

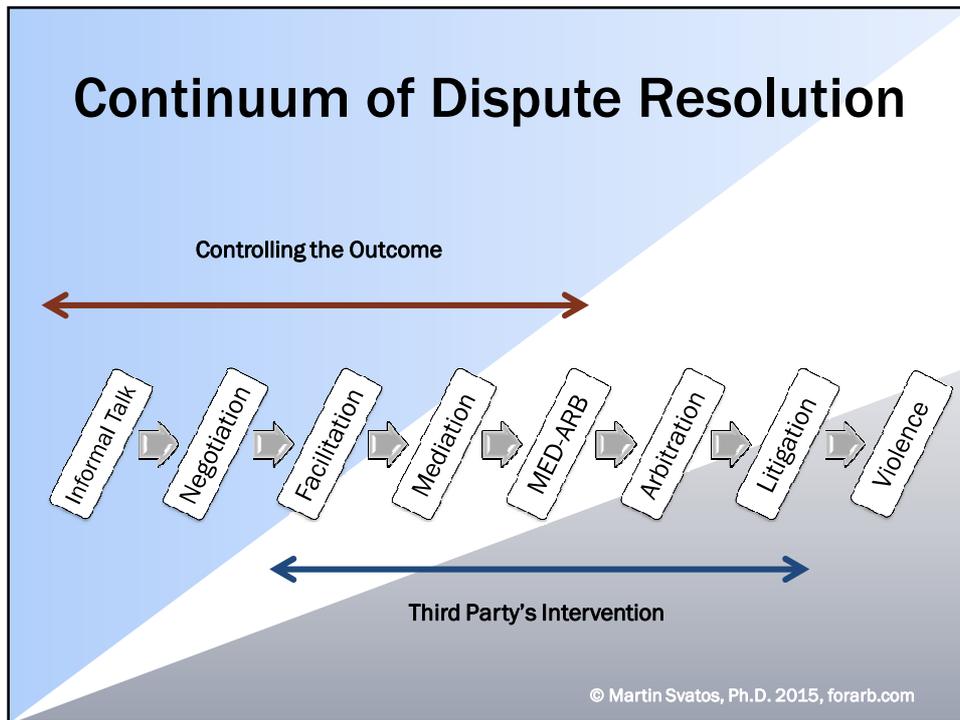
THE BLEND OF JUDICIAL MEDIATION AND ARBITRATION

DR. MARTIN SVATOS, PH.D.

Hermes and Apollo Dispute



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What do they have in common...

	Mediation	Arbitration
Private/Public DR	Private	
Third Party Intervention	YES	
Confidentiality	YES	
Characteristics	Less formal, flexible, party autonomy	
Alternative/Standard	ADR	ADR (?)
Who decides?	Parties	Arbitrator
Free to leave	YES	No
DR Approach	Collaborative	Adversarial
Focussing on	Economic interests	Legal questions

Dispute resolution for 21st Century

- Efficient
- Fast

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**ARBITRATION
INTERFERES
MEDIATION**

Threat of Arbitration as Motivation

- Costs and Fees
- Duration

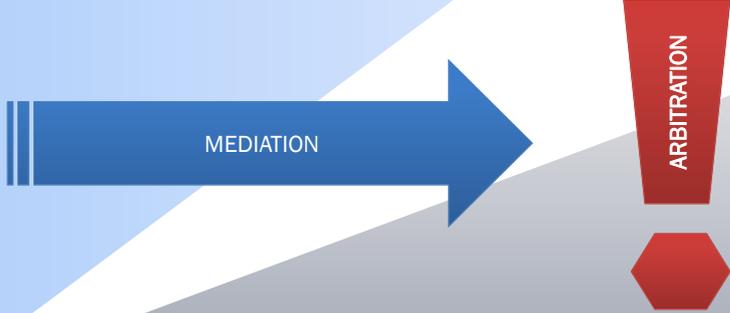


The diagram features a blue arrow labeled 'MEDIATION' pointing from left to right. To its right is a red exclamation mark labeled 'ARBITRATION'. The background is split diagonally from the bottom-left to the top-right, with a light blue upper triangle and a grey lower triangle.

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Baseball Arbitration

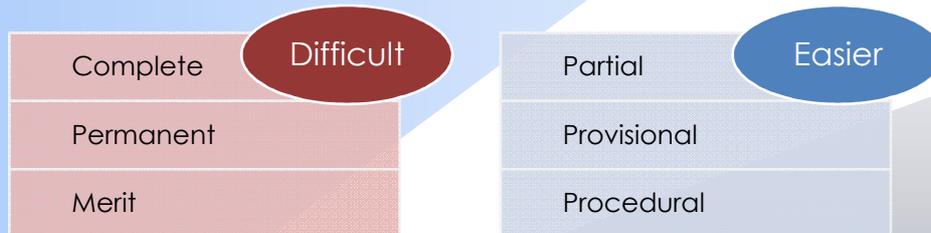
- Parties in Search for an Objective Value
- Envelope Method...
 - Day BA – choosing
 - Night BA – determining and choosing



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Arbitration as Possible Way Out



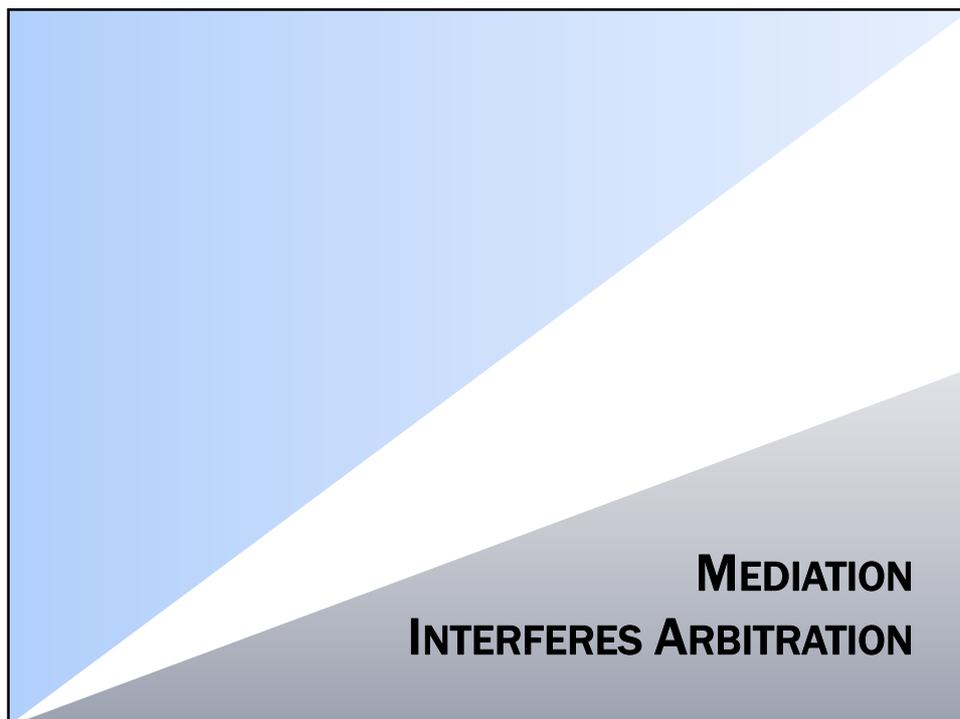
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Outcome Interaction

- Settlement in the form of Arbitral Award
- New York Convention



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Mediation Windows

- Disadvantages
 - 1) Threat of Impartiality
 - 2) Breach of Due Process
 - 3) Coerced Settlement
 - 4) Unexpressed Party Interest

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Settlement within Arbitration

- 86% practitioners believe that **facilitating a consensual solution** is one of the functions of ICA
- 22% regarded arbitration as **an effective means to facilitate voluntary settlement**

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Institutional Rules and Statutory Provisions

- **VIAC Rules SETTLEMENT Article 38**
 - *The parties may request that a settlement which they have reached be recorded or that the settlement be rendered in the form of an award on agreed terms.*

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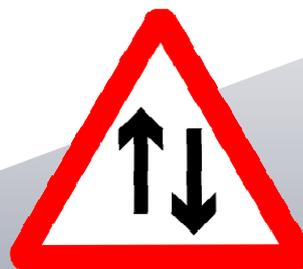
What prevents Settlement

- underestimated costs of the
- bound by the "investments" they have made in the procedure (sunk costs)
- easier to be condemned by a tribunal than to take the responsibility for a settlement

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The Two-Track Approach

- pursuing litigation/arbitration process
- while at the same time negotiating/mediating for settlement



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Thank you for your attention

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