

First View Article on ICLQ

A first view article was published online on 12 April 2024 in *International and Comparative Law Quarterly*.

Raphael Ren, “The Dichotomy between Jurisdiction and Admissibility in International Arbitration”

The dichotomy between jurisdiction and admissibility developed in public international law has drawn much attention from arbitrators and judges in recent years. Inspired by Paulsson’s ‘tribunal versus claim’ lodestar, attempts have been made to transpose the distinction from public international law to investment treaty arbitration, yielding a mixed reception from tribunals. Remarkably, a second leap of transposition has found firmer footing in commercial arbitration, culminating in the prevailing view of the common law courts in England, Singapore and Hong Kong that arbitral decisions on admissibility are non-reviewable. However, this double transposition from international law to commercial arbitration is misguided. First, admissibility is a concept peculiar to international law and not embodied in domestic arbitral statutes. Second, its importation into commercial arbitration risks undermining the fundamental notion of jurisdiction grounded upon the consent of parties. Third, the duality of ‘night and day’ postulated by Paulsson to distinguish between reviewable and non-reviewable arbitral rulings is best reserved to represent the basic dichotomy between jurisdiction and merits.