

# Civil Procedure

## Purposes that the rules seek to achieve:

- 1) Underlying social values – speedy, inexpensive resolution (see **Rule 1**)
- 2) Regulating adjudicatory process
  - a. Resolving and terminating controversy
  - b. Providing state enforced modes of relief
    - i. i.e. defendant must pay, injunction obeyed...it's the state that enforces this relief
  - c. Enunciating the law so that parties can order their affairs
    - i. this impacts those beyond the parties to the controversy.

## State versus Federal System

- In general, **state courts** = courts of **plenary authority**
    - able to hear cases involving any subject matter not exclusively reserved to the federal courts.
  - **Federal courts** are courts of **limited subject matter authority**
    - can hear cases only if authorized to do so by federal statute or within the “judicial power” of the US as set forth in **Article III**.
- “shall extend to all cases arising under the US Constitution, federal law, treaties; cases involving ambassadors, admiralty/maritime, where the US is a party, cases involving two or more states, between a state and citizens of another state, between citizens of different states...”

## Stages of a Lawsuit - Overview:

1. **Investigation:** Attorneys have a responsibility to ascertain that the client has in fact suffered a wrong for which the courts can offer an effective remedy.
  - In addition, federal court rules, and some state courts, impose the obligation to certify that the lawyer has conducted an investigation into the facts and the law. (**Rule 11**)
2. **Retainer**
3. **Subject Matter Jurisdiction:** To bring a case in federal, rather than state, court, the attorney must determine that there is **federal subject matter jurisdiction** either
  - a) “**arising under jurisdiction**” (**28 USC §1331**) – all civil actions arising under the Constitution, laws or treaties of the US; or
  - b) “**diversity jurisdiction**” (**§1332**) – where the suit is between citizens in different states and the amount in controversy is in excess of \$75,000.
    - The statute requires complete diversity: all plaintiffs must be from different states than all defendants.
- Even if the case **CAN** be brought in federal court, the attorney may still bring the case in state court.
  - However, some cases filed by a plaintiff in state court can be **removed** to federal court by the defendant under the **removal procedure** authorized by **28 USC §1441**.

# Civil Procedure Outline Series

**Clifford Lane**



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