided to jointly operate a hotel have entered into a written agreement regarding the renovation of an empty building located in Datça and belonging to (A), with the costs to be borne by (B) and the renovation to be carried out by architect (C).

The parties have also agreed that (C) shall not be liable for any damages. C immediately began the necessary procedures for the renovation of the hotel and entered into an agreement with the construction company X on behalf of the partnership. The renovation cost was agreed to be 800,000 TL. Upon learning of this amount, (B) objected to the transaction, claiming that the amount was too high.

As a result of the hotel being renovated, opened with a grand ceremony, and business running smoothly, the first profit of 150,000 TL was distributed equally among all partners by (C). Upon this, (A) and (B) objected to the distribution of the profit. (B) stated that all expenses were covered by him, and (A) stated that the property was originally brought by him, and that the profit should be distributed according to the ratio of each partner's capital to the total capital.

Concerned about the disputes within the partnership, (C) sought to examine the partnership's records, but (A) and (B) stated that (C) was only an architect involved in the restoration of the hotel and that it was not possible for him to examine the records.

Facing severe economic difficulties, (C) has become unable to repay his debts. For this reason, (K), who was (C)'s personal creditor, ensured that (C)'s share in the company was liquidated and converted into cash through compulsory execution. Although (K) stated that he was now the new partner in the company, (A) and (B) decided to continue the partnership among themselves.

1-) Is the agreement between (A), (B) and (C) valid? If valid, describe the legal relationship established. List the elements of this legal relationship.

An ordinary partnership is established by a contract between two or more persons who undertake to combine their labour and property for a common purpose. Each partner is obligated to contribute a share to the partnership in the form of money, receivables, other property, or labour. The ordinary partnership agreement, which is established by the mutual consent of the parties and is subject to the general provisions of the Law of Obligations, is, of course, bound by the grounds for invalidity set forth in the Turkish Code of Obligations. For example, the provisions on fraud or undue influence apply here, and the parties' intentions must not be vitiated by any defect of will. 'The ordinary partnership agreement is formed when the last partner's declaration of intent reaches the other partners. If even one partner fails to express their intent to accept, a binding partnership agreement does not arise for the partners who have expressed their intent.' The formation of a partnership agreement is not subject to any specific form under the law. However, if the transfer of the value contributed as capital, i.e., the share of participation, is subject to a specific form, the partnership agreement also becomes subject to that form. In our case, we are dealing with a simple partnership agreement.

The parties may enter into it either in writing or orally. There is freedom of form, but it is recommended that it be in writing for evidentiary purposes.

Elements:

1 - Personal Element: At least two persons must exist for a simple partnership agreement to come into existence. Thus, if the number of partners decreases to one for any reason, the partnership terminates. Partners may be natural or legal persons.

2 - Capital Element: The partners undertake to contribute to the partnership the capital necessary to achieve the common purpose of the partnership. The capital contributed may be money, receivables, other property, or labour. However, 'unless otherwise agreed in the agreement, the contribution shares must be of equal importance and quality as required by the purpose of the partnership and must be equal to each other.' Partners are not required to contribute the same type of contribution shares.

3- Contractual Element: A general partnership is a contract based on Article 6202 of the Turkish Code of Obligations (TCO), whereby two or more persons combine their labour or property for a common purpose. The partnership is established by the mutual expressions of intent of the partners. This contract establishes a non-legal entity. Therefore, the general provisions of the TCO apply.

4- Common Purpose Element: For there to be a common purpose, the goal sought to be achieved through the contract must be common to all partners. The purpose of the partners must be single and the same; however, this purpose must not be such that the personal interest of one partner is fulfilled by the other partners. The purpose may be economic or ideal, temporary or permanent. However, it must not be impossible, contrary to law, morality, or public order.

5- In doctrine, the existence of another element known as '*affectio societatis*' (*the element of working together on an equal footing to achieve a common purpose*) is also recognised. 'This element not only distinguishes the ordinary partnership from other contractual relationships but also forms the basis for the prohibition of competition and the right of supervision of the partner.'

2-) Is it possible for (A) to transfer only the right to use the immovable property?

TCC 131/2 Unless otherwise agreed in the company contract or articles of association, the ownership of the assets contributed as capital belongs to the company and the rights are transferred to the company. The transfer of ownership is the primary principle. When ownership is transferred, the provisions of the sales contract apply. If it is a lease, the provisions of the lease contract apply.

3-) Is the contractual provision that (C) shall not participate in the losses of the partnership valid? Can such an exemption be granted to other partners by specifying it in the contract?

Labour or property can be contributed as capital. Here, he has contributed his labour. An agreement that a partner shall participate only in profits without sharing in losses is valid only for a partner who has contributed only his labour as his share. (Lionshare)

CASE PRACTICE 2

(A) Association, established on 25 February 2023 as a public benefit association, registered its four-star hotel in Antalya, which would only provide services during the summer months, in the commercial register on 10 April 2024 and began accepting guests at the hotel as of 30 May 2025.

(A) Association, through its authorised representative, entered into an agreement on 15 May 2024 with (D), a merchant operating in the textile sector in Denizli, to purchase 2,500 sets of bed sheets and duvet covers with the same design for use in the hotel, for a total of 150,000 TL. Pursuant to this agreement, the invoice dated 15 May 2024 issued by (D) was delivered to (A) Association on 18 May 2024 along with the sheets; the bedding sets were to be delivered on 20 May 2024, as stated in the same invoice. Upon noticing that 2,000 of the bedding sets delivered on 20 May 2024 had significantly faded colours, (A) Association sent a fax to (D) on 25 May 2024, stating that most of the bedding sets had faded colours and that it would not be bound by the contract for this reason.

A hotel guest (M) who greatly admired the chairs in the lobby of the hotel owned by (A) Association obtained the contact information of (Ü), the manufacturer of the chairs, from (A) Association and placed an order for chairs for use in his home. (A) Association later demanded 1,000 TL from (Ü) on the grounds that it had acted as an intermediary in the contract concluded between (Ü) and (M).

Following the Association's withdrawal from the contract, (D), whose cash flow was disrupted, obtained a loan of 30,000 Euro from Bank (B) on 05.01.2025; The loan agreement provided that a default interest rate of 50% would apply if the debt was not paid by the maturity date of 05.01.2027. (D) transferred its business to (Z) on 10 June 2025; the transfer agreement, which stipulated that liabilities were not included in the transfer, was registered and published in the commercial register on the same date (= 10 June 2025; additionally, (D)'s registration in the commercial register was cancelled. Upon the failure to repay the loan by its due date, Bank (B) initiated bankruptcy proceedings against (Z) and (D) on 7 January 2027.

1) (A) Has the association acquired the status of a merchant, and if so, when? Please explain, specifying the nature of the hotel.

Pursuant to Article 12/1 of the Turkish Commercial Code, a person who operates a commercial enterprise, even partially, in their own name is referred to as a merchant. Pursuant to the second paragraph of the same article, a person who registers and publishes a commercial enterprise in the commercial register, even if they have not actually commenced operations, is deemed to be a merchant. (Additional points may be awarded to students who note that merchants and those deemed to be merchants are not distinguished in terms of their ability to enjoy the benefits or bear the burdens of merchant status.)

Pursuant to Article 11/1 of the Turkish Commercial Code, a commercial enterprise is an enterprise where activities aimed at generating income exceeding the threshold set for craftsmen's businesses are carried out on a continuous and independent basis. Since the hotel in question is a four-star hotel, it is understood that the aim is to generate income exceeding the threshold set for craftsmen's businesses. Although the hotel will only operate during the summer months, this does not undermine the element of continuity; the absence of an occasional nature in the transaction is sufficient to establish the element of continuity. Therefore, the hotel operated by (A) Association qualifies as a commercial enterprise.

Although it could be argued that (A) Association acquired the status of a merchant on 10 April 2024 and the status of a merchant on 30 May 2025 under the provisions mentioned above, pursuant to Article 16/2 of the Turkish Commercial Code, 16/2 of the Turkish Commercial Code, public benefit associations are not considered merchants even if they directly operate a commercial enterprise. Therefore, the (A) Association has not acquired the status of a merchant. (Under the Supreme Court's case law, even if a public benefit association is not considered a merchant, its commercial enterprise is subject to the provisions and consequences of being a merchant, and an additional point may be awarded to the student who states this.)

2) (A) Evaluate the statements made in the notification sent by the Association to (D) dated 25 May 2024 in terms of their legal validity in terms of a) duration and b) form.

i) The statement sent by (A) Association to (D) warns that the delivered products are defective and that the contract is therefore terminated. Pursuant to Article 23/1-c of the Turkish Commercial Code, the period for notification by the seller in respect of obvious defects is two days from the date of delivery of the goods. In our case, the fact that the colours are quite faded indicates an obvious defect. Since the Association (A) sent this statement five days after the delivery of the products, the rights related to the defect will be lost. (A student who argues that the defect is not an obvious defect and that there is an obligation to inspect and notify within eight days, thereby claiming that the defect notification period has not been exceeded, will also be awarded full marks.)

Pursuant to Article 18/3 of the Turkish Commercial Code, declarations regarding withdrawal from a contract between merchants, termination of a contract, and placing the other party in default must be made in specific forms. Since the defect notification is not one of these notifications, the declaration is valid in terms of form.

ii) TTK m. 23/1-a, depending on the nature of the contract, the parties' purpose, and the type of goods, if the performance of the obligation arising from the sales contract can be fulfilled in parts, or if the buyer has accepted partial delivery without reservation despite the absence of such conditions, the general rule is that the buyer may exercise their rights only with respect to the undelivered portion if the remaining part of the contract is not fulfilled. However, if the benefit expected from the contract cannot be obtained due to the non-delivery of the portion, the contract may be terminated. In the case at hand, since the bedding and sheets were to be delivered as a set (with the same design), the right to terminate the contract exists due to the defects in the sheets; however, since the defect notification period was not observed, the (A) Association has lost this right. (If the student who stated that there was a hidden defect in the case above also states in this response that the right to terminate the contract under Article 23(1)(a) of the Turkish Commercial Code (TTK) exists because the defect notification period was observed, full points will be awarded.) (After stating the provision cited in the ruling, the student who states that the sheets and bedspreads cannot be considered as a set; that the 500

bedspreads are not defective; and that, therefore, the creditor (A) Association can only exercise its right regarding the defective bedspreads will receive full marks.)

Pursuant to Article 18/3 of the Turkish Commercial Code, the declaration of withdrawal from the contract must be made through a notary public, registered letter, telegram, or secure electronic signature via a registered electronic mail system. In our case, since the (A) Association sent this declaration via fax, the declaration is invalid. (After providing the information specified in Article 18/3 of the TTK, stating that this is not a validity requirement but a means of proof, and that the declaration of withdrawal from the contract is valid, the student will receive full marks.)

3) Evaluate the validity of the request made by the Association Charity (A) to (Ü). If the request made by the Association (A) is deemed valid, determine the court in which the claim may be filed for the collection of the amount owed.

Pursuant to Article 20 of the Turkish Commercial Code, a merchant who has performed a service or provided goods to another person, whether or not that person is a merchant, in connection with their commercial business may demand a reasonable fee. In the specific dispute, the activity performed by Association (A) in facilitating the conclusion of the contract (brokerage/agency) cannot be classified as a commercial business activity or hotel service; therefore, Association (A) cannot benefit from this provision.

Pursuant to Article 4 of the Turkish Commercial Code, for a case to be classified as a commercial dispute, it must arise from a matter related to the commercial business of both parties. Since the activity of (A) Association is not related to its commercial enterprise and also does not fall under the matters listed in TTK Article 4/1-a to f, it does not constitute a commercial dispute; if the claim of (A) Association is deemed valid, the dispute will be heard in general courts.

4) a) Evaluate the proceedings initiated by Bank (B) against (Z) and (D), taking into account the provision in the transfer agreement between (Z) and (D).

It is debatable whether the commercial enterprise can be transferred excluding liabilities. While some opinions in the doctrine and the previous practice of the Court of Cassation state that assets serve as collateral for liabilities and therefore liabilities cannot be excluded and only assets can be transferred, some authors and the new practice of the Court of Cassation hold that liabilities can be excluded and only assets can be transferred; the action for the annulment of the transfer, as regulated in the provisions of Article 277 et seq. of the Enforcement and Bankruptcy Code, would be sufficient to protect the rights of creditors, especially considering that each asset item can be transferred in accordance with the provisions on the assignment of claims. 277 et seq., which regulate the action for the annulment of a disposition, is sufficient to protect the rights of creditors, especially since the transfer of each asset in accordance with the provisions on the assignment of claims is also possible, which strengthens this interpretation. According to another view, excluding liabilities from the scope of the transfer would only have consequences in internal relations and would not have any effect in external relations. Regardless of the conclusion reached, provided that the reasoning is stated, the student will be awarded full marks. (Students who mention all three views will be awarded additional points.)

Pursuant to Article 202 of the Turkish Commercial Code, the transferor of a business is jointly liable with the transferee for non-due debts for a period of two years from the date of maturity. In our case, the date of transfer of the business is irrelevant for the purpose of liability for the credit debt; (D) will be jointly and severally liable with (Z) for a period of two years from the date of maturity.

Pursuant to Article 44 of the Enforcement and Bankruptcy Code, bankruptcy proceedings may be initiated against merchants who have ceased trading within one year from the date of cessation and publication. In our case, since this period has not expired, bankruptcy proceedings may be initiated against (D). Furthermore, pursuant to Article 18/1 of the Turkish Commercial Code, the transferee (Z) may also be subject to bankruptcy proceedings for any debts incurred. Therefore, Bank (B) may initiate bankruptcy proceedings against both (D) and (Z). [(For consistency with the student's argument that (D) is not liable under the contract, the assessment will be made solely with respect to (Z).]

b) If the claim is deemed valid, indicate the rate at which Bank (B) may claim default interest, taking into account the type of monetary debt.

Pursuant to Article 4/A of the Interest Law, if the contract does not stipulate a higher contractual or default interest rate, the highest interest rate paid by state banks on a one-year deposit account denominated in the same foreign currency shall apply to the interest on the foreign currency debt. In this regard, the legislator has provided that if the amount agreed in the contract is lower than the specified/statutory interest rate, the statutory rate shall apply. (At this point, additional points will be awarded to students who criticise the provision granting priority to the parties' intentions only if a higher interest rate than the statutory rate is agreed.) Since the agreed rate of 50% is higher than the statutory interest rate in all circumstances, the rate agreed in the contract will apply here.

Pursuant to Article 8/1 of the Turkish Commercial Code, the interest rate in commercial transactions is freely determined. Pursuant to Article 19/2 of the Turkish Commercial Code, contracts that are commercial in nature for one party are also considered commercial for the other party. Furthermore, pursuant to Article 3 of the Turkish Commercial Code, the credit agreement concluded between (B) Bank and (D) constitutes a commercial transaction, as it concerns a commercial enterprise; indeed, it concerns the commercial enterprises of both parties. In this case, it is disputed whether the provision of TTK Article 8/1 or TBK Article 120 should take precedence regarding the default interest rate agreed upon. A student who defends both views, provided they state their reasoning, will receive full marks; an additional point will be awarded to a student who states that the Court of Cassation has given precedence to the provision of Article 8/1 of the TTK.

CASE STUDY 3

A real person (A) who established a commercial enterprise on 15 October 2017 to engage in fabric production applied to the Trade Registry Directorate on 17 November 2017 to register and announce their business. However, the registry director (T) rejected the request on the grounds that the registration period had expired and the business had not yet commenced operations.

In early 2018, (A) commenced operations and entered into a three-year written contract with merchant (B). Under the agreement, (B) undertook to (i) sell the fabrics produced by (A) in

the Marmara Region under (A)'s name and on its behalf, (ii) not to claim compensation upon the termination of the agreement, and (iii) not to sell fabrics in the Marmara Region for a period of three years following the termination of the agreement.

After commencing its activities, (B) paid (D), an employee of (C), a fabric manufacturer and competitor of (A), to obtain (C)'s customer list and, using this list, convinced three of (C)'s customers to work with (B). Upon learning of this, (C) is considering filing a compensation claim against (B).

QUESTIONS

1. a) Are (T)'s reasons for not registering (A)'s commercial enterprise valid? Evaluate each separately.

Every merchant must register and publish their commercial enterprise in the commercial register within fifteen days of its establishment (TK 40/1). In principle, unless otherwise provided by law, the registration period is already fifteen days (TK 30/1). However, these provisions regarding the time limit are procedural rules, and the fifteen-day period is not a time-barring period. If a registration request is made after the expiration of the time limit

, the trade registry director cannot reject the registration request on this ground. Although in this case the registration request was made one month after the establishment of the commercial enterprise, the above explanations indicate that the grounds for rejecting the registration request are not valid.

A person who has established and opened a commercial enterprise and has notified the public thereof through circulars, newspapers, radio, television, or other means of announcement, or who has registered the enterprise with the commercial registry and thereby announced the situation, is deemed a merchant even if the enterprise has not yet commenced operations (TK 12/2). Therefore, a person has the option to register their commercial enterprise before commencing operations. Consequently, the grounds for rejection based on (A)'s failure to commence operations are also unfounded.

b) What legal remedies are available to (A) against (T)'s decision to reject the registration, and within what timeframes? (2 points)

Pursuant to TK 34/1, interested parties have the right to file an objection with the competent commercial court of first instance within eight days of the notification of the decision made by the trade registry director regarding registration, amendment, or cancellation requests.

2. Describe the legal relationship between (A) and (B). Evaluate the validity of the provisions in the contract and explain whether (B) can claim a waiting period fee from (A).

An agent is a person who, without having a legal status tied to a business, acts as an intermediary in contracts related to a commercial enterprise within a specific location or region under a contract, or who makes such contracts on behalf of the merchant as a profession. In the case at hand, (B) has undertaken in writing to sell the fabrics produced by (A) under (A)'s name and on its behalf in the Marmara Region for a period of three years. Therefore, (B) is (A)'s authorised agent for the purpose of entering into the contract (TK 102 and 106).

Pursuant to TK 122/4, the right to demand compensation cannot be waived in advance. 'Waiver in advance' refers to waiving the right before the contract is concluded, during the contract, or during the term of the contract. However, this right may be waived at the termination of the contract or after the contract has terminated. In the case at hand, (B) waived the right to demand compensation when entering into the agency contract. Therefore, provision (ii) is invalid.

Agents may generally continue their commercial activities after the termination of the contractual relationship. However, prior to the termination of the contractual relationship, the agent and the principal may enter into a separate agreement regarding a post-termination non-competition clause. For such a clause to be valid, it must be in writing. The non-competition clause may be established as a separate agreement or included as a provision in the agency agreement. The non-competition clause must be limited in terms of duration, subject matter, and location.

According to TK 123/1, this prohibition may only cover activities related to the agent's business and may relate to matters covered by contracts established by the agent or facilitated by the agent. The duration may be agreed upon for a maximum of two years. If the duration is not agreed upon, the statutory period of two years applies. Contracts exceeding the two-year period may be deemed invalid to the extent they exceed this period.

On the other hand, the non-competition clause must also relate to the territory or customer base assigned to the agent. In the agency agreement (B) at issue, the agent undertook not to sell fabrics in the Marmara Region (= territorial restriction) for a period of three years (= time restriction) after the termination of the agreement (= subject matter restriction). The non-competition clause is included as a provision in the written contract and imposes valid restrictions in terms of subject matter and location. However, since the maximum two-year period has been exceeded, the restriction will apply for two years instead of three [Answers stating that the provision on the non-competition clause is entirely invalid due to the two-year period being exceeded will be awarded points provided that all other elements are also fully met].

The client is obliged to pay the agent appropriate compensation due to the competition restriction (TK 123/1). This payment is not technically compensation but rather the client's counterperformance for the agent's obligation not to compete and the compensation for the loss incurred during the prohibition period. Even if not expressly agreed in the contract, the waiting period fee is a mandatory legal consequence of the competition prohibition. Therefore, (B) may demand the waiting period fee from (A) in exchange for the competition prohibition.

3. a) On what legal grounds can (C) base the lawsuit it will file against (B)?

Inducing third parties' employees, agents, or other assistants to act contrary to their obligations in the performance of their duties by providing or offering them an undeserved benefit, and attempting to secure an advantage for oneself or another, constitutes one of the special cases of unfair competition regulated under the Turkish Commercial Code (TK 55/1-[b].2). In the case at hand, (B), acting as a third party, paid (D), an employee of (C), to obtain (C)'s customer list and convinced three of the customers listed to work with (B). In this case, (C) may file a lawsuit against (B) under the provisions on unfair competition. b) Based on the information in the case, could (C) also make a claim against (A)? (3 Points) Unfair competition lawsuits are generally filed against the persons who commit unfair competition. However, the scope of the defendant has been expanded under the provisions of Articles 57 and 58 of the Turkish Commercial Code.

If the act of unfair competition is committed by employees or workers while performing their duties, claims may also be brought against the employer, regardless of the employer's fault or the occurrence of damage. In the case at hand, (B) is not an employee or worker of (A). The employer-employee relationship required for the application of TK 57 does not exist because (B) is an agent of (A) and therefore an independent commercial assistant. Since (A) did not participate in the act of unfair competition as the perpetrator, (C) cannot make any claims against (A).

Since the provisions on representation in torts do not apply, (A) shall not be liable for (B)'s tort/unfair competition. On the other hand, the contracts entered into as a result of the tort/unfair competition in question were essentially concluded with (A) as the principal. Therefore, even though (A) is not the perpetrator of the unfair competition, it has directly or indirectly benefited from the new situation created by it. When the prohibition/removal of the situation created by the unfair competition is demanded, this demand is essentially directed at the contracts to which (A) is a party. For this reason, it would be appropriate to include (A) as a party in the unfair competition lawsuit at least with regard to the enforcement of the aforementioned claims. Alternatively, the argument that such unfair competition cannot result in the prohibition or prevention of such actions could also be accepted.

CASE STUDY 4

A commercial enterprise named 'İris Giyim,' which operates a store in Bodrum and has its headquarters in Istanbul, has appointed (T) as manager to manage the store and conduct all of its affairs, including representing (A) in all matters related to the store. T's authority to represent is limited to the affairs of the Istanbul store, and this limitation has been registered and announced in the commercial register. T, on behalf of A, has entered into a contract with a merchant (B) residing in Bodrum for the sale of various products to be delivered from the Bodrum store's inventory. Despite having paid the sales price in advance, (B), who was unaware of (T)'s authority limitations, requested the delivery of the products from (A). However, (A) rejected this request, arguing that '(T) did not have the authority to sell products from the Bodrum store's inventory, and therefore (A) was not bound by the contract.' (A) transferred its Istanbul and Bodrum stores to merchant (D) through a written contract, which was registered and published in the Commercial Register on 11 December 2023. The contract stipulates that '(i) the name "İris Giyim" and (ii) debts incurred prior to the transfer date are not included in the scope of the transfer.' Meanwhile, despite having sold fabric to (A) on 8 September 2023, (C) has not yet been able to collect the payment for the fabric and, on 4 January 2024, initiated enforcement proceedings against (D) to collect the amount owed.

1. a) Describe the legal relationship between (T) and (A). A commercial representative is a person who is granted the broadest authority by a merchant to manage a commercial enterprise and to represent the merchant in commercial transactions under the merchant's trade name (Civil Code 547/1). Since (T) is authorised to perform all kinds of tasks, the relationship between (T) and (A) is one of commercial representation.

b) Is the response given by (A) to (B), stating that '(T) is not authorised to sell goods from the Bodrum store's inventory and is therefore not bound by the contract,' legally correct? Explain. The authority of a commercial agent may be explicitly limited to the 'head office (=main branch)' or to one or more branches outside the head office (CC 549/1). Such limitations

are among those that can be registered and published in the commercial register, and if registered and published, they can be invoked against anyone (CC 549/2). Therefore, (T)'s authority to act as an agent can be limited to the affairs of the Istanbul store; this limitation can be registered and published in the commercial register and invoked against (B). (B)'s claim that he was unaware of this restriction is not admissible (TK 36/3). Therefore, (A)'s response is legally correct. [Points are also awarded to the student who answers that a restriction regarding a branch cannot be imposed on the main branch.]

2. Legally classify the term ‘İris Giyim.’ Is it possible to exclude this term from the scope of the transfer in the transfer agreement under clause (i)? Explain.

Names used directly to identify a business and distinguish it from similar businesses, regardless of the business owner, are referred to as ‘business names’ (TK 53). A commercial business may be transferred as a whole without the need for separate dispositive acts for the transfer of the assets it contains and may be the subject of other legal transactions. Unless otherwise provided, the transfer agreement is deemed to include the fixed assets, the business value, the right of lease, the trade name, and other intellectual property rights, as well as the assets specifically allocated to the business on a permanent basis. Other contracts that subject the commercial enterprise as a whole to transfer must be made in writing, registered in the commercial register, and published (TK 11/3). In this regard, provided that the transferred elements can be classified as a ‘commercial enterprise’ and continue operations, it is legally possible to exclude certain elements or elements, including the business name ‘İris Giyim,’ from the scope of the transfer by including special provisions in the transfer agreement.

3. Can (C) apply to (D) for the collection of the sales price of the fabrics sold to (A)? Discuss your answer with justification, taking into account clause (ii) of the transfer agreement in the case.

A person who acquires a property or a business, including its assets and liabilities, becomes liable to creditors for the debts of the property or business from the date on which they notify the creditors or, in the case of commercial businesses, publish a notice in the Trade Register Gazette or in one of the newspapers distributed nationwide in Turkey (Civil Code Article 202/1). There are two different views regarding the legal situation that arises when debts incurred prior to the transfer of a commercial enterprise are excluded from the scope of the transfer. According to one view, since the assets of the business constitute collateral for its liabilities, the provision in the contract between (A) and (D) applies only to internal relations, and (C) may still be held liable to (D) under Article 202/1 of the Turkish Civil Code, despite the contractual provision. This is because the debt in question arose prior to the transfer date. According to the second view, since the action for the annulment of the transfer provided for in Article 280/4 of the Turkish Commercial Code (İİK) provides sufficient protection to creditors and the transfer agreement has been registered, it is possible to exclude debts (liabilities) arising prior to the transfer from the scope of the transfer. Therefore, (C) cannot apply to (D) [Provided that the student is aware of both opinions and explains them, points will be awarded for this section to any student defending either of these two opinions.]