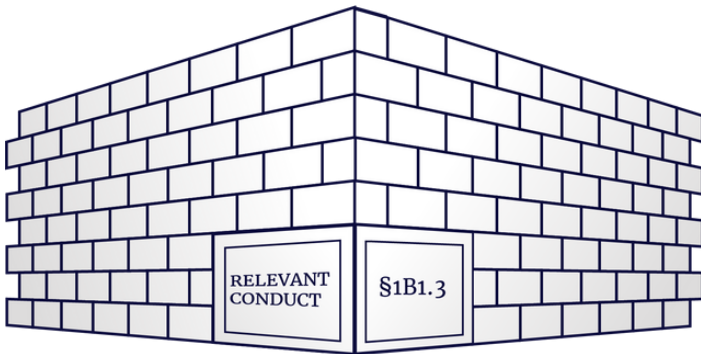




§1B1.3 - Relevant Conduct Analysis

Overview



Relevant conduct, found at §1B1.3, is often referred to as the "cornerstone" of guideline application. It is the analysis used to determine the application of Chapters Two and Three, which includes the Base Offense Levels, Specific Offense Characteristics, Cross References, and Chapter Three Adjustments.

The relevant conduct analysis begins with the offense of conviction and then considers many real offense characteristics. The information included as relevant conduct for a particular offense may be different from criminal liability and is more limited than the factors a court can consider at sentencing.



PRINCIPLES

The relevant conduct analysis includes three main principles. Each principle will be addressed in its own separate one-pager.

PRINCIPLE

1

The defendant will be accountable for acts that he or she did in furtherance of the offense of conviction.

PRINCIPLE

2

The defendant may be accountable for certain acts of others that are in furtherance of the offense of conviction.

PRINCIPLE

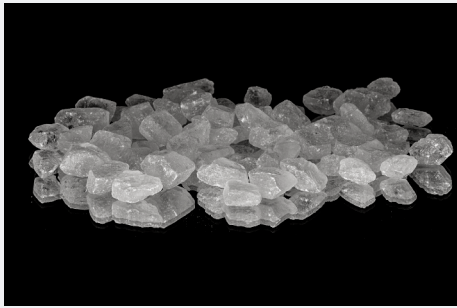
3

For certain offenses, the defendant may also be accountable for acts that are part of the same course of conduct or common scheme or plan as the offense of conviction.

Sentencing Liability vs. Criminal Liability

The principles and limits of sentencing accountability under the relevant conduct guideline are not always the same as the principles and limits of criminal liability. The focus of relevant conduct is on the specific acts and omissions for which the defendant is to be held accountable in determining the sentencing range, rather than on whether the defendant is criminally liable for an offense as a principal, accomplice, or conspirator. For example, a defendant may be charged with a drug conspiracy for which he is criminally liable, but for sentencing, that defendant may not be held accountable for all acts that occurred during the conspiracy.

Example



The defendant and 7 other co-defendants were charged with Conspiracy to Distribute 5 Kilograms of Methamphetamine. The defendant distributed 1 kilogram of methamphetamine on one occasion.

At sentencing, based upon relevant conduct and the specific acts of the defendant, the defendant was only held accountable for 1 kilogram of methamphetamine that he distributed on one occasion, not the 5 kilograms of methamphetamine charged in the conspiracy.

Relevant Conduct vs. Factors Considered in Imposing Sentence

Relevant conduct principles limit the amount of information that a court can consider in determining the applicable guideline range. After the guideline range is determined, the court must decide what sentence to impose. At that point the court may consider, without limitation, any information concerning the background, character, and conduct of the defendant unless otherwise prohibited by law. See 18 U.S.C. § 3661 and §1B1.4.

Example

The defendant was convicted of Structuring Transactions to Evade Reporting Requirements. Over a period of many years, the defendant withdrew funds to pay an individual with whom the defendant had committed prior misconduct decades earlier. In this case, §2S1.3 primarily considers the amount of money the defendant provided to the other individual or the amount of money that he evaded reporting requirements.

At sentencing, the individual whom he paid over a period of years revealed he was sexually abused by the defendant and that the payments were made to conceal past sexual misconduct. Although this information is not relevant conduct and the guidelines do not account for this behavior, the court may consider these additional factors pursuant to 18 U.S.C. § 3661 and §1B1.4, when imposing the sentence.



Key Points to Remember

- Relevant conduct is based upon a preponderance of evidence standard. §6A1.3 Commentary
- Relevant conduct can include uncharged, dismissed, and acquitted conduct.
- The majority of the relevant conduct analysis occurs under §1B1.3(a)(1) and (a)(2).