

Question 1

The defendant was convicted of health care fraud. In this case, the defendant recruited 7 patients from March 2016 to May 2017 to be “fake patients” at a local chiropractor’s office. The loss sustained as a result of these 7 patients was \$200,000. However, the government believes the defendant is responsible for the entire loss of the conspiracy (\$1.8 million) which spanned from January 2015 through May 2017.

What is the loss amount?

Question 2

Defendants A and B were convicted of Conspiracy to Defraud the United States with Respect to Claims - §2B1.1. A stole personal identifying information from a local business and shared them with B. B filed the vast majority of the false tax returns listing her address for the refunds. She collected over \$500,000. A filed a handful of tax return and collected \$20,000.

What amount of loss should Defendant A be held accountable for?

Question 3

The defendant was convicted of stealing money from an ATM via jack potting (installing malware and bypassing regular codes and in essence, stealing money from the ATM). The defendant was charged by indictment in Utah. However, during the presentence investigation, the USPO also learned the defendant orchestrated the same scheme in his home state of Colorado as well as in Washington state.

Can the USPO use the loss from those states as well or are there jurisdictional issues?

Question 4

Defendant committed health care fraud from 2010 - 2014. She was sentenced for that offense in June 2016 and placed on home detention for one year as a condition of probation, plus 5 years of probation. However, the defendant never stopped committing health care fraud. She again pleaded guilty in August 2017 to health care fraud that occurred from 2015 - 2017. She committed that offense while on release, so an increase under §3C1.3 applies.

Is the initial fraud (2010 - 2014) relevant conduct or criminal history?

Question 5

Defendants A and B are convicted of wire fraud (18 U.S.C. § 1343). Defendant A fraudulently obtained \$810,000 from Victim 1 (his mother). The defendant told his mother he was terminally ill and was accepted to undergo a clinical trial to treat his illness. He created fraudulent documents to support the scheme, which he used to solicit his mother's financial support. Over a period of time, on several occasions, his mother wired to her son's bank account, the \$810,000 from her trust account, rendering it insolvent.

Distraught for her son, the victim then contacted her sister (Victim 2) who began wiring money to her nephew from her trust account. Victim 2's bank became suspicious and stopped all wire transfers. To continue with the payments, Victim 2 agreed to send payments to Defendant A via Western Union.

Defendant B (a friend of the defendant) agreed to receive every Western Union payment. On 22 occasions, Defendant B received the payments from Victim 2 totaling just over \$22,000. In total, Victim 2, however, transferred \$310,000 (including the Western Union transfers) to her nephew.

When calculating the guidelines for Defendant B, at §2B1.1, what is the amount of loss?

Will Defendant B receive an enhancement for causing substantial financial hardship to the victim? Why or why not?

Question 6

Defendants are convicted of bank fraud and aggravated identity theft. The organizer of the scheme talked an ex-girlfriend into stealing checks from UPS, where she worked. She stole the checks, gave him the checks, and in exchange, he paid for home renovations and other expenses. He then made fake checks and used 4 other women, as runners, to try to cash the fake checks. Two of the women went on two trips with the organizer. USPO says it does not appear the women knew each other nor were they conspiring together. It appeared that they acted individually with the organizer and each woman received a portion of any check she cashed. The USPO has concluded that the relevant conduct of each woman is only the checks they cashed. The government is objecting to the PSR, indicating that it is reasonably foreseeable that the 4 women knew what each was doing and is trying to hit the women with the entire loss.

Is the government correct in that the total amount of loss will be the same for each defendant?

Question 7

Hearns was convicted at trial of conspiracy to commit bank fraud. The indictment charged that from on or about June 11, 2008 through July 1, 2008, Hearns conspired to knowingly execute a scheme to defraud. She was a loan officer who made materially false statements on a loan application for a prospective buyer who did not qualify for the loan. The prospective buyer was able to obtain the loan to purchase a home (the Brownstone property) despite not having the money for a down payment. The buyer later defaulted, and the bank foreclosed on the property.

At sentencing, the government argued that the other fraudulent loans making up the total loss amount of \$865,940.18, were part of the same course of conduct. The probation officer agreed, providing the following support in the PSR: "The government has identified 10 properties (including the Brownstone property) that involved fraud in the mortgage loan process. . . . Government records reflect that Hearns and her co-conspirators were all involved in the scheme to defraud." The court held Hearns accountable for the total loss attributed to the conspiracy, finding that the loss was foreseeable to Hearns and therefore was relevant conduct.

Was the court's ruling correct?

Question 8

Smith owned a convenience store that also cashed checks for customers. In addition, Smith provided illicit check-cashing services to Johnson and Williams. Each had brought hundreds of checks, many of them US Treasury or government checks, especially around tax season. Over the course of two years, the store owner (Smith) cashed checks totaling \$1.5 million, which is his loss amount. Johnson's portion of the loss was \$1 million, and Williams' was \$500,000. However, at sentencing, the Judge ruled that each defendant was responsible for the total amount of loss because of the relevant conduct provisions of §1B1.3. Williams indicated he never worked with Johnson and although he knew other people were cashing checks at Smith's business, he never did so with Johnson. While it was true that they both used Smith's store to cash checks in much the same manner, they never split the proceeds with one another, nor did it appear the men knew each other.

Was the court's ruling correct in that each defendant was responsible for the entire loss amount?

Question 9

From September 2009 through June 2013, White and his co-schemers bought merchandise in retail stores with fake checks and then returned the merchandise for cash. Over about four years, the group targeted 32 stores and inflicted actual losses of approximately \$627,000. White was in prison from September 2009 until August 2011. He was then incarcerated again on another state charge in August 2012, where he remained until his federal arrest in June 2013. The court agreed with the government and held the defendant responsible for an amount of loss of \$548,000. It is unclear when the defendant entered the conspiracy, but the government contends he signed a plea agreement indicating he was part of the conspiracy from September 2009 through June 2013, cashing checks at various businesses.

At sentencing, White objected to being held accountable for the \$548,000 actual loss, because he was incarcerated from September 2009 to August 2011, then again from August 2012 to August 2013.

The court overruled the objection because White pleaded guilty to the language above. The guideline range was 84-105 months, but the court varied downward and sentenced White to 59 months.

Was the court's ruling correct?

Given the downward variance, will the appellate court care whether the ruling was correct or incorrect?

Question 10

Actual v. intended loss? Defendant deposited five counterfeit and/or stolen checks, equaling \$108,600. He successfully withdrew \$27,800. Is the loss amount the intended loss of \$108,600 - \$27,800, which is \$80,800 or the actual loss of \$27,800?

What is the loss amount?

Question 11

Sunmola was convicted of fraud involving an online dating scheme. He and his co-defendants created profiles on online dating platforms using fake names and giving the impression that they were successful businessmen. After gaining the women's trust, Sunmola and his co-defendants had the women send electronics purportedly in support of the U.S. military's efforts to defeat ISIS, and electronic money transfers. One victim was 55 and recently divorced from her husband of 20 years.

Over Sunmola's objection, the court applied the vulnerable victim enhancement found at §3A1.1(b)(2).

Was the court's ruling correct?