CGA
Christos Georgiades & Associates LLC

Iura Novit Curia in Common law

Cyprus Arbitration Day

Panel: Unsettled Legal Doctrines

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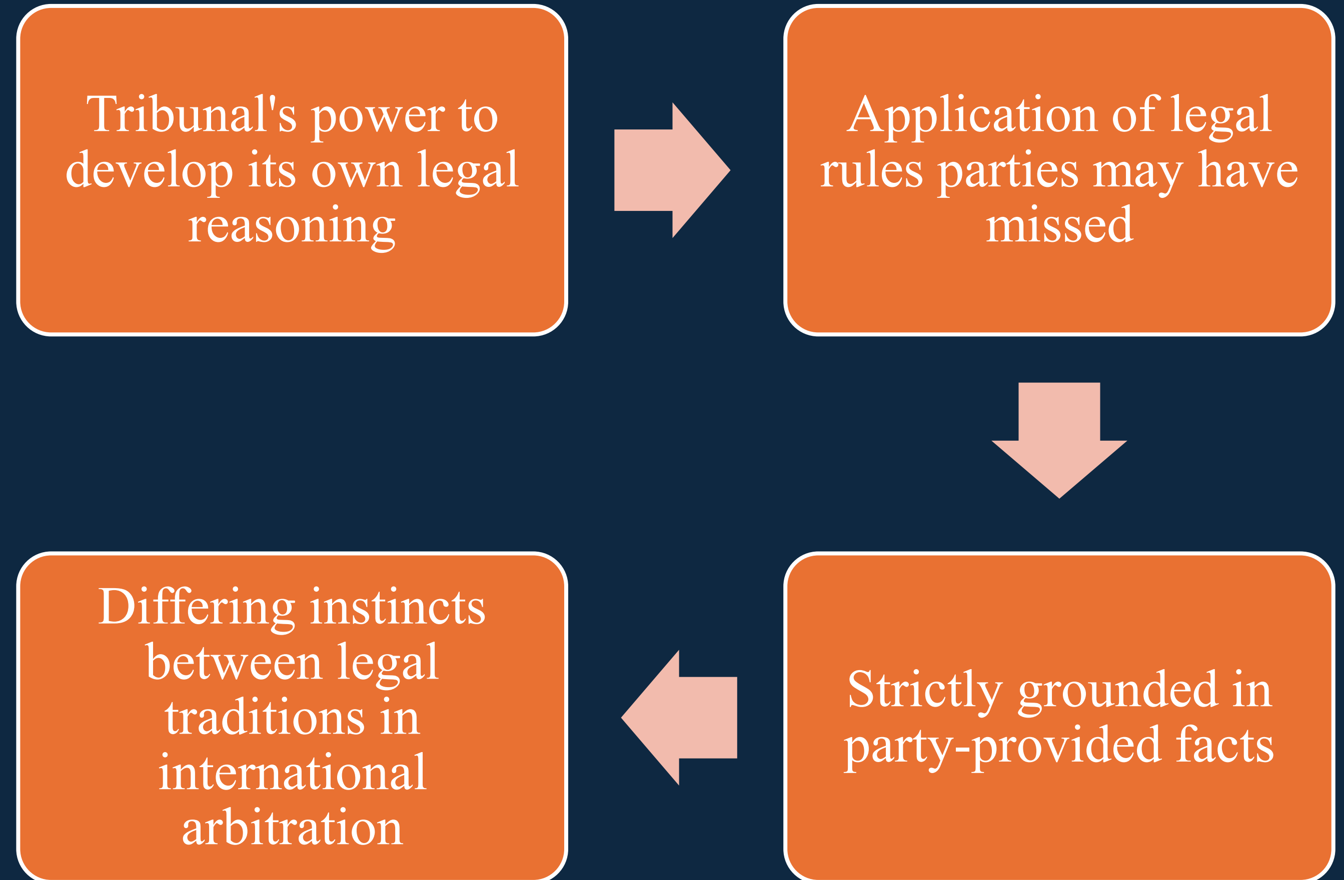
Setting the Scene:

Defining the Doctrine



The Common Law Starting Point

Adversarial model: Parties define the dispute

Tribunal decides within the defined framework

Tribunal must decide within the framework of the parties’ submissions

Foreign Law as a Question of Fact

01

FOREIGN LAW TREATED AS A MATTER OF FACT IN COMMON LAW

02

REQUIREMENT TO BE PLEADED AND PROVED BY EXPERTS

03

RISKS OF TRIBUNALS 'FILLING GAPS' IN LEGAL ARGUMENTS

The Risks of an Unsettled Doctrine

No global consensus
on the extent of power

Line of authority
varies by jurisdiction

Direct impact on
award challenge risks

Risk 1: The 'Surprise Award'

- Reliance on theories parties never addressed
- Violation of the fundamental right to be heard
- New York Convention Article V(1)(b) invocation risks

Risk 2: Exceeding the Tribunal's Mandate

- Party autonomy and the scope of claims
- Boundaries of requested remedies
- Distinguishing analysis from overreach

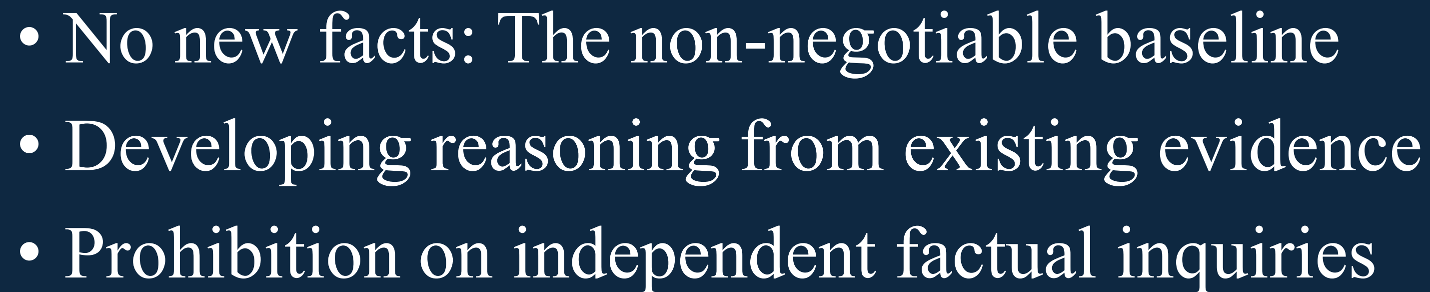
England as the Common Law 'Bridge'

- English Arbitration Act 1996, Section 34:
  - *"(1) It shall be for the tribunal to decide all procedural and evidential matters, subject to the right of the parties to agree any matter.*
  - (2) Procedural and evidential matters include-
  - *[...]* (g) **whether and to what extent the tribunal should itself take the initiative in ascertaining the facts and the law."**
- A 'controlled initiative' rather than passivity

Institutional Support: The LCIA Rules

- LCIA Rules of Procedure, Article 22.1:
  - *“22.1 The Arbitral Tribunal shall have the power, upon the application of any party or (save for sub-paragraph (x) below) upon its own initiative, but in either case only after giving the parties a reasonable opportunity to state their views and upon such terms (as to costs and otherwise) as the Arbitral Tribunal may decide: […]*
  - (iii) to conduct such enquiries as may appear to the Arbitral Tribunal to be necessary or expedient, **including whether and to what extent the Arbitral Tribunal should itself take the initiative in identifying relevant issues and ascertaining relevant facts and the law(s)** or rules of law applicable to the Arbitration Agreement, the arbitration and the merits of the parties' dispute.”
- Tribunal initiative in identifying issues
- Subject to reasonable opportunity for party views

Limit 1: The Factual Baseline



Limit 2: The 'Invite Comments' Discipline

Tests of Validity: Foreseeability & Seat

- Foreseeability: Could parties anticipate the outcome?
- Section 68: Serious procedural irregularity
- Sensitivity to the approach of the Seat

Practical Guidance for Tribunals

Establish methodology in the first Procedural Order

Power to research vs. obligation to research

Transparency and early party agreement

Conclusion: A Workable Balance

- Legitimacy through disciplined procedure
- Staying within the requested relief and facts
- Avoiding unfair surprise through open debate

Thank you for your attention.

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