

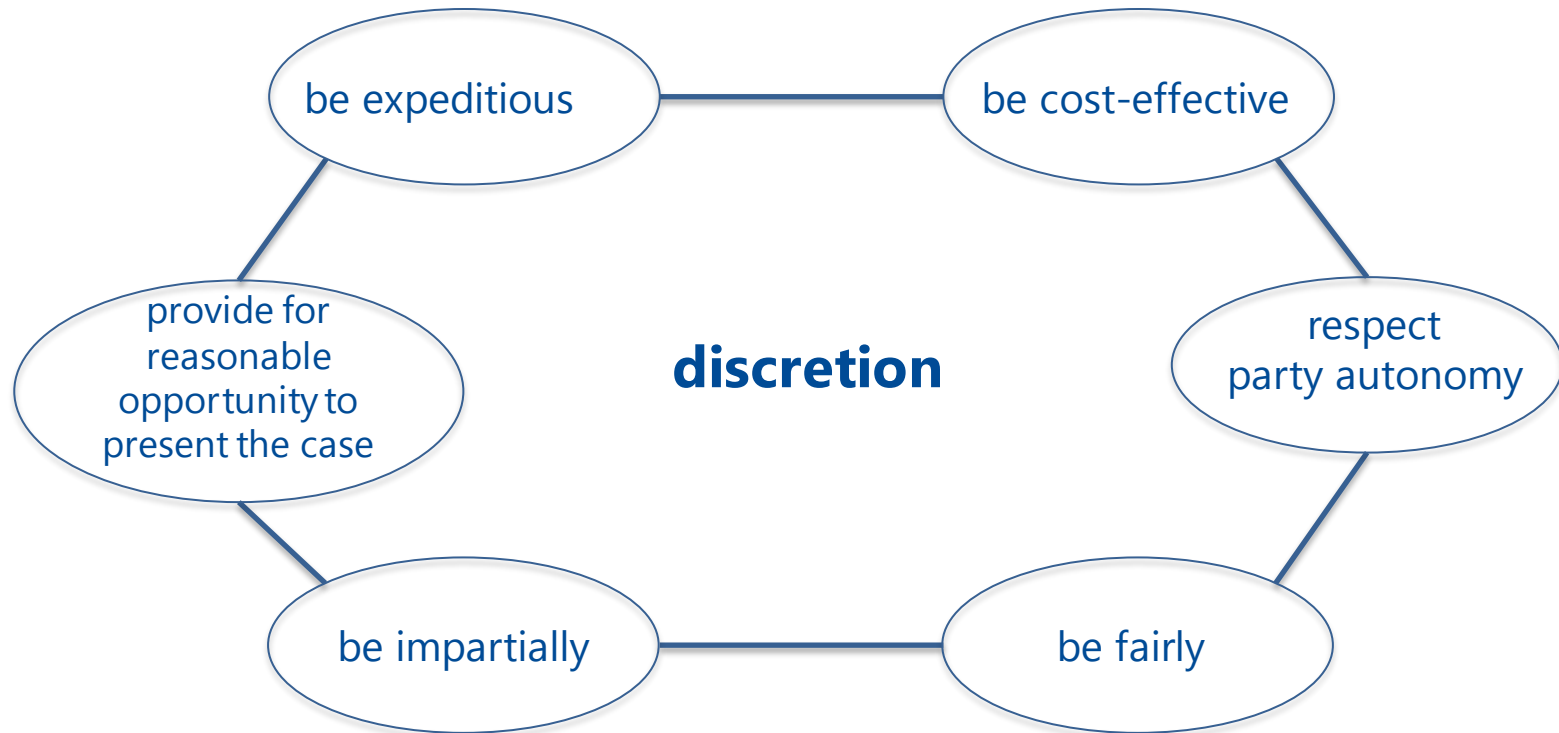
# Arbitral Activism vs. Impartiality

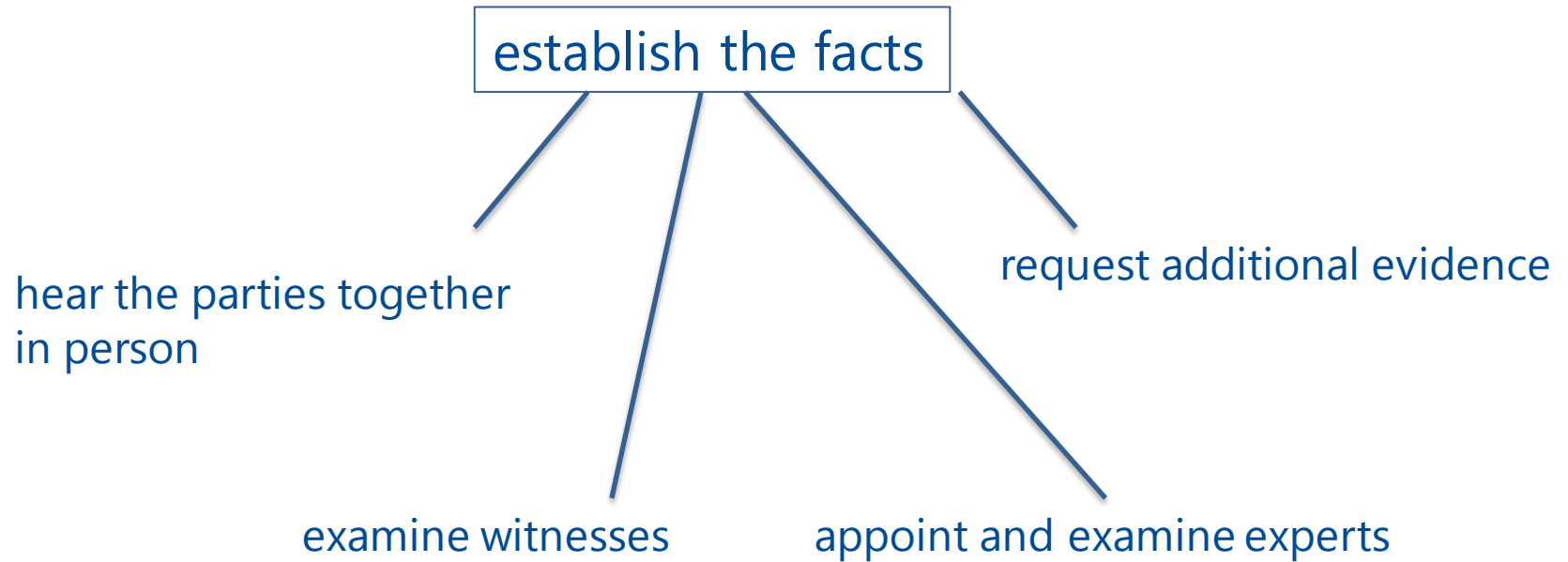
Kiev Arbitration Days 2015 : Think Big!

- topic
- legal framework
- discretion of arbitral tribunals
- practical examples

- arbitral activism
- impartiality
- versus

- mandatory rules of the *lex loci arbitri*
- institutional or ad-hoc rules
- enforcement framework
- discretion of arbitral tribunals





- diversity
- opposing Interests
- flexibility
- efficiency
- legitimacy

- When should an arbitral tribunal hold an oral hearing?
- On which facts should an arbitral tribunal examine a witness?
- When should an arbitral tribunal appoint an expert?



- General guidelines:
  - request by one party to hold an oral hearing
  - joint request of the parties to decide based on documents
  - insufficient or inconclusive information
- Borderline example:
  - respondent does not participate
  - claimant requests a decision based on documents
  - claimant's pleading justify claimant's requests
  - but it appears that they are not supported by the documents

- General guideline
  - The parties plead the facts, identify the witnesses able to testify on those facts and the tribunal takes evidence on the facts relevant for its decision
- Borderline example:
  - parties have nominated and cross-examined witness A for a fact A
  - parties have made submissions on fact B
  - parties have nominated and cross-examined witness B for a fact A, but not witness A
  - the tribunal is convinced that witness A could provide relevant testimony of fact B

- General guideline:
  - appointment only upon request of a party
- Borderline example:
  - parties have relied on party-appointed experts
  - the arbitral tribunal is neither convinced by the testimony of expert A nor by the testimony of expert B
  - the arbitral tribunal itself lacks the required expert know-how

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