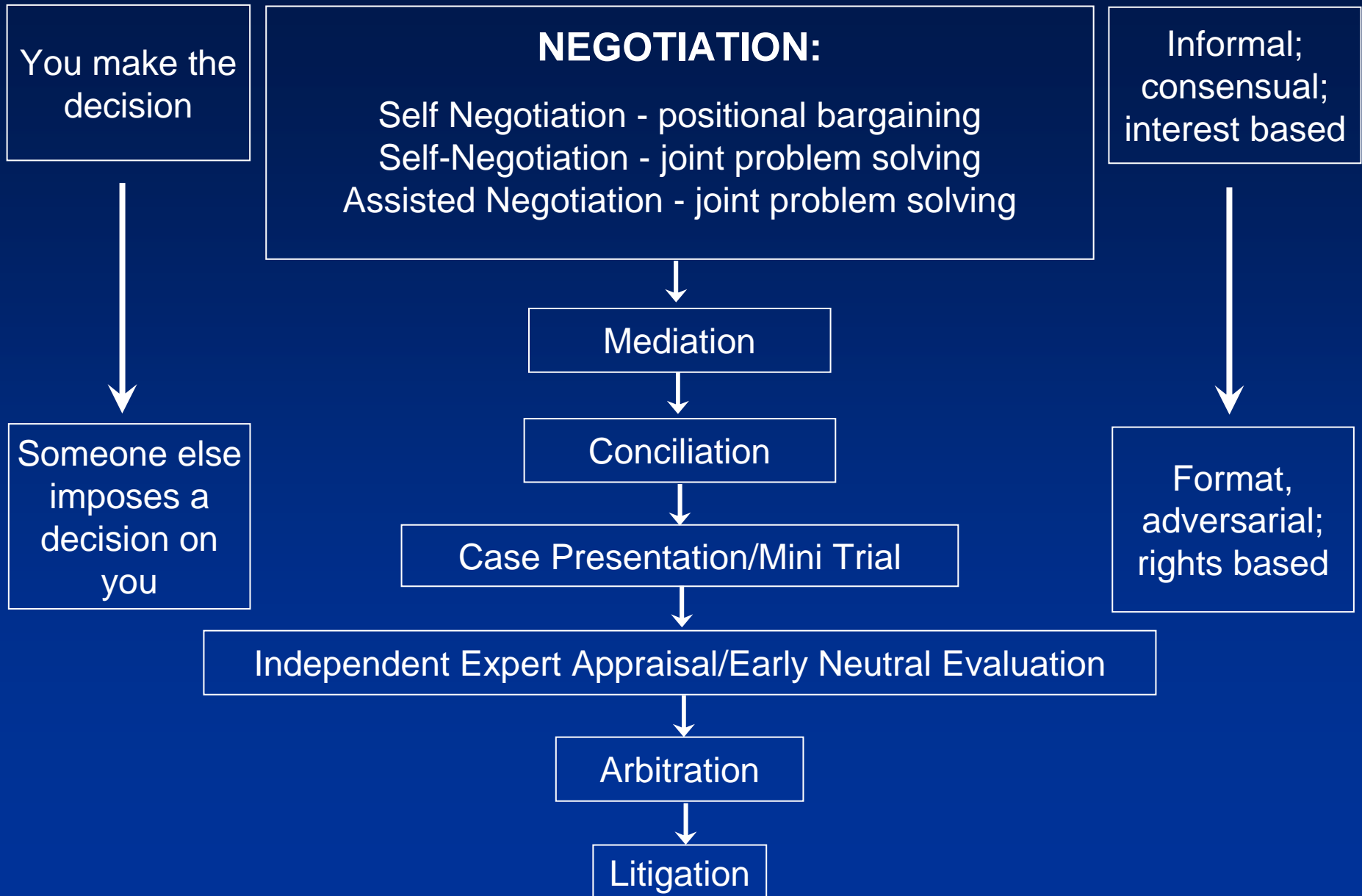


The Mediation Option

The Landscape of Dispute Resolution



Definition of mediation

- n The process by which the participants together with the assistance of a neutral person or persons systematically isolate disputed issues in order to develop options, consider alternatives and aim to reach a consensual agreement that will accommodate their needs
- n Folberg & Taylor *Commercial Mediation*, 1984

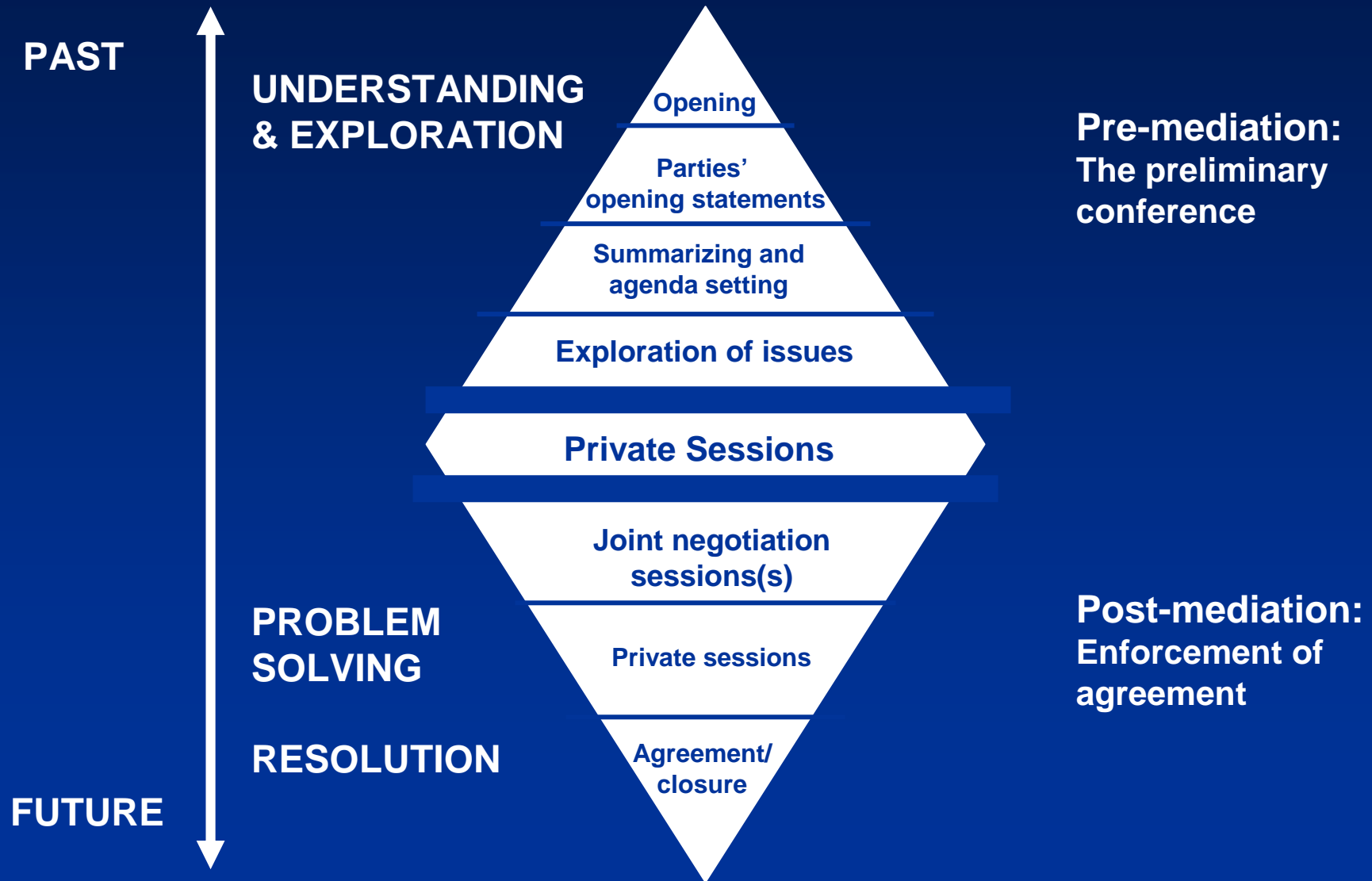
Advantages of Mediation

- n Control with those who know most
- n Opportunity for 'say'
- n Relationships
- n Understanding
- n All issues relevant
- n Satisfaction
- n Confidential
- n Time and cost savings
- n Focuses on future not past

Factors that support 'mediability'

- n Interdependence
- n Each side has something to give
- n Time pressure exists
- n Personal power (ability to negotiate for self)
- n Clear issues
- n Multiple issues
- n Encouragement for mediation
- n Support systems
- n Voluntary
- n Honest, good faith efforts
- n Right people at table
- n 'Will to settle'

LEADR Model of Mediation

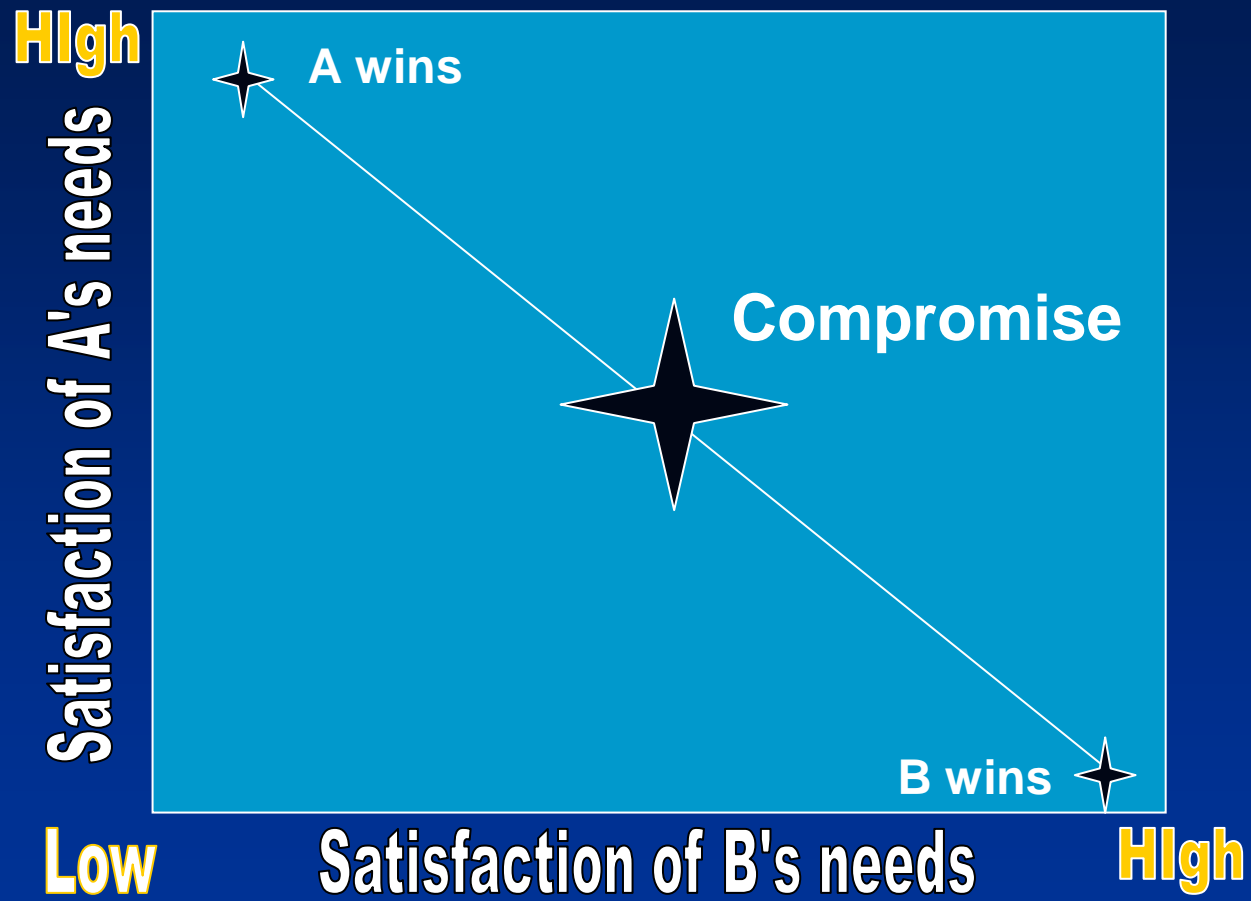


Successful outcomes

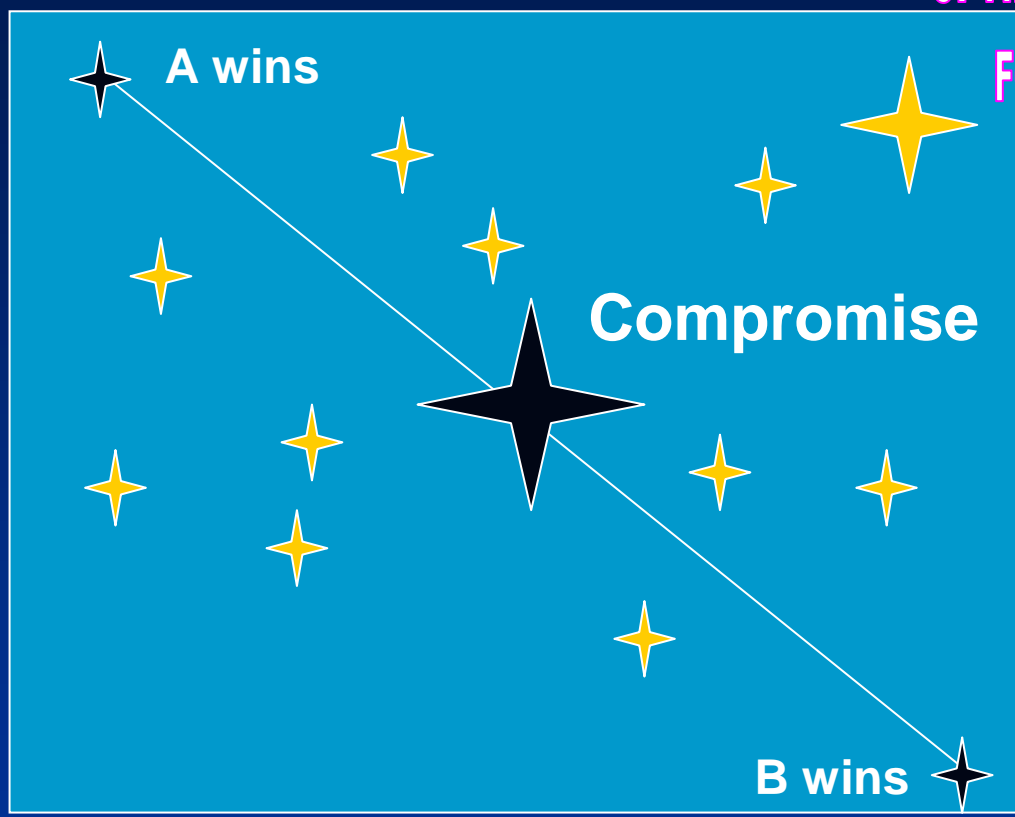
- n Isolation of issues
- n Partial resolution of some issues
- n Satisfaction of needs of parties
- n Understanding of others' needs
- n Relationship maintained – or enhanced

Communication Orientation





High
Satisfaction of A's needs



**OPTIMUM OUTCOME
FOR A AND B**

Low

Satisfaction of B's needs

High

Getting the other side to mediate

- n Hurdles and resistance caused by:
 - n Lack of information
 - n Unfamiliarity with process
 - n Reluctance to do things differently
 - n Negative past experience

Overcoming resistance

- n Advocate do not sell
- n Provide information
- n Be responsive to concerns
- n Cooperate in process definition and mediator selection
- n Check the advantages in case
- n Discuss alternatives
- n Share positive experiences of mediation

People attending

- n Parties - including insurers
- n Decision-makers
- n Advisers
- n Support people
- n Witnesses of fact
- n Experts

Turn conflict into Cooperation

- n Under pressure
- n Exact science
- n Button pushing
- n Listening to understand – identify the intent
- n Ask questions - more important than giving answers
- n Open questioning
- n Speaking to be understood
- n Being genuine

THE PRELIMINARY: Preparation Strategies

- n Planning to take a flight
- n Planning for process rather than for detail
- n Planning to frame story effectively
- n Planning for tension between empathy and assertiveness

Positional bargaining

- n Begins with possible solutions. Parties trade offers and counter offers until they hit upon a solution which falls within their bargaining range

Interest based bargaining

- n Begins with an exploration of the problem. Parties educate each other about their needs and jointly problem solve on how to meet those needs

Positions v Interests

- n Prematurely searching for solutions
- n Canine self-interest
- n Iceberg – what interests are all about
- n Desert island – question mark
- n Subtlety around the use of “Why”
- n Timing is crucial: when and how to nudge negotiators off positions

The Insurance Dimension

- n Importance of decision makers being involved in mediation
- n Crucial that insurer/insured relationship - who calls the shots - be settled prior to mediation
- n Then decision maker must be there
- n War Stories

Multi-Party Disputes

- n Mediation as relevant here as anywhere else
- n But added dimensions
- n Numbers and logistics; multi “plaintiffs”/one “defendant” - one “plaintiff”/multi “defendants”; multi “plaintiffs”/multi “defendants” - in each case how many
- n Insurers
- n One grand mediation
- n Series; in which case, relationship between them

Conclusion?