

# TIPS AND STRATEGIES FOR GETTING A JURY CHARGE YOU CAN LIVE WITH

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# Why is the Jury Charge Important?

- Trial preparation

- Trial

- Appeal

# Why is the Jury Charge Important?

The charge that is given to the jury focuses the jury on deciding the critical factual disputes between the parties that control the outcome of this case under the law. *See Aero Energy, Inc. v. Circle C Drilling Co.*, 699 S.W.2d 821, 823 (Tex. 1985).

# Why is the Jury Charge Important?

If the jury charge is wrong, then the jury's answer is likely wrong.

Jury charge error has been described as “a prolific source of reversals.”

Jury charge error is the second-leading cause of the reversal of judgments in jury trials.

# The Basics of the Jury Charge Practice

Texas Rules of Civil Procedure 271 – 279

*Crown Life Ins. Co. v. Casteel*

*Harris County v. Smith*

*Romero v. KPH Consolidation*

*Bed, Bath & Beyond, Inc. v. Urista*

*Dillard v. Texas Elec. Coop.*

*State Dept. of Highways & Transp., Co. v. Payne*

# The Basics of the Jury Charge Practice

The PJC is a starting point:

“Texas Pattern Jury Charges are nothing more than a guide to assist the trial courts in drafting their charges; they are not binding on the courts.” *Keetch v. Kroger Co.*, 845 S.W.2d 276, 281 (Tex. App.—Dallas 1990), *aff’d*, 845 S.W.2d 262 (Tex. 1992); *see also*, *Ford Motor Co. v. Ledesma*, 242 S.W.3d 31 (Tex. 2007) (PJC definition of “producing cause” was incorrect).

# The Basics of the Jury Charge Practice

## **RULE 271. CHARGE TO THE JURY**

Unless expressly waived by the parties, the trial court shall prepare and in open court deliver a written charge to the jury.

# The Basics of the Jury Charge Practice

Think of the jury charge as one of the components of a judgment in a jury trial: (1) pleadings + (2) evidence + (3) verdict = JUDGMENT.



# The Basics of the Jury Charge Practice

## RULE 272. REQUISITES

- The charge shall be in writing, signed by the court, and filed with the clerk, and shall be a part of the record of the cause.
- It shall be submitted to the respective parties or their attorneys for their inspection, and a reasonable time given them in which to examine and present objections thereto outside the presence of the jury, which objections shall in every instance be presented to the court in writing, or be dictated to the court reporter in the presence of the court and opposing counsel, before the charge is read to the jury. All objections not so presented shall be considered as waived.
- The court shall announce its rulings thereon before reading the charge to the jury and shall endorse the rulings on the objections if written or dictate same to the court reporter in the presence of counsel. Objections to the charge and the court's rulings thereon may be included as a part of any transcript or statement of facts on appeal and, when so included in either, shall constitute a sufficient bill of exception to the rulings of the court thereon. It shall be presumed, unless otherwise noted in the record, that the party making such objections presented the same at the proper time and excepted to the ruling thereon.

# The Basics of the Jury Charge Practice

1. Charge has to be in writing, signed by the judge, filed with the clerk, and be a part of the record. If not, object.
2. Parties must be given a reasonable amount of time to review charge. A “reasonable amount of time” is a matter left to the discretion of the trial judge, reviewable only for an abuse of discretion. *See Hargrove*, 332 S.W.2d at 123.
3. Objections must be made in writing or dictated into the record in the presence of the judge and opposing counsel, before the charge is read to the jury. Objections dictated in the court’s absence are not preserved. *Brantley*, 636 S.W.2d at 225.
4. All rulings must be made before the charge is read to the jury. It may be presumed that the trial court overruled an objection if there is no change in the charge after a proper objection. *Acord*, 669 S.W.2d at 114.

# The Basics of the Jury Charge Practice

## RULE 273. JURY SUBMISSIONS

Either party may present to the court and request written questions, definitions, and instructions to be given to the jury; and the court may give them or a part thereof, or may refuse to give them, as may be proper. Such requests shall be prepared and presented to the court and submitted to opposing counsel for examination and objection within a reasonable time after the charge is given to the parties or their attorneys for examination. A request by either party for any questions, definitions, or instructions shall be made separate and apart from such party's objections to the court's charge.

# The Basics of the Jury Charge Practice

1. Rule 33.1 of the Texas Rules of Appellate Procedure requires a party to present the trial court with a timely request, motion, or objection, state the grounds for the same, and obtain a ruling in order to preserve an appellate complaint.
2. All parties may request written questions, definitions, and instructions. Any such request shall be made in writing.
3. Any request for a question, definition or instruction must be made separately from a party's objections. *See Lester*, 907 S.W.2d at 453.
4. The trial court can refuse a requested question if it contains a defective definition. *Sherwin-Williams Paint Co.*, 449 S.W.3d at 322 - 23.
5. Do not submit your requests en masse; the trial court may properly reject an en masse request if any part of the en masse request is defective.

# The Basics of the Jury Charge Practice

## RULE 274. OBJECTIONS AND REQUESTS

- A party objecting to a charge must point out distinctly the objectionable matter and the grounds of the objection.
- Any complaint as to a question, definition, or instruction, on account of any defect, omission, or fault in pleading, is waived unless specifically included in the objections.
- When the complaining party's objection, or requested question, definition, or instruction is, in the opinion of the appellate court, obscured or concealed by voluminous unfounded objections, minute differentiations or numerous unnecessary requests, such objection or request shall be untenable.
- No objection to one part of the charge may be adopted and applied to any other part of the charge by reference only.

# The Basics of the Jury Charge Practice

1. Must be a specific objection. Counsel is required to point out the objectionable matter and the ground of the objection. No objection results in waiver.
2. General objections do not give the trial court an opportunity to correct any mistake. *Wilgus*, 730 S.W.2d at 672. Objections must be specific and distinct enough to show that the court was fully cognizant of the ground of the complaint and deliberately choose to overrule it. *City of Weatherford*, 83 S.W.3d at 272.
3. An untimely objection results in waiver. Failure to raise all proper objections, orally or in writing, before the charge is read to the jury waives any error.
4. Don't assert a laundry list of objections; voluminous unfounded objections or numerous unnecessary requests are not proper and can result in waiver.
5. You are not permitted to adopt objections.

# The Basics of the Jury Charge Practice

## **RULE 275. CHARGE READ BEFORE ARGUMENT**

Before the argument is begun, the trial court shall read the charge to the jury in the precise words in which it was written, including all questions, definitions, and instructions which the court may give.

# The Basics of the Jury Charge Practice

## RULE 276. REFUSAL OR MODIFICATION

- When an instruction, question, or definition is requested and the provisions of the law have been complied with and the trial judge refuses the same, the judge shall endorse thereon "Refused," and sign the same officially.
- If the trial judge modifies the same the judge shall endorse thereon "Modified as follows: (stating in what particular the judge has modified the same) and given, and exception allowed" and sign the same officially.
- Such refused or modified instruction, question, or definition, when so endorsed shall constitute a bill of exceptions, and it shall be conclusively presumed that the party asking the same presented it at the proper time, excepted to its refusal or modification, and that all the requirements of law have been observed, and such procedure shall entitle the party requesting the same to have the action of the trial judge thereon reviewed without preparing a formal bill of exceptions.



# The Basics of the Jury Charge Practice

1. The best practice is to have the judge rule on your requests and objections in writing.
2. The *Payne* test for preserving error is: “... whether the party made the trial court aware of the complaint, timely and plainly, and obtained a ruling.” *Payne*, 838 S.W.2d at 241.

# The Basics of the Jury Charge Practice

## **RULE 277. SUBMISSION TO THE JURY**

- In all jury cases the court shall, whenever feasible, submit the cause upon broad-form questions.
- The court shall submit such instructions and definitions as shall be proper to enable the jury to render a verdict.
- Inferential rebuttal questions shall not be submitted in the charge.
- The placing of the burden of proof may be accomplished by instructions rather than by inclusion in the question.
- In any cause in which the jury is required to apportion the loss among the parties the court shall submit a question or questions inquiring what percentage, if any, of the negligence or causation, as the case may be, that caused the occurrence or injury in question is attributable to each of the persons found to have been culpable.
- The court shall also instruct the jury to answer the damage question or questions without any reduction because of the percentage of negligence or causation, if any, of the person injured.
- The court may predicate the damage question or questions upon affirmative findings of liability. The court may submit a question disjunctively when it is apparent from the evidence that one or the other of the conditions or facts inquired about necessarily exists.
- The court shall not in its charge comment directly on the weight of the evidence or advise the jury of the effect of their answers, but the court's charge shall not be objectionable on the ground that it incidentally constitutes a comment on the weight of the evidence or advises the jury of the effect of their answers when it is properly a part of an instruction or definition.

# The Basics of the Jury Charge Practice

1. Broad form when “feasible.”
2. For an instruction to be proper, it must (1) assist the jury, (2) accurately state the law, and (3) find support in the pleadings and evidence. *See In re K. M. B.*, 91 S.W.3d at 18.
3. Words which have no special or technical meaning apart from their ordinary usage need not be defined. *Green Tree Acceptance,, Inc.*, 745 S.W.2d 89 - 90.
3. Inferential rebuttal questions are not proper; they are properly submitted as instructions.
4. The jury is to be instructed to not reduce its answer on any damages question because of the percentage of negligence or causation, if any, of the person injured.
5. The court may predicate a damages question on an affirmative finding of liability.

# The Basics of the Jury Charge Practice

## RULE 278. SUBMISSION OF QUESTIONS, DEFINITIONS, AND INSTRUCTIONS

- The court shall submit the questions, instructions and definitions in the form provided by Rule 277, which are raised by the written pleadings and the evidence.
- Except in trespass to try title, statutory partition proceedings, and other special proceedings in which the pleadings are specially defined by statutes or procedural rules, a party shall not be entitled to any submission of any question raised only by a general denial and not raised by affirmative written pleading by that party.
- Nothing herein shall change the burden of proof from what it would have been under a general denial.
- A judgment shall not be reversed because of the failure to submit other and various phases or different shades of the same question.
- Failure to submit a question shall not be deemed a ground for reversal of the judgment, unless its submission, in substantially correct wording, has been requested in writing and tendered by the party complaining of the judgment; provided, however, that objection to such failure shall suffice in such respect if the question is one relied upon by the opposing party.
- Failure to submit a definition or instruction shall not be deemed a ground for reversal of the judgment unless a substantially correct definition or instruction has been requested in writing and tendered by the party complaining of the judgment.

# The Basics of the Jury Charge Practice

1. Requests must be supported by the pleadings and the evidence.
2. Different shades of the same question generally not permitted. Different “shades” of the same question may be permitted if the law is unsettled.
3. No error unless the requests is in writing, in substantial correct wording.

# The Basics of the Jury Charge Practice

## RULE 279. OMISSIONS FROM THE CHARGE

- Upon appeal all independent grounds of recovery or of defense not conclusively established under the evidence and no element of which is submitted or requested are waived.
- When a ground of recovery or defense consists of more than one element, if one or more of such elements necessary to sustain such ground of recovery or defense, and necessarily referable thereto, are submitted to and found by the jury, and one or more of such elements are omitted from the charge, without request or objection, and there is factually sufficient evidence to support a finding thereon, the trial court, at the request of either party, may after notice and hearing and at any time before the judgment is rendered, make and file written findings on such omitted element or elements in support of the judgment.
- If no such written findings are made, such omitted element or elements shall be deemed found by the court in such manner as to support the judgment.
- A claim that the evidence was legally or factually insufficient to warrant the submission of any question may be made for the first time after verdict, regardless of whether the submission of such question was requested by the complainant.

# The Basics of the Jury Charge Practice

1. If it is your question and you omit it, you only obtain a reversal if you establish the claim or defense as a matter of law.
2. Omitted element – if factually sufficient evidence to support the finding, the trial court, at the request of either party, may make and file written findings on such omitted element in support of the judgment if done before the judgment is rendered.
3. If you no requests the trial court to make such a ruling, the court of appeals will rule that the omitted element is deemed found.

# The Basics of the Jury Charge Practice

- Object to an omitted question on which the opposing party has the burden of proof.
- Object to a defective instruction or definition that appears in the charge.
- Object to an erroneous question that appears in the charge.
- Request a definition or instruction that is omitted—and also object to the omission.
- Request an omitted question on which you have the burden of proof—and also object to the omission.



# Easy Enough????

“The rules governing charge procedures are difficult enough; the case law applying them has made compliance a labyrinth daunting to the most experienced trial lawyers.” *State Dep’t of Highways & Pub. Transp. v. Payne*, 838 S.W.2d 235, 240 (Tex. 1992).

“[T]he process of telling the jury the applicable law and inquiring of them their verdict [remains] a risky gambit in which counsel has less reason to know that he or she has protected a client's rights than at any other time in the trial.” *Id.* at 240.

# Easy Enough????

“Our disposition of charge-error cases in recent years has been less than clear.” *Torrington Co. v. Stutzman*, 46 S.W.3d 829, 839 (Tex. 2001).

# COMMON MISTAKES

1. No collaborative effort between plaintiff and defendant.
2. Placing improper burdens of proof. *See* TRCP 226a.
3. Asking for too long of a charge or proposing too many issues.
4. Proposing “nudging” instructions that comment on the weight of the evidence.
5. Blindly following the PJC.
6. Not knowing how to object or submit requests.
7. Requesting an improper measure of damages.
8. Making global and voluminous objections.

# Problem Areas

## The *Casteel* Problem:

The Rules dictate that we use broad-form when feasible.

In *Casteel*, the supreme court determined that “it may not be feasible to submit a single broad-form liability question that incorporates wholly separate theories of liability.” *Crown Life Ins. Co. v. Casteel*, 22 S.W.3d 378, 390 (Tex. 2000).

Therefore, when “a single broad-form liability question erroneously commingles valid and invalid liability theories and the appellant's objection is timely and specific, the error is harmful when it cannot be determined whether the improperly submitted theories formed the sole basis for the jury's finding.” *Id.* at 388.

# Problem Areas

The question in *Casteel* instructed the jury on DTPA-based [Article 21.21](#) liability theories as follows:

Question 16(a), “Representing that the insurance policies had characteristics, uses, benefits and quantities which they did not have,” tracks DTPA [§ 17.46\(b\)\(5\)](#).

Question 16(b), “Representing that the insurance policies were of a particular standard, quality or grade if they were of another,” tracks DTPA [§ 17.46\(b\)\(7\)](#).

Question 16(c), “Advertising insurance policies with intent not to sell them as advertised,” tracks DTPA [§ 17.46\(b\)\(9\)](#).

Question 16(d), “Representing that agreements conferred or involved rights, remedies or obligations which they did not have or involve,” tracks DTPA [§ 17.46\(b\)\(12\)](#).

Question 16(e), “Failing to disclose information concerning an insurance policy which was known at the time of the transaction with the intention to induce another into a transaction,” tracks DTPA [§ 17.46\(b\)\(23\)](#).

Answer: \_\_\_\_\_

# Problem Areas

After *Casteel*, the commingling of valid and invalid theories of liability within a single broad-form question represents reversible error—although the trial court may not know of or agree with the invalidity at the time of submission.

Because the jury was not asked separately about each of the plaintiff's 13 theories of liability in *Casteel*, the supreme court concluded that the jury could have based its affirmative answer solely on one or more of the erroneously submitted theories. *Casteel*, 22 S.W.3d at 387-88.

# Problem Areas

The Texas Supreme Court held that “when a trial court submits a single broad-form liability question incorporating multiple theories of liability, the error is harmful and a new trial is required when the appellate court cannot determine whether the jury based its verdict on an improperly submitted invalid theory.”

*Casteel*, 22 S.W.3d at 338.

# Problem Areas

1. If all of your theories are valid, then you probably do not have a *Casteel* issue.
2. A party is not entitled to have the jury answer granulated questions on a *single* theory of liability.
3. Be wary of the word “and” appearing in any of the jury questions.



# Problem Areas

Were (a) the Bandier Defendants' and/or Kenroc Defendants' alleged misrepresentations to plaintiffs and/or other alleged misconduct after December 1, 2010 and/or (b) SSC's assignment of its rights in the Property to Del Papa as trustee of a to-be-formed entity superseding causes of SSC's losses from a breach of fiduciary duties by Charter Title?

The acts of a third person (e.g. the Bandier Defendants or Kenroc Defendants) in committing an intentional tort (e.g. fraud, breach of fiduciary duties, or tortious interference) is a superseding cause of harm to SSC, although Charter Title's conduct created a situation which afforded an opportunity to the other defendants to commit such a tort, unless Charter Title at the time of its conduct realized or should have realized the likelihood that such a situation might be created, and that a third person might avail himself of the opportunity to commit such a tort against SSC. Similarly, actions taken by SSC in response to wrongful conduct of Charter Title, which actions caused the damages SSC claims to result from Charter Title's alleged wrongdoing, are superseding causes unless Charter Title knew or should have known that SSC would take those actions.

Answer: \_\_\_\_\_

# Problem Areas

Answer “Yes” or “No” for each of the following:

## A false representation of fact by:

a. Bandier Realty \_\_\_\_\_

b. Banzhaf \_\_\_\_\_

c. Halberdier \_\_\_\_\_

## A false promise to do an act by:

a. Bandier Realty \_\_\_\_\_

b. Banzhaf \_\_\_\_\_

c. Halberdier \_\_\_\_\_

\*\*\*\*\* *But see Lundy v. Masson*, 260 S.W.3d 482, 494 (Tex. App. – Houston [14th Dist.] 2008, pet. denied) (“trial courts may combine several species of fraud into one broad form fraud question and are not required to ask the jury to specify the grounds for its answers.”).

# Problem Areas

Before *Casteel*, courts routinely upheld damages awarded in a lump-sum as long as the evidence supported the total. See, e.g., *Brookshire Bros., Inc. v. Lewis*, 997 S.W.2d 908, 921-22 (Tex. App—Beaumont 1999, pet. denied.) (“to successfully challenge a multi-element damage award on appeal, an appellant must address all of the elements and show the evidence is insufficient to support the entire damage award”).

But, following *Casteel*, the supreme court rejected the approach of these cases and clarified that a broad-form damage finding may be reversible if any single element of damages lacks evidentiary support. See *Harris County v. Smith*, 96 S.W.3d 230 (Tex. 2002).

# Problem Areas

In *Harris County v. Smith*, 96 S.W.3d 230 (Tex. 2002), the trial court submitted two broad form damages questions, each of which instructed the jury to consider several elements and award a single lump-sum amount. Harris County objected to the questions and asked the trial court to submit each element separately. *Id.* at 231.

After the court denied the request for separate submissions, Harris County objected on the ground that one listed element in each question was supported by no evidence. *Id.* at 231-32. The trial court overruled the objections. *Id.*

# Problem Areas

On appeal, the court of appeals concluded there was no evidence of the challenged elements, but held the submission error was harmless “because there was ample evidence on properly submitted elements of damage to support the jury’s awards to both plaintiffs.” *Id.* at 232.

The supreme court reversed, relying on *Casteel* and holding that “the trial court erred in overruling [the defendant’s] timely and specific objection to the charge, which mixed valid and invalid elements of damage in a single broad-form submission, and that such error was harmful because it prevented the appellate court from determining „whether the jury based its verdict on an improperly submitted invalid“ element of damage.” *Id.* at 234.

# Problem Areas

## Example:

PJC – Negligence § 15.3

- a. Physical pain and mental anguish sustained in the past.

Answer: \_\_\_\_\_

- b. Physical pain and mental anguish that, in reasonable probability, *Paul Payne* will sustain in the future.

Answer: \_\_\_\_\_

# Problem Areas

**Better example:**

**What was the amount of Banzhaf's profit and fees in connection with the transactions at issue?**

Answer in dollars and cents, if any.

A. Profit

**ANSWER:** \_\_\_\_\_

B. Fees

**ANSWER:** \_\_\_\_\_

# Problem Areas

## **Broad-Form Is Not Feasible for Multiple Liability Apportionment Questions.**

In *KPH Consolidation, Inc. v. Romero*, the trial court submitted two separate liability questions—one asking the jury to decide the Hospital's negligence and one asking the jury to decide the Hospital's malice in medical credentialing. The Hospital did not challenge the jury's negligence finding. The Hospital did challenge the malicious credentialing claim, and the court of appeals concluded that there was no evidence the Hospital acted with conscious indifference. *KPH Consolidation, Inc. v. Romero*, 102 S.W.3d 135, 146- 55 (Tex. App.—Houston [14th Dist.] 2003), *aff'd*, *Romero v. KPH Consolidation, Inc.*, 166 S.W.3d 212 (Tex. 2005).



# Problem Areas

After concluding that no evidence supported the credentialing claim, the court reversed the judgment and remanded the entire case, despite the jury's unchallenged negligence finding. *Id.* at 155-60. The court did so because the jury had answered a single apportionment question and indivisible damages questions predicated on an affirmative answer to either liability theory. *Id.* The court found it **“hard to believe that the 40% liability the jury attributed to the Hospital in question 3 was not based (1) partly on the liability it found for negligence (question 1), and (2) partly on the liability it found for malicious credentialing (question 2).”** *Id.* at 159. The court likewise concluded that **“the jury must have based part of the actual damages on negligence and part on malicious credentialing.”** *Id.* at 160. The court therefore, **“reversed and remanded for a new trial on negligence and damages.”** *Id.*

# Problem Areas

The supreme court affirmed the court of appeals. *Romero v. KPH Consolidation, Inc.*, 166 S.W.3d 212 (Tex. 2005).

Writing for the court, Justice Hecht explained, “[h]aving found malicious credentialing, the jury could not conceivably have ignored that finding in apportioning responsibility. While in other instances a jury may simply ignore a factor in the charge that lacks evidentiary support, there are other instances—and this case is one—where the jury is as misled by the inclusion of a claim without evidentiary support as by a legally erroneous instruction.” *Id.* 227.

*Romero* makes clear that “unless the appellate court is ‘reasonably certain that the jury was not significantly influenced by issues erroneously submitted to it,’ the error is reversible.” *Id.* at 227-28.

# Problem Areas

Section 33.003 of the Civil Practice and Remedies Code provides:

(a) The trier of fact, as to each cause of action asserted, shall determine the percentage of responsibility, stated in whole numbers, for the following persons with respect to each person's causing or contributing to cause in any way the harm for which recovery of damages is sought, whether by negligent act or omission, by any defective or unreasonably dangerous product, by other conduct or activity that violates an applicable legal standard, or by any combination of these:

(1) each claimant;

(2) each defendant;

(3) each settling person; and

(4) each responsible third party who has been designated under Section 33.004.

(b) This section does not allow a submission to the jury of a question regarding conduct by any person without sufficient evidence to support the submission.

TEX. CIV. PRAC. & REM. CODE § 33.003(a) and (b).

# Strategies and Tips

**Stay current.**

New admonitory instructions – TRCP 226a

New definition of proximate cause:

“Proximate cause” means a cause that was a substantial factor in bringing about an event, and without which cause such event would not have occurred. In order to be a proximate cause, the act or omission complained of must be such that a person using ordinary care would have foreseen that the event, or some similar event, might reasonably result therefrom. There may be more than one proximate cause of an event.

**“Objection: The definition of proximate cause/producing cause does not contain the required ‘substantial cause’ instruction.”**

# Strategies and Tips

**Consider objecting to conditioning instructions, but make sure your contingent questions do not contain an impermissible comment on the weight of the evidence:**

SSC objects to the conditional submission of its damages questions (Question Nos. 3, 6, 10, 14, 17, and 22) upon a finding of liability – even though Rule 277 expressly provides the Court with discretion to predicate the damages questions upon affirmative findings of liability. SSC objects to the conditional submission of its damages questions because in the event a court of appeals disagrees with a jury’s finding and holds that a Defendant is liable as a matter of law, the court of appeals will be required to remand this case for a new trial on liability and damages, as opposed to a reversal and rendition of judgment for damages in the amount found by the jury because the court of appeals cannot remand a case back to a trial court for a new trial on damages only when liability is disputed. TEX. R. APP. 44.1(b).

**“Objection: Do not submit my client’s damages conditionally upon a finding of liability—even though Rule 277 expressly gives you the discretion to ‘predicate the damage question or questions upon affirmative findings of liability.’”**

# Strategies and Tips

**“Objection: The laundry list instructions on what constitutes a ‘misrepresentation’ include forms of misrepresentation not raised by the pleadings or the evidence and that are not actionable under the facts of this case.”**

“Misrepresentation” means:

- i. A false statement of fact; or
- ii. A promise of future performance made with an intent, at the time the promise was made, not to perform as promised; or
- iii. A statement of opinion based on a false statement of fact; or
- iv. A statement of opinion that the maker knows to be false; or
- v. An expression of opinion that is false, made by one claiming or implying to have special knowledge of the subject matter of the opinion.

# Strategies and Tips

**“Objection: The charge allows the jury to find the wrong measure of damages (such as breach of contract damages) for the tort causes of action.”**

Always know the measure of damages for every theory of recovery and insist that they be submitted separately.

# Strategies and Tips

**“Objection: the instruction improperly focuses the jury on a ‘common objective or course, of action’ that merely ‘resulted in damages’ to the plaintiff. The point of civil conspiracy is that the conspirators intended to injure or harm the plaintiff, not that injury resulted. Intent to harm is not sufficient.”**

PJC 109.1 submits conspiracy in the same “resulted in damages” language that was condemned by the Supreme Court in *Triplex Communications, Inc. v. Riley*, 900 S.W.2d 716, 719-20 (Tex. 1995), as erroneously permitting “the jury to find that the parties conspired to be negligent,” thereby resulting in injury. *Id.* at n.2. Instead, “[t]he ‘gist of civil conspiracy’ is the injury that is intended to be caused.” *Id.* at 720.



# Strategies and Tips

- Object to an omitted question on which the opposing party has the burden of proof.
- Object to a defective instruction or definition that appears in the charge.
- Object to an erroneous question that appears in the charge.
- Request a definition or instruction that is omitted—and also object to the omission.
- Request an omitted question on which you have the burden of proof—and also object to the omission.

# Strategies and Tips

Take time to focus on the order you want to present the questions to the jury.

Focus on the informal charge conference.

Bring your critical cases with you.

You do not need to win every battle; avoid risk.

Use the jury charge in closing argument.