

# BASIC RELEVANT CONDUCT EXERCISES

## Exercise #1

- Defendant convicted of one count of Bank Robbery, citing a specific robbery
- Applicable guideline §2B3.1 (Robbery)
- It is determined that Defendant possessed a firearm during the robbery
- Will the §2B3.1(b)(2) SOC “if a firearm was brandished or possessed, increase by 5 levels” apply?

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## Exercise #1-Variation

- While Defendant was actually robbing the bank there was no indication that he possessed a firearm
- After exiting the bank, in carjacking a vehicle for his getaway, Defendant discharged a firearm
- Will the §2B3.1(b)(2) SOC “if a firearm was discharged, increase by 7 levels” apply?

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## BASIC RELEVANT CONDUCT EXERCISES

### Exercise #2

- Defendant convicted of bank robbery; Applicable guideline §2B3.1
- Co-participant possessed a firearm during the robbery, a fact unknown to Defendant until the co-participant brandished it
- Will the §2B3.1 SOC for “if a firearm was brandished or possessed” apply for Defendant?

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### Exercise #3

- 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
- Applicable guideline §2D1.1 (Drugs)
- During the three years of the conspiracy a total of 300 kg was imported
- It is determined that Defendant
  - joined the conspiracy after its first year of operation, during which 100 kg had been imported, and
  - after Defendant joined the conspiracy, his undertaking was limited to two importations, each in a quantity of 5 kg
- What quantity of drugs will be used to establish Defendant’s base offense level at §2D1.1(a)(5)?

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## BASIC RELEVANT CONDUCT EXERCISES

### Exercise #4

- Defendant convicted of one count: Conspiracy to Commit Health Care Fraud (18 USC §§ 1349 & 1347) in the three-years from January 2014 through December 2016
  - Applicable guideline §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
  - Defendant doctor joined the clinic and began participating in the illegal activity during the final ten months of the conspiracy, but Defendant doctor knew of all the preceding defrauding
  - Does Defendant doctor's relevant conduct include:
    - All the fraudulent acts by all the participants and all the resulting losses during the three-year conspiracy?
    - Only the fraudulent acts and resulting losses by Defendant doctor and other participants during Defendant doctor's involvement in the conspiracy?
    - Only the fraudulent acts and resulting losses by Defendant doctor?
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### Exercise #5

- Defendant convicted of sale of 1 kg of cocaine on a single occasion; Applicable guideline §2D1.1
- The sale was to a member of a gang engaged in user-amount sales

## BASIC RELEVANT CONDUCT EXERCISES

- It is determined that Defendant additionally sold 1 kg of cocaine to a member of the gang each week for 40 weeks
- What quantity of drugs will be used to determine Defendant's base offense level at §2D1.1(b)(5)?

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### Exercise #6

- Defendant convicted of felon in possession of a firearm, a pistol, on a specific date
- Applicable guideline §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
- How many firearms will be counted for the §2K2.1(b)(1) SOC for number of firearms?
- Will the §2K2.1(b)(4)(B) SOC for obliterated serial number apply?

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### Exercise #7

- Defendant is convicted of one count of bank robbery; Applicable guideline §2B3.1
- There were no injuries in this robbery

## BASIC RELEVANT CONDUCT EXERCISES

- 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 #8

- Defendant convicted of one count of conspiracy to traffic 1 kg or more of heroin during a period of 100 weeks
- Applicable guideline §2D1.1 (Drugs)
- Conspiracy involved 100 occasions of heroin being transported into the district from a major city in a nearby state; 1 kg of heroin was transported on each occasion
- Defendant's undertaking involved only two of those occasions, #51 & #52, although he was aware of the other occasions
- For what quantity of drugs is defendant accountable?
- 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
- Will defendant get the 2-level increase for the SOC at §2D1.1(b)(1): "If a . . . firearm . . . was possessed . . ." ?

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## BASIC RELEVANT CONDUCT EXERCISES

### Exercise #9

- Defendant 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
- Applicable guideline §2B1.1 (Fraud)
- In the same month that 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:
  - The fraudulent act and resulting loss in the count of conviction?
  - The fraudulent acts and resulting losses related to the ten additional insurance companies?

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