

# ARBITRATION



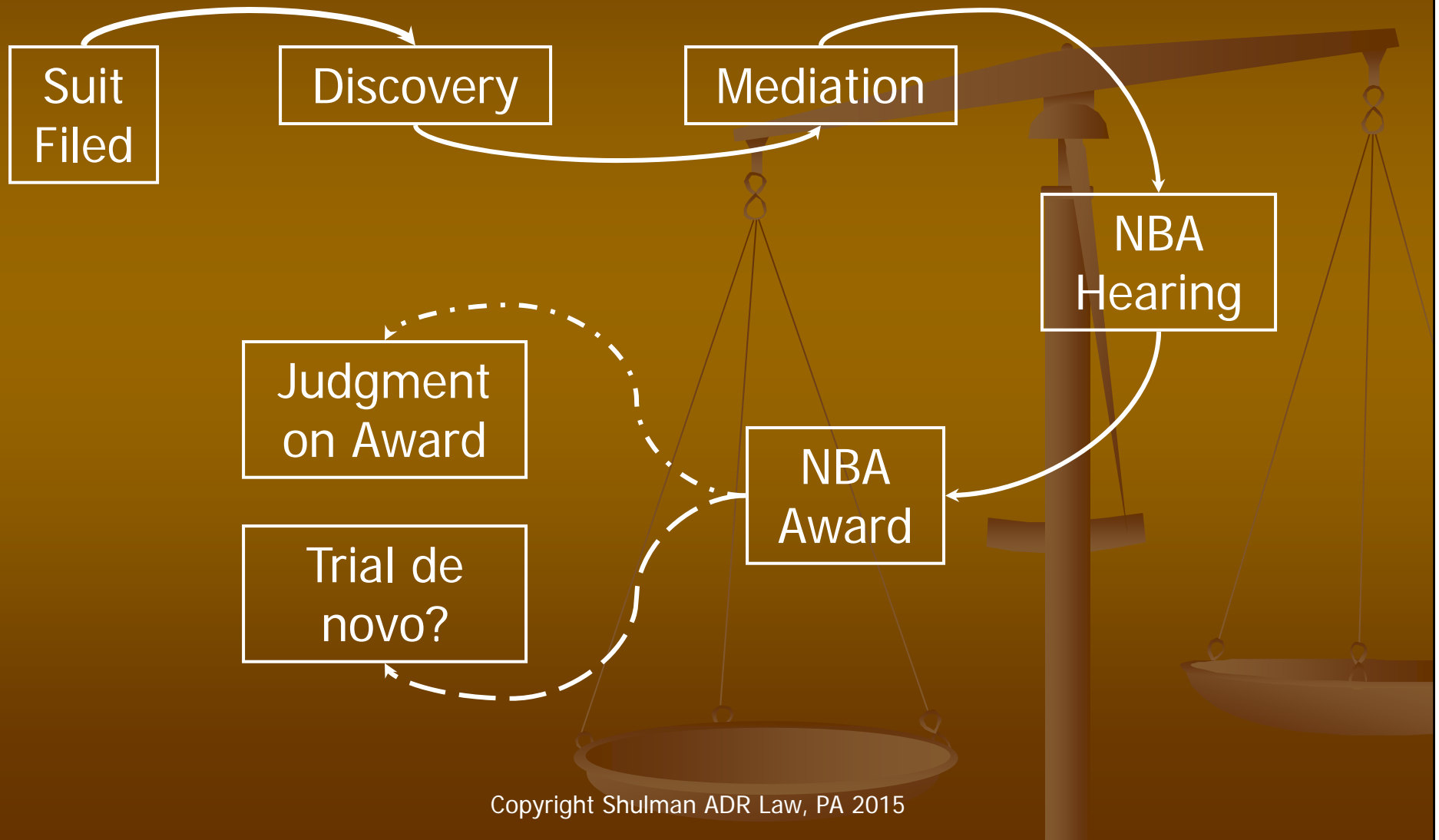
## An Overview

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# Types of Arbitration

- Non-binding (“advisory”)
  - in Florida, mainly court-annexed, like mediation
  - Fla. R. Civ. P. 1.820; Fla. Stat. § 44.103
    - short, informal proceeding
    - arbitration award becomes binding unless appealed for trial *de novo*
      - if appealed, then party appealing must do better at trial than in award

# Non-Binding Arb



# Types of Arbitration

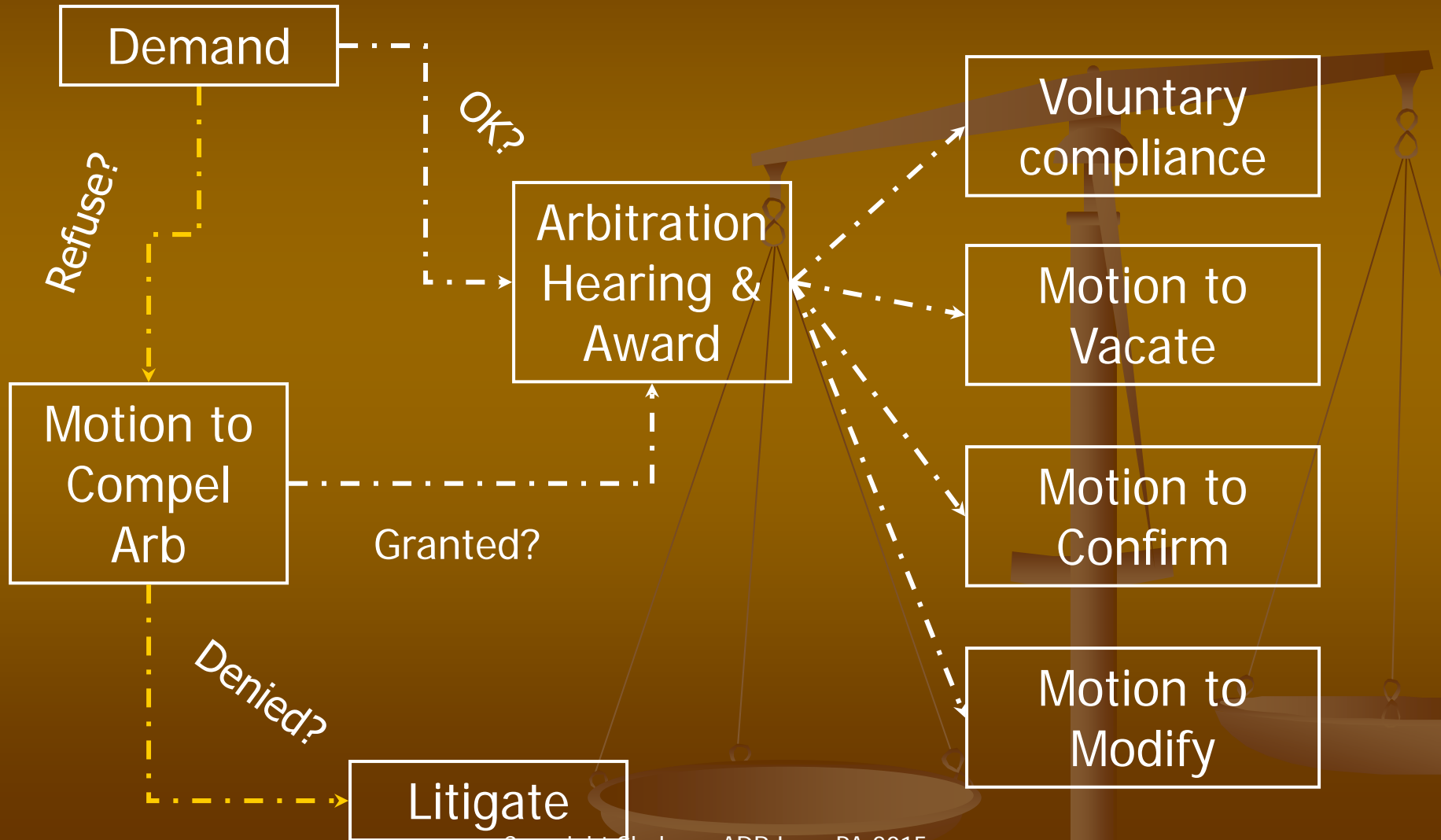
- Binding
  - typically, by virtue of pre-dispute agreement
    - “executory” arbitration clauses
  - occasionally post-dispute agreement
    - especially if parties want
      - confidential proceedings
      - subject matter expert as neutral

# Binding Arbitration

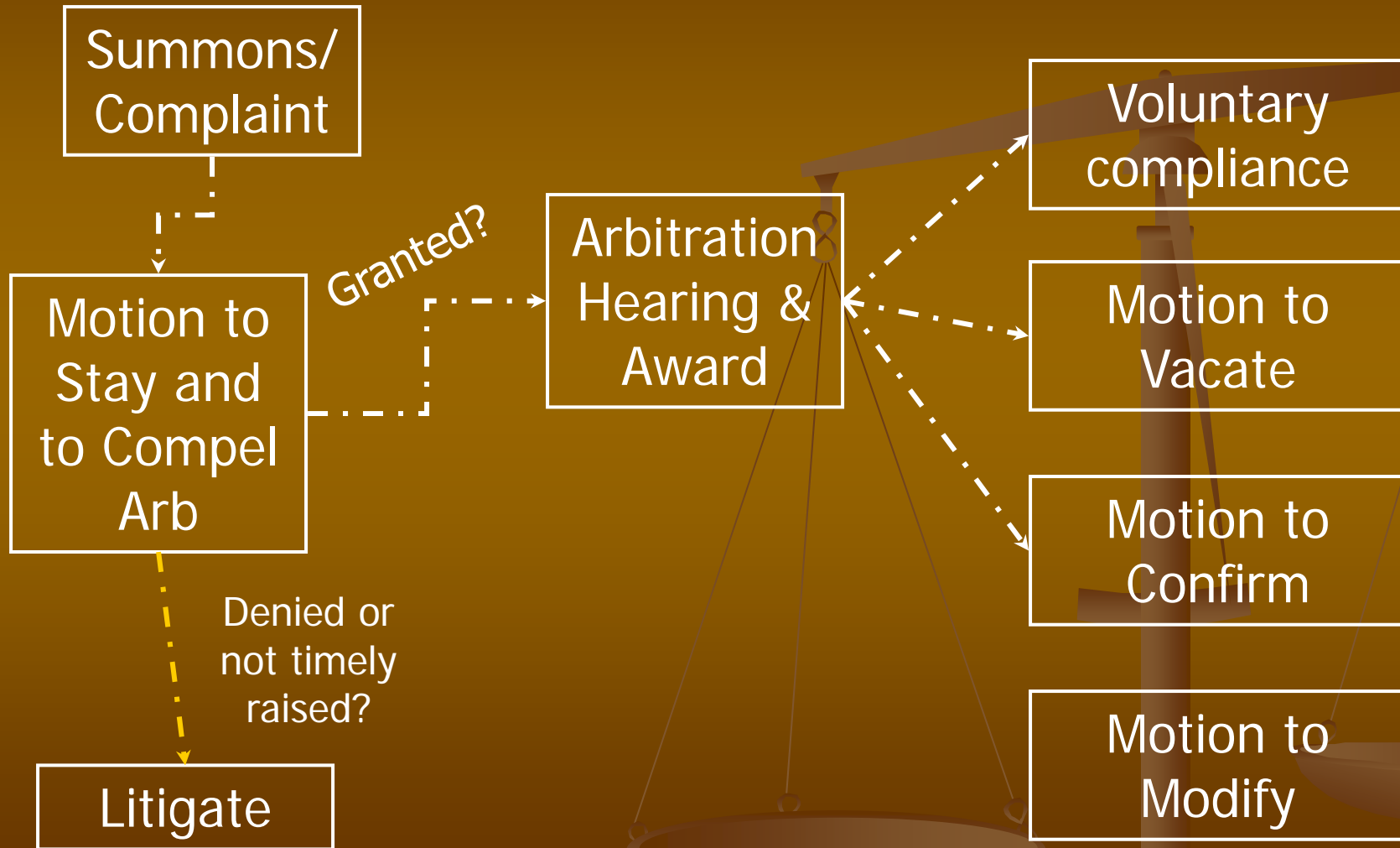


- What if the other side changes its mind?
  - Motion to compel arbitration
    - Federal Arbitration Act, 9 USC § 4
    - Revised Fla. Arb. Code, Fla. Stat. § 682.03
- What if litigation is already pending?
  - Motion to stay litigation
    - Federal Arbitration Act, 9 USC § 3
    - Revised Fla. Arb. Code, Fla. Stat. § 682.03
  - Make sure to assert early or else deemed to have waived right to arbitrate
    - *Raymond James Financial Services, Inc. v. Saldukas*, 896 So.2d 707 (Fla. 2005)

# Binding Arb – No suit filed

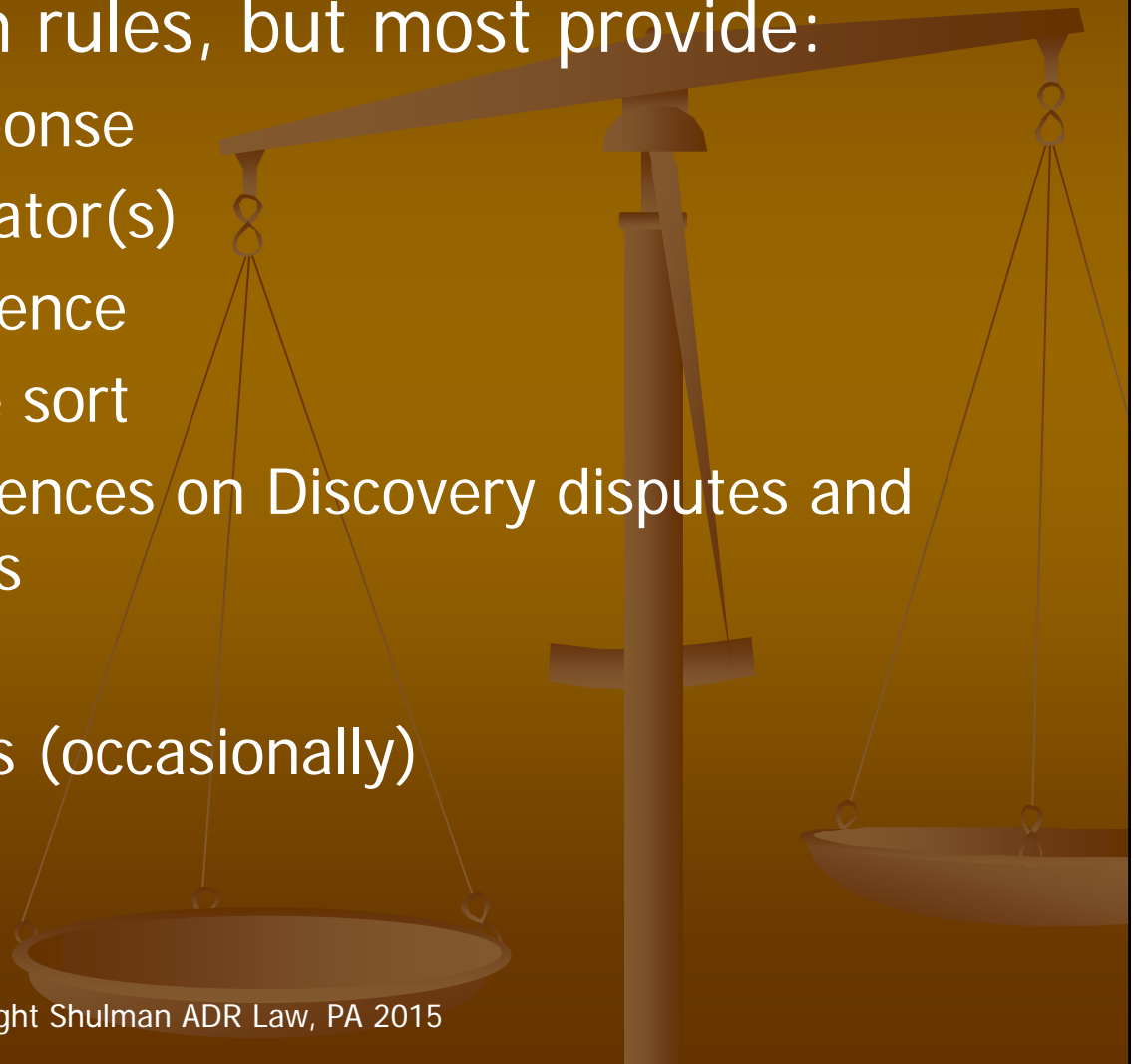


# Binding Arb – Suit filed



# Arbitration Procedures

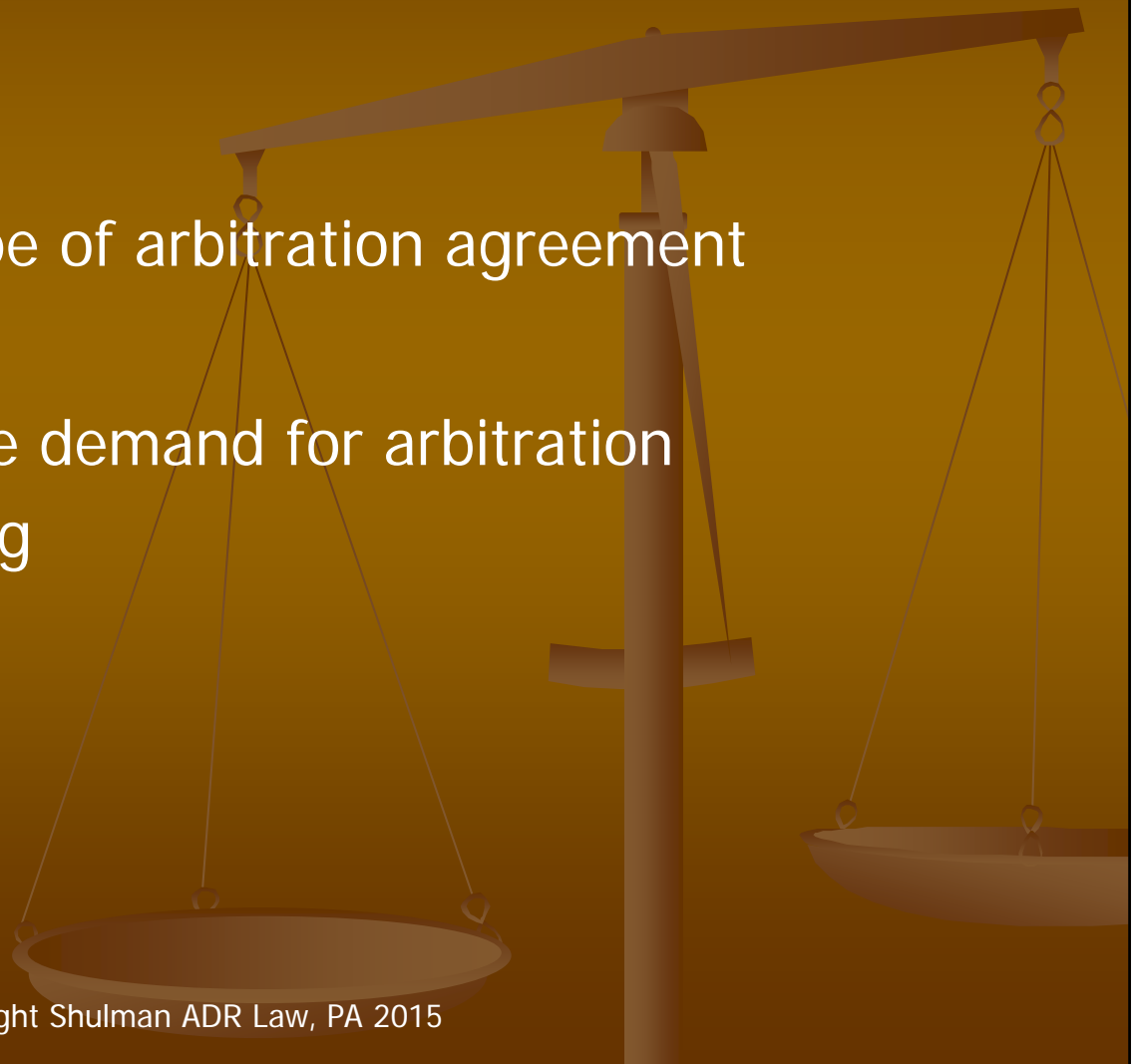
- Depends on forum rules, but most provide:
  - Demand and Response
  - Selection of Arbitrator(s)
  - Prehearing Conference
  - Discovery of some sort
  - Prehearing Conferences on Discovery disputes and dispositive motions
  - Hearing
  - Post-hearing briefs (occasionally)
  - Award





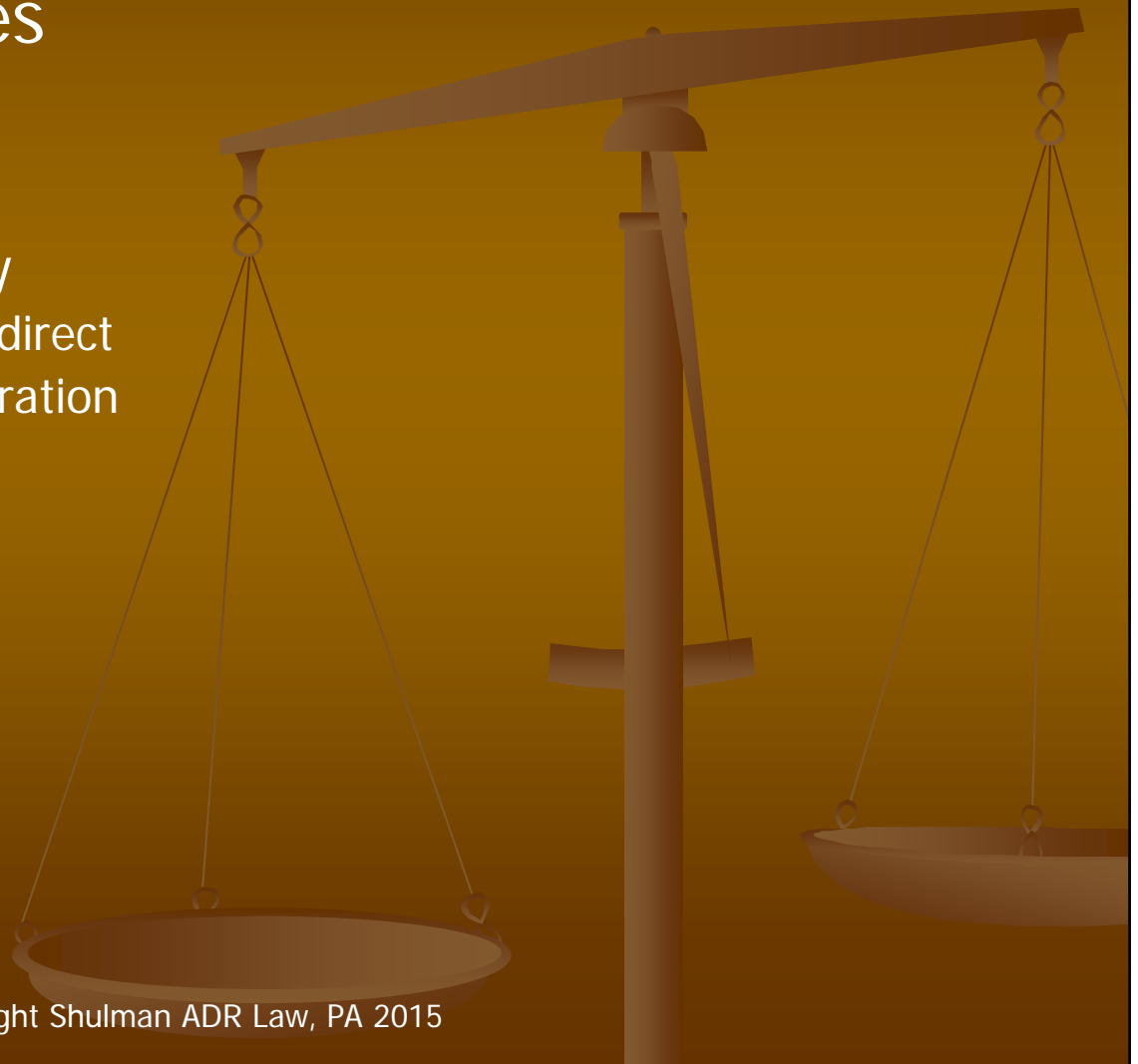
# Procedural Issues

- Arbitrability
  - Substantive
    - Not within scope of arbitration agreement
  - Procedural
    - Untimely/unripe demand for arbitration
    - Lack of standing



# Procedural Issues

- Hearing Procedures
  - Issue Presented
  - Evidence
    - Witness Testimony
      - Direct/Cross/Redirect
      - Rule of Sequestration
    - Exhibits
  - Subpoenae
  - Burdens of Proof
  - Order of Proof
  - Record



# Arbitrator Ethics

- Rules vary by forum but include Arbitrator's obligations
  - to disclose possible conflicts of interest
  - to resign if conflict is too great
  - to conduct a fair and impartial hearing
  - to render a fair award

# Standards for Vacating Award

- Statutory (Federal Arbitration Act; Revised Fla. Arb. Code very similar):
  - Award was procured by corruption, fraud, or undue means
  - Evident partiality or corruption in the arbitrators, or either of them
  - Arbitrator misconduct:
    - Refusing to postpone the hearing, upon sufficient cause shown
    - Refusing to hear evidence pertinent and material to the controversy
    - or any other misbehavior by which the rights of any party have been prejudiced
  - Arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made