

MULTIPLE CHOICE QUIZ ON GROUPING

Instructions

The following scenarios require a grouping decision. Using the format illustrated in the example below, select the most appropriate grouping guideline for each problem and enter the corresponding letter as your answer.

See Guidelines Manual at §3D1.2 for reference

Select (write appropriate letter in answer blank):

a = §3D1.2(a)

b = §3D1.2(b)

c = §3D1.2(c)

d = §3D1.2(d)

n = counts do not involve substantially the same harm and should not be grouped.

Example: The defendant possessed marihuana and amphetamines on the same occasion and is convicted of two counts of simple possession of controlled substances. (§2D2.1)

Answer: a

Explanation: Because the counts involve the same victim (the same societal interest) and the same act, use §3D1.2(a) to group the counts.

Questions

1. The defendant is convicted of five counts of embezzling money from five different clients (§2B1.1). _____

2. The defendant is convicted of one count of unlawfully possessing a firearm (§2K2.1) and one count of making a false statement in connection with acquisition of this firearm (§2F1.1).

3. The defendant is convicted of one count of embezzlement (§2B1.1) and one count of making a false entry to conceal the same embezzlement (§2F1.1). _____
4. The defendant is convicted of two counts of assault with a dangerous weapon for attacking two individuals (§2A2.2). _____
5. The defendant is convicted of one count of fraud (§2F1.1) and one count of obstruction of justice for attempting to cover up that fraud (§2J1.2). _____
6. The defendant is convicted of four counts: (1) interstate transportation of a stolen motor vehicle valued at \$6,000 (§2B1.1); (2) forgery of a \$3,000 check (§2F1.1); (3) forgery of a \$2,000 check (§2F1.1); and theft of a \$7,000 check (§2B1.1). _____
7. The defendant is convicted of three counts of bank robbery (§2B3.1) for robbing three different banks. _____
8. The defendant is convicted of three counts of unlawful possession of a firearm (§2K2.1). All counts arise out of a single incident involving three different weapons _____
9. The defendant is convicted of one count of mishandling environmental pollutants (§2Q1.3) and one count of record keeping violations in connection with the mishandled pollutants (§2Q1.3). _____
10. The defendant is convicted of one count of drug distribution (§2D1.1) and one count of forgery (§2F1.1) in an unrelated case. _____

ANSWERS TO MULTIPLE CHOICE QUIZ ON GROUPING

1. d Embezzlement is an offense for which the offense level is determined primarily on the amount of money involved (an offense based on the aggregate), and the guideline for embezzlement (§2B1.1) is listed under §3D1.2(d) as one included for grouping under Rule (d).

2. b The victim is the same (the same societal interest) and both charges that represent one composite harm. Both acts constitute part of a common scheme, in this case, possession of the weapon.

3. a,b,
 or d The victim (the bank) is the same for both charges, and similarly, both charges represent one composite harm. To assist in determine whether Rule (a) or (b) applies, ask the following question: did the defendant do anything to accomplish this embezzlement other than make this one false entry?

Reminder: Rules (a) and (b) are so closely related that it is often difficult to point to one grouping rule over the other as the "correct" solution. This does not create problems in correct guideline application because either rule results in the same grouping decision, and consequently the same offense level.

Because both counts of conviction are of a type listed under §3D1.2(d), they are groupable under Rule (d) as well.

4. n The counts do not involve the same victim, and therefore cannot be grouped under Rule (a) or (b). The conduct embodied in one count is not treated as a specific offense characteristic of or adjustment to the other count, making grouping under Rule (c) incorrect. The guideline for assault (§2A2.2 is expressly prohibited from grouping under Rule (d). Therefore, the counts cannot be grouped. By not grouping these counts the defendant will probably receive incremental punishment for the additional harm. If not, it may provide reason for sentencing at the upper end of sentencing range.

5. c The offense level for the fraud count is increased by the Chapter Three obstruction adjustment (§3C1.1) to reflect the obstruction of justice behavior. Rule (c) requires grouping when one count embodies conduct that is treated as a specific offense characteristic or adjustment to another count.

6. d All four counts are groupable under Rule (d) because their offense levels are based on the aggregate and their guidelines are identified as groupable under §3D1.2(d).

It does not matter that different guidelines are involved. Use the guideline based on the aggregate that produces the highest offense level.

7. n The counts do not involve the same victim (eliminating grouping Rules (a) and (b)), do not embody conduct taken into consideration in other counts (eliminating grouping Rule (c)), and are expressly prohibited from grouping under Rule (d). Therefore, the counts cannot be grouped.
8. d §2K2.1 is a guideline listed for grouping under §3D1.2(d).
9. a The record keeping violations are a specific violation of a general prohibition (§3D1.2(a)). The victim is the same (the same societal interest). substantially the same harm results.
10. n While the guidelines for both offenses (§2D1.1 for the drug violation and §2F1.1 for the forgery) are primarily based on an aggregate and are listed as groupable under §3D1.2(d), they are not the same general offense type (one involves drug amounts and the other involves monetary loss) and cannot be grouped under Rule (d). They are otherwise unrelated and represent separate harms that cannot be grouped. Incremental punishment is therefore appropriate.