



Lee Burgess: Welcome to the Bar Exam Toolbox podcast. Today, I'm discussing a civil procedure MEE question. This is one of our series of podcasts on how to approach each section of the UBE. Your Bar Exam Toolbox hosts are Alison Monahan, and Lee Burgess, that's me. We're here to demystify the bar exam experience so you can study effectively, stay sane, and hopefully pass and move on with your life.

We're the co-creators of the [Law School Toolbox](#), [Bar Exam Toolbox](#), and the Career related website [Career Dicta](#). Alison also runs [The Girl's Guide to Law School](#).

If you enjoy the show please leave a review on your favorite listening app and check out our sister podcast the [Law School Toolbox](#)! If you have any questions, don't hesitate to reach out to us. You can reach us via the contact form on [BarExamToolbox.com](#) and we'd love to hear from you.

With that, let's get started.

Lee Burgess: Welcome back. Today we are walking through a UBE civil procedure question. This is part of our series of podcasts talking about how to approach questions on the UBE. Today, we're talking about how to draft rule statements. Don't forget to subscribe to our podcast so you don't miss any upcoming essay discussions. Before we get started, let's chat for a moment about memorizing rule statements. It's very common when studying for the bar exam that students focus too much on memorizing lengthy, complicated rule statements. That is unnecessary and makes your job much more challenging. Instead, rule statements should be as short and concise as possible and include clean and clear rule statements when applicable.

Lee Burgess: Short and concise rule statements are easier to memorize and easier to type out during strict timed conditions. With only 30 minutes to complete a UBE essay, you want to minimize the time spent on rule statements and instead spend the time on factual analysis, since that's where the majority of the points come from anyway. As we walk through this question, listen to the rule statements. Could you come up with a way that they could be more concise? Are they presented in a way that you could easily memorize? Before we walk through today's question, we need to do a quick review of the law you will want to know for this question. Because this is a civil procedure question, we will be looking mainly to the federal rules of civil procedure and cases interpreting those rules. For major rules, it can be nice to memorize the numbers, but if you don't know the numbers, that is generally okay. Just make sure you know the rules and how to apply them.



Lee Burgess: All right. Let's start with Rule 7(a). It defines pleadings to include answers. Rule 8(b)(3) only allows a party to file a general denial as an answer to a complaint if the party has a good faith intention to deny all allegations, including jurisdiction. Because there is almost always something in the complaint that should be admitted, a general denial is improper in most cases. Under 28 USC §1391(b)(2), venue is appropriate in a federal district court in which a substantial part of the event or omissions giving rise to the claim occurred. So this is one example if you didn't know 28 USC §1391(b)(2), you could always just memorize the rule. Venue is appropriate etc, etc.

Lee Burgess: Rule 11 requires an attorney signature on each pleading certifying that, among other things, denials of factual contentions are warranted on the evidence or are reasonably based on belief or lack of information. If reasonably based on belief it must be specifically identified. Reasonableness is judged as of the time that the pleading is submitted. Rule 11 has more stuff in it. It also has a provision for sanctions, the party seeking sanctions must serve on the opposing party a motion describing the specific conduct that allegedly violated the rule. The opposing party must be given 21 days to withdraw or correct the challenge pleading. If the 21-day period passes and the pleading is not corrected, the motion for sanctions maybe filed with the court.

Lee Burgess: Oh, but there's more Rule 11. Rule 11(c)(4) states that sanctions should be limited to what suffices to deter future similar conduct by the sanctioned party and other future litigants, but the determination of sanctions is left to the discretion of the trial court. Sanctions can be monetary, penalties paid to the court, attorneys' fees for the party seeking sanctions, or even non-monetary like striking the offending documents, censuring, reprimanding, or requiring education for the attorney. The court can also refer the attorney to disciplinary authorities. Factors that the courts should consider include whether the conduct was willful, negligent, part of a pattern, or isolated. Whether the person had engaged in similar behavior in other cases. Whether it was intended to injure, the effect of and time and expense caused by the violation, and what is needed to deter similar behavior by others.

Lee Burgess: Oh, even more Rule 11. Under Rule 11(c)(1), the court may impose sanctions on any attorney, law firm, or party that violated the rule or is responsible for the violation. Absent exceptional circumstances, a law firm must be held jointly responsible for a violation committed by its partner.

Lee Burgess: Alright, so that's all you really need to know for this question. That's a lot of Rule 11, but really when it comes down to it, that's not that much material. So, let's move on to reading the bar exam question. This is a question from the February 2018 UBE. We will link to a [web page](#) where you can find this question in the show notes if you'd like to read along.



Lee Burgess: While speeding down a rural highway in State A, the driver of a moving van lost control of the van and struck a car. A passenger in the car was seriously injured. The passenger filed suit in the federal district court for the district in the state A, where the accident had taken place. She sought damages for her injuries from the driver of the van and the moving company that employed him. Among other allegations, the complaint alleged that:

- the driver and the moving company are citizens of state A;
- the driver resides in the federal judicial district where the suit was brought;
- the accident occurred in the federal judicial district where the suit was brought;
- the passenger is a citizen of state B;
- the amount in controversy exceeds \$75,000;
- venue is proper in the federal judicial district where the suit was brought;
- the driver was employed by the moving company and was acting in the course of his employment at the time of the accident;
- the driver of the moving van was negligent; and
- the passenger suffered serious injuries are the result of that negligence.

Lee Burgess: The defendant driver and the defendant moving company were both represented by an attorney who was a partner in a 30-lawyer law firm. The attorney was retained and received a copy of the complaint only four days before an answer was due. The attorney was conducting another trial at the time. Rather than ask another lawyer in the firm to answer the complaint, the attorney personally prepared and filed a timely answer to the complaint on behalf of the defendants. The answer to the complaint which was signed by the attorney simply read, 'General Denial. Defendants hereby deny each and every allegation in the complaint.'

Lee Burgess: Two months later, the plaintiff, who was the passenger, properly served Requests for Admission on the defendants requesting admission of each allegations in the complaint. Responding to their Requests for Admission, the defendants (still represented by the attorney) deny the allegations concerning the driver's negligence and the plaintiff's injuries, but admitted all other alleged facts. The plaintiff then served on the defendants' attorney a motion for sanctions on the ground that the denial and the answer was inappropriate. The plaintiff requested that the defendants withdraw their original answer and file an amended answer admitting the allegations that the defendants had admitted in their response to the Requests for Admission.

Lee Burgess: One month later, after the defendants had failed to withdraw or amend their answer, the plaintiff filed the motion for sanctions in court. The plaintiff's lawyer submitted evidence that his customary billing rate is \$300 per hour and that he



had spent several hours preparing the motion and corresponding with the defendants' attorney about the answer for total of \$2,100.

1. May the court properly grant the plaintiff's motion for sanctions? Explain.
2. If the court grants the plaintiff's motion for sanctions, (a) what sanctions are appropriate and (b) against whom should the sanctions be ordered? Explain.

Lee Burgess: Okay. So one of the first thing I noticed about this question is for a UBE question, it feels a little long to me. And so, that just means that you have to be very thoughtful about going through each of the facts, because they added a lot of details in there that you need to make sure that you are tracking, because they're going to relate to these issues. But hopefully because we just reviewed the law that applies in this situation, some of the issues should be kind of popping up for you as you heard me read the question, especially around rules with sanctions and the different types of sanctions.

Lee Burgess: So the first thing you should do is mark up your exam paper to assess what is legally significant about each fact in fact pattern. Facts are where you get the bulk of your analysis. So you need to make sure that you examine these fully. So, first let's start with the beginning. While speeding down a rural highway in state A, the driver of a moving van lost control of the van and struck a car. A passenger in the car was seriously injured. The passenger filed suit in federal district court for this district in state A where the accident had taken place. So, this is all about whether or not venue is appropriate in state A.

Lee Burgess: Oftentimes when I do civil procedure questions, I make sure that I have like a column of things would happen in state A, and a column of things that happened in state B, so I can clearly know what's going on in each state. It's always an issue typically with venue about which states something is going to happen in.

Lee Burgess: Alright, the next fact. She sought damages for her injuries from the driver of the van and the moving company that employed him. Among the other allegations, the complaint alleged that, and then we have this whole list of things that they alleged. So, the driver and the moving company or citizens of state A. So I typically put that under the state A column. The driver resides in the federal judicial district where the suit was brought, so put that in the appropriate column. The accident occurred in the federal judicial district where the suit was brought. Put that in the appropriate column. The passenger is a citizen of state B, so that goes in the B column. The amount in controversy exceeds \$75,000.

Lee Burgess: Oh, this sounds like diversity to me. So, I make a note of that. Venue is proper in the federal judicial district where the suit was brought. The driver was employed



by the moving company, he was acting in the course of his employment at the time of the accident. Sounds like that the moving companies might be liable for this as well. And the driver of the moving company van was negligent, and the passenger suffered serious injuries as result of that negligence. So, each of these allegations will be important to your analysis about whether the general denial was appropriate.

Lee Burgess: The defendant driver and the defendant moving company were both represented by an attorney who was a partner in a 30-lawyer law firm. So this is relevant to who the court might impose sanctions against. If you remember there were specific rules about sanctions being levied against a law firm and not just an individual partner. The attorney was retained and received a copy of the complaint only four days before the answer was due. And so that's important because it was still within the window. The attorney was also conducting another trial at the time. And these facts are going to be relevant when determining whether the attorney's actions were reasonable under the totality of the circumstances test that we discussed in the rules at the beginning of this podcast.

Lee Burgess: Rather than ask another attorney in the firm to answer the complaint, the attorney personally prepared and filed a timely answer to the complaint on behalf of the defendants. So this matters because under Rule 7(a), an answer is a pleading, which means it is subject to the requirements of Rule 11 that we discussed earlier in the podcast. The answer to the complaint, which was signed by the attorney, simply read, 'General denial. Defendants hereby deny each and every allegation in the complaint.' So we know the attorney signed it, which the rule states, 'Certifies to the best of his knowledge, information or believe after a reasonable inquiry that all denials are warranted on the evidence or if specifically so identified are reasonable based on the belief or a lack of information.'

Lee Burgess: So this is also important because general denials are technically allowed under Rule 8, but only if the party attempts in good faith to deny all of the allegations, including jurisdictional grounds. So that sounds like something you really need to focus on here. Then two months later, the plaintiff, who was the passenger, properly served Request for Admissions on the defendants requesting admission of each allegations in the complaint. Responding to their Request for Admissions, the defendants, still represented by the same attorney, denied the allegations concerning the driver's negligence and the plaintiff's injuries but admitted to all the other facts.

Lee Burgess: This is important because it means that the defendants' admissions contradict the general denial filed in the answer. So the rules require that denials be specifically identified if they are reasonably based on a belief or lack of



information. So, that's problematic. The plaintiff then served on the defendants' attorney a motion for sanctions based on the belief that the general denial was inappropriate. The plaintiff requested that the defendants withdraw their original answer and file an amended answer admitting the allegations that the defendants had admitted in their response to their Request for Admissions. This is relevant to whether the plaintiff's lawyer properly served a motion describing specific conduct that violated Rule 11 and gave the opposing party an opportunity to withdraw and correct the pleading, which we need to do before seeking any sanctions.

Lee Burgess: Then a month later, after the defendants had failed to withdraw or amend their answer, the plaintiff filed the motion for sanctions in the court. This is relevant to whether the defendants' attorney withdrew or amended the challenged pleading within the 21-day safe harbor required after the opposing party's motion. The plaintiff's lawyer submitted evidence that his customary billing rate is \$300 an hour, and he had spent seven hours preparing the motion and corresponding with the defendants' attorney about the answer for a total of \$2100. This is relevant when the court considers whether to award sanctions in that amount.

Lee Burgess: So, why is knowing and employing the rules key to improving an essay answer? Well, when you know the rules and you know them in a short, clear and concise way, it helps you quickly identify and characterize the relevant facts. It allows you to spend more time in your analysis and less time drafting rule statements. We talked about that at the beginning of this podcast. And it allows you to tie the facts to the relevant legal issue instead of pouring your outline into the answer. So, there's time to be thoughtful and smart about it, but there's not a ton of time, so you really need to just include the relevant rules. Just writing down all of the Rules of Civil Procedure you know is not going to get you any closer to a passing answer.

Lee Burgess: Now, let's look at how to answer each part of this question as presented by the examiners. You would start any outline or answer by breaking your paper into a section for each question. This question was written in two parts, but there are really four topics that you need to address, which you probably picked up on as we walked through the facts. So, number one, did the defendants' attorney violate Rule 11 by filing an answer containing a general denial? Then, did the plaintiff follow the requirements of Rule 11 for filing a motion for sanctions? And then the subsection, if yes, what sanctions may be imposed? And then finally, against whom should the sanctions be imposed?

Lee Burgess: This is where your knowledge of the rules will help you craft an effective answer and focus your time on analysis. So let's go issue by issue. So, first did the defendants' attorney violate Rule 11 by filing an answer containing a general



denial? So our rule started with Rule 7(a), which defines pleadings which includes the answers and complaints. Rule 11 requires an attorney signature on each pleading certifying that among other things, denials of factual contentions are warranted on the evidence or are reasonably based on a belief or lack of information. Here, that answer was properly signed by the attorney for defendants, and is a pleading and that's subject to the requirements of Rule 11.

Lee Burgess: Now, Rule 8(b)(3) technically allows a party to file a general denial as an answer to a complaint, but only if the party intends in good faith to deny all allegations of a complaint, including the jurisdictional grounds. Answers must respond to the legal conclusions stated in the complaint, as well as factual allegations. Because there's almost always something in the complaint that in good faith should be admitted, a general denial is likely improper in most cases. Here, the effect of the general denial was to deny all of the complaint's allegations, including factual allegations that were correct, such as the state of citizenship of the defendants and the driver's employment at the time of the accident, which the defendants could not deny in good faith.

Lee Burgess: The denials were not specifically identified as being 'reasonably based on belief or lack of information,' so they would only be proper if warranted on the evidence. However, as the defendants later admitted to these facts, they clearly were not warranted on the evidence. Further, the defendants' general denial also had the effect of denying that venue is proper, but this denial was not warranted by the facts or the law. Because we have a rule that venue is appropriate in the federal district court in which a substantial part of the events or omissions giving rise to the claim occurred, and because the case was filed in the district where the accident occurred, venue is proper and the denial was unwarranted.

Lee Burgess: Now we have another rule here. A lawyer who files an inaccurate pleading is not subject to sanctions if the lawyer acted in good faith after making a pre-filing inquiry that was reasonable under the circumstances. But here, the defendants' attorney only had a few days to investigate and that was in the midst of a trial. However, the attorney or member of his firm should have known or could have easily discovered the relevant facts, such as the citizenship of their clients and where the accident occurred. Even a brief conversation with their clients would have permitted them to verify these facts. Further, the response to the request for admissions in which they admitted these same facts supports an argument the original denials and the answer were not warranted by evidence.

Lee Burgess: Our conclusion for this first issue, is that the court should grant the motion for sanctions, because the defendants' attorney violated Rule 11 by filing an answer that contained improper denials of factual and legal contentions. Now, our second issue. Did the plaintiff follow the requirements of Rule 11 for filing a



motion for those sanctions? Before a party may seek sanctions under Rule 11, the party must serve on the opposing party a motion that describes the specific conduct that allegedly violated rule. The opposing party must be given 21 days to withdraw or correct the challenged pleading. If the 21-day period passes and the pleading is not corrected, a motion for sanctions may be filed with the court. Here, the plaintiff's lawyer filed a motion requesting the answer containing the general denial be withdrawn and amended. The lawyer waited more than 21 days to allow the defendants' attorney to withdraw or correct the answer. But when the attorney failed to do so, the plaintiff's lawyer filed the Rule 11 motion. The motion set forth the specific conduct that allegedly violated Rule 11 by requesting that the answer be corrected to admit the allegations admitted in the RFA's.

Lee Burgess: So for our second conclusion here, the plaintiff's lawyer properly gave the defendants' attorney an opportunity to correct the pleadings before the plaintiff's lawyers sought Rule 11 sanctions and properly filed the Rule 11 motion with the court. Now, what sanctions may be imposed?

Lee Burgess: Although the courts will likely determine the answer violated Rule 11, the court is not obligated to impose sanctions. Sanctions should be limited to what would suffice to deter repetition of the conduct or comparable conduct by others and can be monetary or non-monetary. Courts consider many factors when determining what sanctions are appropriate, including but not limited to whether the conduct was willful, negligent, part of a pattern or isolated, whether the person has engaged in similar behavior in other cases, whether it was intended to injure, the effect of and time and expense caused by a violation, and what is needed to deter similar behavior by others. Now let's be honest. Let's take a second here. That's a very long list of things that the courts could consider and you may not remember that entire list, but when you're studying you want to remember as many of these as possible and you would want to specifically list at least the ones that relate to this question.

Lee Burgess: Here, the defendants later admitted the facts in their RFA's, meaning the initial denial was likely not willful, and there were also only a few months between the answer and the RFA's. So, there was likely not significant time or expense caused by the violation. The facts don't state whether this lawyer has a history of similar improper answers or whether there was a problem with such answers in the district. If so, the court might impose sanctions to deter such behavior in the future. So that's something that you would add if you had time, but if you didn't have time, you could leave that out because we didn't have any facts adding that information to your answer. If the court determines that the sanctions were appropriate, they would order sanctions consisting of the plaintiff's reasonable attorneys' fees directly resulting from the violation. They



would evaluate the records to ensure that the fees directly resulted from the violation and the amount is reasonable.

Lee Burgess: Seven hours at \$300 an hour does not seem unreasonable. I practice law in San Francisco, and a partner who bills \$300 an hour is certainly reasonable to me. But seven hours at \$300 does not seem unreasonable and the court could impose sanctions to fully compensate the plaintiff for his costs in challenging the defendants' attorneys conduct.

Lee Burgess: So our conclusion here is that the court has discretion over awarding sanctions. In this case, sanctions are likely to include an award of reasonable attorneys' fees the plaintiff incurred due to the violation.

Lee Burgess: Now our last issue: against whom should sanctions be imposed? So, the court may impose sanctions on any attorney, law firm or party that violated the rule or is responsible for the violation. This is in Rule 11(c)(1). In general, absent exceptional circumstances, a law firm must be held jointly responsible for a violation committed by its partner. A client cannot be held responsible for an attorney's unwarranted legal contentions.

Lee Burgess: So, here the defendants' attorney signed the pleading, it's clearly responsible for the violation. The law firm is likely to also be held jointly responsible because the attorney is a partner and no extenuating circumstances appear in the facts. There are no facts that indicate that the defendants themselves knew or authorized the attorney to make the unwarranted factual denial or that the defendants are responsible for the attorney's failure.

Lee Burgess: So finally, the general denial also included an unwarranted legal contention, the denial of proper venue, for which the client cannot be sanctioned. So, the conclusion here is sanctions may be imposed on the defendants' attorney and his law firm. If the defendants were responsible for any of the unwarranted factual contentions, they may be sanctioned as well. But the facts here do not indicate that they were.

Lee Burgess: All right, so one last thing about this final issue. I think that my analysis that I laid out for you here is wonderful if you have time to really go through all the steps, but if you're running out of time, the key that we're really looking for is, is the law firm going to be responsible or is just the partner going to be responsible? We know that we have this rule from Rule 11(c)(1) that says that the law firm can be held jointly responsible. So you just want to talk about that, because the facts did give us that information.

Lee Burgess: All right, so writing good rule statements is just the beginning of a good bar essay, but they lay the foundation for success in the rest of your answer. Being



able to quickly and efficiently incorporate the rules into your answer will give you more time to work on the meat of your analysis, and that's where the points come from. Make sure that you have an effective attack plan so you can effectively memorize the law and write out rule statements as you need them on the exam.

Lee Burgess:

One more thing I'm going to say about this question. These are very specific rules in civil procedure and I think a lot of people may not even remember these rules, unless they have recently been studying Civil Procedure. Maybe you did, but I think it's not out of the realm of possibility that you got this question on the test and you may not remember all of the rules about sanctions. So, what do you do? Well this question gave you a lot of very specific facts that this guy was a partner in a 30-person law firm. That he had four days and choose not to give any other attorney an assignment to work on this pleading. Like there are lots of very specific facts and so, if you can't remember what the rules for sanctions are, think about the facts and then think about what rules would make sense based on those facts. Make those rules up and put them on the test, because what you don't want to do is leave issues on the table because you don't remember the rules. You need to still identify the issue based on the facts, make up a rule statement and then go ahead and do your analysis. And hopefully you can get enough points possible to pass or at least help you pass the overall question.

Lee Burgess:

And with that, we're out of time. I want to take a second to remind you to check out our blog at BarExamToolbox.com, which is full of helpful tips to help you prepare and stay sane as your study for the bar exam. You can also find information on our website about our courses, tools, and one on one tutoring programs to support you as you study for the UBE or California Bar Exam. If you enjoyed this episode of the Bar Exam Toolbox Podcast, please take a second to leave a review and rating on your favorite listening app. We'd really appreciate it. And be sure to subscribe so you don't miss anything. If you are still in law school, you might also like to check out our popular [Law School Toolbox Podcast](#) as well. If you have any questions or comments, please don't hesitate to reach out to myself or Alison at Lee@BarExamToolbox.com, or Alison@BarExamToolbox.com. Or, you can always contact us via our website contact form at BarExamToolbox.com. Thanks for listening.

Resources:

- [February 2018 UBE Bar Exam Essay Questions](#)
- [Podcast Episode 23: Tackling an MEE Corporations Question](#)
- [How to Write Succinctly: Rule Statements](#)
- [How to Approach a Uniform Bar Exam Subject Essay](#)
- [Private Bar Exam Tutoring](#)