

BASIC RELEVANT CONDUCT EXERCISES

Exercises #1-2 “Acts of the Defendant”

The defendant is convicted of one count of Bank Robbery, citing a specific robbery for which the applicable guideline is §2B3.1 (Robbery). It is determined that the defendant possessed a firearm during the course of robbing the bank.

Will the §2B3.1(b)(2)(C) SOC “if a firearm was brandished or possessed, increase by 5 levels” apply?

Exercise #2

While the defendant was actually robbing the bank there was no indication that he possessed a firearm, however, after exiting the bank, in carjacking a vehicle for his getaway, the defendant discharged a firearm.

Will the §2B3.1(b)(2)(A) SOC “if a firearm was discharged, increase by 7 levels” apply?

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Exercise #1-4- “Jointly undertaken criminal activity”

The defendant is convicted of bank robbery for which the applicable guideline is §2B3.1. The co-participant possessed a firearm during the robbery, a fact unknown to the defendant until the co-participant brandished it.

Will the §2B3.1(b)(2)(C) SOC for “if a firearm was brandished or possessed” apply for the defendant?

Exercise #2

The defendant is convicted of a count charging a three-year conspiracy to import 5 kg or more of cocaine, with multiple participants and multiple importations. The applicable guideline is §2D1.1 (Drugs).

During the three years of the conspiracy, a total of 300 kg of cocaine was imported.

It is determined that the defendant joined the conspiracy after its first year of operation, during which 100 kg had been imported. It is also determined that after the defendant joined the conspiracy, his undertaking was limited to two importations of 5 kg each.

What quantity of drugs will be used to establish Defendant’s base offense level at §2D1.1(a)(5)?

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Exercise #3

The defendant is convicted of one count: Conspiracy to Commit Health Care Fraud (18 USC §§ 1349 & 1347) in the three years from January 2014 through December 2016. The applicable guideline is §2X1.1 (Conspiracy) which directs use of §2B1.1 (Fraud/Theft). The three-year conspiracy involved numerous fraudulent claims by a health clinic to Medicare for services never provided. The conspiracy included a total of 12 participants, with each fully involved in the fraud activity, but only during the period he/she was employed by the clinic. The defendant doctor joined the clinic and began participating in the illegal activity during the final ten months of the conspiracy, but the defendant doctor knew of all the preceding fraud conduct.

Does Defendant doctor's relevant conduct include:

1. All the fraudulent acts by all the participants and all the resulting losses during the three-year conspiracy?
2. Only the fraudulent acts and resulting losses by the defendant doctor and other participants during the defendant doctor's involvement in the conspiracy?
3. Only the fraudulent acts and resulting losses by the defendant doctor?

Exercise #4

The defendant is convicted of one count of conspiracy to traffic 1 kg or more of heroin during a period of 100 weeks for which the applicable guideline is §2D1.1 (Drugs). The conspiracy involved 100 occasions of heroin being transported into the district from a major city in a nearby state. One kg of heroin was transported on each occasion. The defendant's undertaking involved only two of those occasions,

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#51 & #52, although he was aware of the other occasions. The defendant never carried a firearm nor did he aid, abet, counsel, command, induce, procure, or willfully cause his co-participants to do so, however, one of his co-participants on occasion #51 carried a gun.

1. For what quantity of drugs is Defendant accountable?
2. Will Defendant get the 2-level increase for the SOC at §2D1.1(b)(1): “If a . . . firearm . . . was possessed . . .” ?

Exercise #1-4- “Expanded Relevant Conduct”

The defendant is convicted of a sale of 1 kg of cocaine on a single occasion for which the applicable guideline is §2D1.1. The sale was to a gang member engaged in user-amount sales. It is determined that the defendant additionally sold 1 kg of cocaine to a gang member each week for 40 weeks.

What quantity of drugs will be used to determine Defendant’s base offense level at §2D1.1(a)(5)?

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Exercise #2

The defendant is convicted of felon in possession of a firearm, a pistol, on a specific date. The applicable guideline is §2K2.1 (Firearms). A search of defendant's house the day after he had been arrested in possession of the firearm (the offense of conviction) revealed two additional firearms, both pistols, one with an obliterated serial number.

1. How many firearms will be counted for the §2K2.1(b)(1) SOC for number of firearms?
2. Will the §2K2.1(b)(4)(B) SOC for obliterated serial number apply?

Exercise #3

The defendant is convicted of one count of bank robbery for which the applicable guideline is §2B3.1. There were no injuries in this robbery, however, on the day prior to the robbery of conviction, the defendant committed another bank robbery in a similar manner, and in which he struck a teller, resulting in serious bodily injury.

In the application of the robbery guideline, will the §2B3.1(b)(3)(B) SOC for serious bodily injury apply?

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Exercise #4

The defendant is convicted of one count of Mail Fraud (18 USC § 1341) citing the submission of a fraudulent claim of \$5,000 to an insurance company on a specific date. The applicable guideline is §2B1.1 (Fraud). In the same month that the defendant made the fraudulent claim in the count of conviction, he also submitted fraudulent \$5,000 claims of the same nature to ten additional insurance companies.

Which of the following acts and losses are included in Defendant's relevant conduct:

1. The fraudulent act and resulting loss in the count of conviction?
2. The fraudulent acts and resulting losses related to the ten additional insurance companies?
