

New!

# PRE-DRAFTED TRIAL PLANS

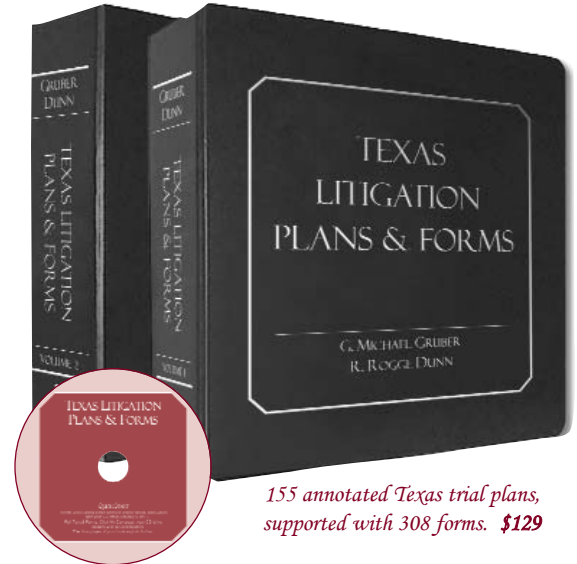
*Quickly map strategy, learn elements and defenses, address related causes of action, and organize evidence*

Creating custom trial plans is the best way to evaluate cases, formulate objectives, and focus your limited time on critical evidence.

A proven case organization approach is to list for each element needing to be proved: (1) the determinative law, (2) your proof, (3) the opposition's counter-proof, and (4) admission factors.

If you are short of time for this essential preparation, turn to Michael Gruber and Rogge Dunn's big collection of pre-researched case templates and forms. *Texas Litigation Plans & Forms* provides in customizable chart form:

- ◆ Causes of action present in the case
- ◆ Elements of each cause of action
- ◆ Case and statutory citations underlying those elements
- ◆ Examples of proof supporting each element
- ◆ Potential obstacles to admitting that proof into evidence
- ◆ Defenses to overcome



*155 annotated Texas trial plans, supported with 308 forms. \$129*

## 155 PRACTICE-TESTED TRIAL TEMPLATES

The case charts average over a dozen pages each. Each chart contains seven columns: Remedy, Elements, Law, Proof, Evidence, Exhibits, and Evidentiary Law. The data in the first three columns will be retained throughout most of your cases; the specific facts in the remaining four columns will be customized as your cases develop.

A wide variety of case types are covered, many with several plans each:

- ◆ General negligence
- ◆ Negligence per se
- ◆ Premises liability
- ◆ Products liability
- ◆ Breach of fiduciary duty
- ◆ Fraud
- ◆ Defamation
- ◆ Breach of contract
- ◆ Conversion
- ◆ Breach of note
- ◆ Employment discrimination
- ◆ Breach of employment contract
- ◆ Employer negligence
- ◆ Retaliation
- ◆ DTPA
- ◆ Insurance
- ◆ Construction
- ◆ Workers' compensation
- ◆ Bankruptcy
- ◆ And more

**BONUS:**

### OVER 300 TEXAS FORMS

The trial plans comprise three-fourths of the book. The remaining fourth contains 308 practice-tested, custom-drafted litigation forms. You receive:

- ◆ Retainer agreements
- ◆ Demand letters
- ◆ Pleadings
- ◆ Tolling agreements
- ◆ Pleading motions
- ◆ TROs and injunctions
- ◆ Preservation letters
- ◆ Triple-threat written discovery
- ◆ Deposition outlines
- ◆ Discovery responses
- ◆ Protective orders
- ◆ Motions to compel
- ◆ Procedural motions
- ◆ Summary judgment motions
- ◆ Settlement agreements
- ◆ Arbitration motions
- ◆ Motions in limine
- ◆ Trial motions
- ◆ Jury questionnaires
- ◆ Voir dire questions
- ◆ Witness questions
- ◆ Jury instructions

*See inside for sample pages, author biographies, and list of the trial plans . . .*

# PARTIAL LIST OF 155 PLANS

## Negligence

Negligent Maintenance of Credit Report, Loading Dock Accident, Dog Bite, Duty to Report Child Abuse to Authorities, Injury to Independent Contractor, Basic Elements and Authorities, Common Law Negligence in Maintenance of Credit Report, Negligent Manufacture of Actuator, Products Liability

Negligent Credit Reporting, Negligent Failure to Delete/Correct Credit Report, Negligent Failure to Maintain Reasonable Procedures re Credit Report, Inaccurate Credit Reporting

Premises Liability Elements and Authorities, Slip & Fall, Failure to File Legal Malpractice Suit Within Statute of Limitations, Negligence of Government Employee Results in Jail Death

Breach of Fiduciary Duty: Elements and Authorities. By Shareholder/Limited Partnership, Partnership Agreement, By Bankruptcy Trustee, Larceny/Embezzlement, General Partner/Limited Partners, Negligent Misrepresentation Re Square Footage of House in Connection with Sale

## Intentional Torts

Fraud Re Repairs Completed per Inspection Report, Fraud Re Property Located in Flood Plain, False Statements in Motion to Allow Administrative Claim

Conspiracy: Parent with Subsidiary, Conspiracy Re Slander/Interference with Contract/Invasion of Privacy, Conspiracy to Destroy Car Dealership

False Imprisonment Elements and Authorities, Tortious Interference with Contract Elements and Authorities

## Reputation Torts

Libel from Newspaper Article, Statement That Plaintiff Assaulted Subordinate Employee with Gun, Libel from Statement re Competency of President in Corporate Control Fight, Libel: Nurse Accused of Narcotics Use

## Products Liability

Sale of Unwholesome Food, Manufacture and Sale of Defective Climbing Rope, Sale of Defective and Unreasonably Dangerous Product

## Contract

Breach: Interior Decorating Services, Contractor and Subcontractor – Insulating Work, Municipal Administrative Franchise Compliance Audit Agreement, Sale of Milling Machine, Sale of Real Property, Confidentiality Agreement, Joint Venture Agreement, Loan Agreement

Sale of House, Sale of Software Licenses, Lease Agreement, Sale of Auto, Basic Elements & Authorities, Sale of Real Estate, Suit on Note, Contractor – Express and Implied Contracts, Sale of Condominium Unit

Sales Compensation Agreement, Nondisclosure Agreement. Promissory Note, Suit on Note, Set Off/Debt on Note, Voicemail Services Contract, Enforcement of Deed, Agreement to Provide Security Personnel, Letter of Credit/Breach of Issuer's Obligations to Customer

Conversion: Elements & Authorities, Client List/Computer Data, Property Owned by Development Team, Written Instrument/Forged Endorsement

Breach of Note: Foreclosure Action, Suit for Defi-

### Systematic approach.

*Each cause of action is identified, and organized by its elements, law, proof, and evidence.*

1-87		TEXAS LITIGATION PLANS — Negligence				§1:20.1	
<b>§1:20 Negligence Per Se</b>							
<b>§1:20.1 Negligent Credit Reporting (15 U.S.C. §1681)</b>							
CAUSE NO. _____							
_____	§	IN THE DISTRICT COURT OF _____					
PLAINTIFF,	§						
VS.	§	_____ COUNTY,					
_____	§						
DEFENDANT.	§	_____ JUDICIAL DISTRICT					
REMEDY (Cause of Action or Affirmative Def.)	ELEMENTS	LAW	PROOF	EVIDENCE	EXHIBITS	LAW re: Evidence (predicate, etc.)	
I. Claim #1 negligent violation 15 U.S.C. §1681. failure to delete inaccurate info after being notified of dispute when no reasonable ground for such failure	A. Inaccurate info on credit report	A. 15 U.S.C. 1681 i(a) - in absence of other willful or negligent violation of FCRA, there is no liability if information is accurate;	A. ____ can show (with ____'s assistance) that the info on ____'s credit report was accurate (the minor exception of time period between ____ (date acct. paid) & ____ (date credit report changed to show "charged to ____ - Account Paid")):				

# PARTIAL LIST OF 155 PLANS (CONTINUED)

ciency Judgment on Note Following Foreclosure, Suit to Enforce Guaranty Following Breach/Default on Note, Suit for Deficiency Judgment on Note Following Foreclosure

Breach of Warranty Re Latent Defects in Leased Commercial Space, Promissory Estoppel Re Indemnity Agreement, Usury Re Interest on Promissory Note and Extensions of Note

## Employment

Age Discrimination, Sex Discrimination, Constructive Discharge, Termination as part of RIF, Labor Code §451 Elements & Authorities

Breach of Employment Contract to Employ for One Year, Damages Owed Following Termination for Cause, Covenant Not to Compete Elements & Authorities

42 U.S.C. §1981 Elements & Authorities, Wrongful Termination for Refusal to Falsify Loan Application

Employer Negligence Elements & Authorities, Failure to Warn/Provide Safe Workplace/Provide Competent Workforce,

Retaliation Elements & Authorities, Sexual Harassment Elements & Authorities

## Texas State Law Causes of Action

DTPA: Toxic Mold in Leased Apartment, Toxic Roofing Shingles, Residential Construction, Insurance Practices

Retaliation for Reporting Abuse/Neglect of Resident, Firefighters and Police Officers Civil Service Act/ Termination of Employment, Municipal Authority to Impose Licensing Fee/Long Distance Phone Lines, Texas Alcoholic Beverage Code §2.02 Elements & Authorities, Fraud in Sale of Real Estate: Easement v. Defined Right of Way

Venue & Jurisdiction: Validity of Contract Venue Provision, Special Appearance to Negate Personal Jurisdiction

### List of elements.

Each cause of action is broken down into its specific elements.

### Supporting law.

The source of the element is cited, with key cases.

1-88 TEXAS LITIGATION PLANS — Negligence §1:20.1						
REMEDY (Cause of Action or Affirmative Def.)	ELEMENTS	LAW	PROOF	EVIDENCE	EXHIBITS	LAW re: Evidence (predicate, etc.)
		<i>Middlebrooks v. Retail Credit Co.</i> , 416 F.Supp. 1013 (E.D. Ga. 1976); <i>McPhee v. Chilton Corp.</i> , 468 F.Supp. 494, 497 (D.Conn. 1978); but see <i>Konopoulis v. The Credit Bureau, Inc.</i> , 734 F.2d 37 (D.C. Cir. 1984)	(1) ___ did rent the equipment. (2) ___ was billed for a balance of \$ _____. (3) ___ did not pay the \$ ____ balance. (4) After ___ failed or refused to pay the balance, account was turned over to _____. (5) the Report does not evaluate underlying transactions.	(1) Deposition Testimony of ___ Testimony of ___ Representatives ___ (2) Deposition testimony of ___ Testimony of ___ (2) Testimony of ___ Testimony of ___ (3) Deposition testimony of ___ (4) Testimony of ___ (5) Report itself discloses that "Report is based on information from reliable sources, but that information's accuracy is not guaranteed.	(1) ___ Contract and invoice (2) ___ Invoice dated ___ (3) ___ (4) ___ (5) Copy of Credit Report dated ___	
	B. Consumer notified reporting agency that consumer disputed specific information on credit report.	B. 15 U.S.C. 1681i; <i>Swager v. Credit Bureau of Greater St. Petersburg</i> , 608 F.Supp. 972 (M.D. Fla. 1985)	B. ___ notified ___ that he never owed ___ any money, but did not notify CCR until ___	B. Business records of ___		
	C-1. After receiving notification of dispute, reporting agency refused to reinvestigate accuracy of disputed information or C-1.	C-1. 15 U.S.C. §1681i (a) <i>Pinne v Schmidt</i> , 805 F.2d 1258 (5th Cir. 1986)	* ___ does say in his deposition that he called ___ in [year]. C-1. ___ did reinvestigate the disputed info by contacting ___ after being contacted by ___ in [month, year]	C-1. 1. Testimony of ___ 2. Testimony of ___ 3. Testimony of ___ 4. Testimony of ___	C-1. Were mailed to ___: "Concerning Your Credit Report," "In Response to Your Request," "Completion of Reinvestigation"	

1-89 TEXAS LITIGATION PLANS — Negligence §1:20.1						
	C-2. After investigating reporting agency failed or refused to delete disputed info without a reasonable basis for doing so.	C-2. 15 U.S.C. §1681i (a); See <i>Swager v Credit Bureau of Greater St. Petersburg, supra.</i>	C-2. ___ did not delete the disputed info because ___ said money had been owed by ___ no reason to believe that ___ was providing such information in good faith.	1. Testimony of ___ 2. Testimony of ___ 3. Testimony of ___ 4. Testimony of ___	's Memo, Business Records showing log of contacts by ___ with ___ (these documents have problems with them)	
	D. ___'s failure to reinvestigate (delete) disputed info was due to ___'s negligence.	15 U.S.C. §1681o(l)	D. ___ followed its own Procedures of reinvestigation and had a reasonable basis for not deleting disputed info. It was not negligent.	- Testimony of ___ (on ___'s procedures) - Testimony of ___ - Testimony of ___ - Testimony of ___		
	E. Consumer sustained actual damages as a result of ___'s failure to reinvestigate (delete) disputed information.	15 U.S.C. §1681o(l)				
			1. ___ contributed to damages by telling people about his problems.			
			2. ___ could have paid \$ ___ to get rid of debt back in ___ and could have thereby avoided any subsequent damages.			
			3. He has suffered, but didn't ___ himself contribute to his reputation by telling other people about his problems.	- ___ deposition		
			4. ___ could have filed Statement of Dispute with ___, but did not.			

# PARTIAL LIST OF 155 PLANS (CONTINUED)

Condemnation to Open or Change or Widen Public Street, Refund of Tax Paid Under Protest, Appointment of Guardian/Attorney Ad Litem for Estate, Bank Directors Failed Follow Procedures, Suit on Account

## Insurance

Denial of Coverage Elements & Authorities, Denial of Life Insurance Benefits

## Intellectual Property

Advertising Campaign Copyright Infringement, Unfair Competition Elements & Authorities

## Construction

Breach of Implied Warranty – Performance in Good & Workmanlike Manner Elements & Authorities, Construction & Sale of New Home, Design Contract/Preparation of Plans and Specs

Breach of Contract Elements & Authorities, Contractor-Subcontractor/Change Orders, Contractor/Subcontractor Liability for Negligence

## Nonmonetary Relief

Temporary Restraining Order/Injunction: Breach of Settlement Agreement, Trustee Seeking Injunction for Tortious Interference with Contract, Loan Funding/Repayment, Use of Name/Assets, Maintain Money in Account until Trial

Declaratory Relief: Easement on Property Implied by Estoppel/Express, Distribution Agreement, Foreclosure/Lease and Related Written Instruments, Use/Distribution of Trust Funds, Texas Civ. Prac. & Rem. Code §37.01, Termination of Public Employee, Elements & Authorities, Sale of Real Estate, Writ of Attachment Elements & Authorities

## Bankruptcy

Equitable Subordination, Fraudulent Conveyance, Avoidance, Marshaling

## Proof.

The examples provided illustrate the types of proof, evidence, and exhibits that you can and should investigate.

1-90 TEXAS LITIGATION PLANS — Negligence §1:20.1						
REMEDY (Cause of Action or Affirmative Def.)	ELEMENTS	LAW	PROOF	EVIDENCE	EXHIBITS	LAW re: Evidence (predicate, etc.)
			5. The ___ entry on the report did not hurt his credit record (2)  F. ___ states in his Petition that he has damages "in excess of \$___	- Expert testimony by ___ and/or ___ on the topic of credit evaluation and the effect of the entry on how credit grantors perceived ___'s credit record.		
			- says he has been - Refused loan by ___ - Refused loan by ___ - Refused Credit by ___  In his deposition and his interrogatory answers, he states that his actual damages are limited to:  (1) Emotional distress and trauma  (2) Damage to his reputation		Notice of Denial by ___ dated ___	
II. Claim 2 – ___'s Negligent failure to maintain reasonable procedures designed to assure maximum possible accuracy  A. Inaccurate information on credit report						

1-91 TEXAS LITIGATION PLANS — Negligence §1:20.1						
REMEDY (Cause of Action or Affirmative Def.)	ELEMENTS	LAW	PROOF	EVIDENCE	EXHIBITS	LAW re: Evidence (predicate, etc.)
	B. ___ did not maintain reasonable procedures designed to assure maximum possible accuracy of the info on the consumer's credit report	B. ___ must show ___ did not maintain reasonable procedures. ___ must show it did maintain reasonable procedures.		- Testimony of ___ (re: procedures of special handling)  - Our experts:	Documents Used to screen ___ as being a reliable source	
	C. ___'s failure to maintain those reasonable procedures was due to the ___'s negligence.		___ must show that ___ negligently failed to maintain reasonable procedures with regard to ___'s report.	- ___: on ___'s reasonable procedures - ___: for the purposes of demonstrating the relationship of ___  - Testimony of ___ - Testimony of ___	Forms used to communicate with consumers who dispute information on their credit report	
	D. Consumer sustained actual damages as a result of ___'s failure to maintain those reasonable procedures with respect to information on consumer's credit report.	- ___ could have avoided all damages except payment of \$___ if he had paid account back in [year], but he didn't do that.  - ___ could have filed statement of dispute with ___, but didn't.		Deposition testimony of ___ ("Significant amount of damages could have been avoided")  - Testimony of ___	Business Records of ___	
	E. Actual Damages – ___'s negligent failure to maintain reasonable procedures designed to assure maximum possible accuracy.					

# ABOUT THE BOOK AND CD

Gruber and Dunn's *Texas Litigation Plans & Forms* contains 1,400 letter-sized pages and 18 tabbed dividers in two sturdy 3-ring binders. Its 155 trial plans from the files of litigation powerhouse Godwin Gruber get you organized and focused at the outset on what you need to win: the (1) elements to be proved, (2) law underlying those elements, (3) facts that support each element, and (4) admissible evidence to prove each fact. Dozens of causes of actions are covered.

The book also contains 308 forms from Rogge Dunn's successful and systemized trial firm. They include interview questionnaires, retainer agreements, demand letters, initial pleadings, motions re pleadings, TROs and injunctions, notices to preserve evidence, extensive written discovery, discovery responses, summary judgment motions, motions in limine, jury questionnaires, and much more.

Roughly half of the content provided is in print. 78 of

the 155 plans and 52 of the 308 forms are in both the book and on the CD; the remaining 77 plans and 256 forms are on CD only. In other words, you receive over four volumes of material for James Publishing's low two-volume price.

The CD contains over 3,000 pages of plans and forms. The CD requires no installation before use, and may be searched by key word, case name, topic, or form. You may also open and modify any of the CD's plans or forms simply by using your favorite word processor; you need not work with the CD's search program.

\$129 buys the book and CD. The book is updated annually for \$89 with replacement pages and a new CD. Both the book and its update are sold on a 30-day trial basis, and may be returned if not to your liking. The update service may be cancelled at any time.

## ABOUT THE AUTHORS

**G. Michael Gruber** is CEO of Godwin Gruber, LLP, a large litigation firm containing approximately 150 attorneys at offices in Dallas and Houston. The firm specializes in all types of trial and appellate work representing Fortune 500, middle-market industry leaders, and entrepreneurs in make-it-or-break-it cases.

Mr. Gruber's practice primarily involves litigation defense but he has also posted several of the largest verdicts and judgments in Dallas County, including a nine-figure award in a commercial litigation case. Other verdicts include multi-million dollar jury verdicts in cases involving employment issues against Roche Pharmaceuticals and commercial litigation against Shell Oil Company. Mr. Gruber has also negotiated multi-million dollar settlements in a large number of cases,



including a recent shareholder dispute.

He has been consistently named as a Texas Super Lawyer since 2003 in *Texas Monthly* and *Law & Politics* magazines.

The same publications listed him as one of the Top 100 Texas Super Lawyers and one of the Top 100 Dallas/Fort Worth Region Super Lawyers. Additionally, *D Magazine* listed him as one of the Best Lawyers in Dallas in 2003.

Mr. Gruber is board certified in civil trial law by the Texas Board of Legal Specialization. He attended Southern Methodist University and went on to attend the Dedman School of Law after obtaining a Bachelor's of Science degree in 1978. He obtained his J.D. from Dedman School of Law in 1981, where he served as an editor of the law review and class president.

**R. Rogge Dunn** is a trial lawyer who loves trying cases. A partner in the Dallas firm of Clouse Dunn Hirsch LLP, he has litigated complex business, employment, partnership, and insurance disputes throughout the country. He has tried cases to a jury verdict in four states.

Although approximately two-thirds of his practice involves representing corporate defendants, Mr. Dunn has won settlements and judgments that have netted more than \$200 million for his plaintiff clients, including million dollar jury verdicts in Texas, Louisiana and Arkansas.

From 2003 to the present, Mr. Dunn has been recognized by *Texas Monthly* as a Texas "Super Lawyer" and by *D Magazine* as one of the "Best Lawyers in Dallas." He was also selected as one of the top 100 attorneys in the DFW metroplex by *Texas Monthly* in 2005.



He has authored three books on trials and evidence.

Mr. Dunn is one of only approximately 25 attorneys in Texas who is Board Certified in both Civil Trial Law and Labor and Employment Law. He received his JD, with honors, from the University of Texas in 1983, where he served as a note editor of the *Texas Law Review* and was a member of the Board of Advocates. He clerked for the Honorable Reynaldo Garza of the U.S. Fifth Circuit Court of Appeals from 1983 to 1984, and taught at Southern Methodist University as an adjunct professor for 14 years.

Mr. Dunn enjoys discussing trial strategies and evidentiary issues with other trial lawyers. If you ever wish to exchange ideas or case citations, feel free to contact him at (214) 220-0077, by fax at (214) 220-3833, or at [rdunn@trialtested.com](mailto:rdunn@trialtested.com).

**(800) 440-4780 OR [WWW.JAMESPUBLISHING.COM](http://WWW.JAMESPUBLISHING.COM)**

We give 1% of our revenues to needy youth

# 155 HEAD STARTS

Yes, send me one copy of Gruber and Dunn's *Texas Litigation Plans & Forms* and its CD with an invoice for \$129 plus shipping. If not satisfied, I may return the book within 30 days. Send the annual supplements on the same 30-day review basis. I may cancel the update service at any time.

Copyright © 2005 James Publishing

## Four Easy Ways to Order...

TLFI

MAIL: James Publishing, Inc. / P.O. Box 25202 / Santa Ana, CA 92799-5202 PHONE: 800-440-4780 FAX: 714-751-2709 INTERNET: [www.jamespublishing.com](http://www.jamespublishing.com)

### Prepay and save \$8.98 shipping

- “ Check enclosed for \$129  
(Make check payable to James Publishing / U.S. funds only)
- “ Charge \$129 to my credit card: “ Visa “ Mastercard “ AMEX



### Invoice option

(I do not wish to take advantage of the free shipping offer)

- “ Bill firm \$137.98 (shipping included)
- “ Bill me the same

Card #: \_\_\_\_\_ Exp. Date: \_\_\_\_\_ 3(or 4)-digit security code: \_\_\_\_\_

Please complete all blanks, providing a street address for your office.

Printed Name: \_\_\_\_\_

Firm Name: \_\_\_\_\_

Office Address: \_\_\_\_\_ Suite: \_\_\_\_\_  
*(not residence)*

City, State, Zip: \_\_\_\_\_

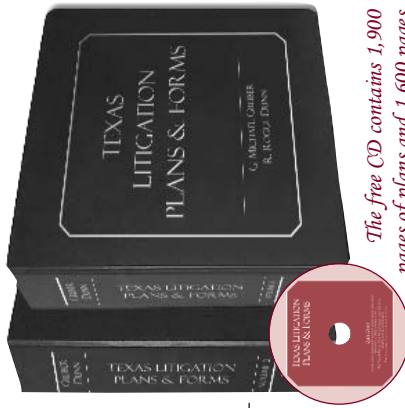
Telephone: (\_\_\_\_) \_\_\_\_\_ Fax: (\_\_\_\_) \_\_\_\_\_

Bar #: \_\_\_\_\_ E-mail: \_\_\_\_\_

Signature: \_\_\_\_\_

# LITIGATION PLANNING MADE EASY

*These 155 Texas-specific case templates provide pre-researched pleading and discovery frameworks*



*The free CD contains 1,900 pages of plans and 1,600 pages of forms, which would fill four print volumes. All of the CD's extra plans and forms are referenced and indexed in the two print volumes. \$129*

The best way to maintain a laser focus on the objectives of your case is to draft a trial plan. Unfortunately, the demands of responding to the opposition frequently limits the time available for case analysis.

Michael Gruber and Rogge Dunn's *Texas Litigation Plans & Forms* organizes your case for you, so analysis is easy, pleadings flow readily, and your limited discovery time is spent efficiently. This unique book contains pre-researched trial charts and forms that include:

1. Elements to be proved
2. Law underlying those elements
3. Sample facts supporting each element
4. Admissible evidence to prove each fact
5. Defenses to the claim

## HOW IT WORKS

When you adapt a chart from the book to the facts of your case, you will quickly identify what you do not know and what you need to find out. In addition to highlighting the evidentiary holes in your story, the charts make it easy to share the work and results with other members of your team. Most important, **the chart's analysis and research focus your efforts on proving each element of your causes of action.**

*Texas Litigation Plans & Forms* also contains 300 litigation forms to help with implementation. You receive pleadings, extensive written discovery, summary judgment motions, injunctions/TROs, motions in limine, jury questionnaires and more.

*Sample plans and forms, and list of plans and forms inside ...*