

Exploring the Inference of Similarity in Foreign Law

Hot off the press and published in the Cambridge Law Journal, the article “The Inference of Similarity,” written by Marcus Teo, delves into the intricacies of what has traditionally been referred to as the “presumption of similarity” in English legal proceedings. Teo’s work challenges the conventional understanding of this presumption, arguing that it should be seen not as a true presumption but rather as an inference that courts can draw under certain circumstances.

Teo begins by outlining the challenges litigants who wish to rely on foreign law in English courts face. They must first demonstrate that the relevant choice-of-law rule selects the foreign law as applicable and then prove that the foreign law supports their claim or defence. This task is often complicated by the patchy or vague nature of foreign law evidence, leading courts to apply what has been termed a “presumption of similarity”—the idea that foreign law is presumed similar to English law when not sufficiently proven.

However, Teo argues that this “presumption” is misleading. The paper contends that it should not be understood as a true presumption but rather as an inference that courts can draw when there is reliable evidence to suggest that English and foreign courts would render similar rulings on the same facts. This distinction is crucial because a true presumption would be unprincipled, lacking the justifications of logic, convenience, and policy that support other legal presumptions.

Teo’s paper further explores the nature of legal presumptions and inferences, providing a detailed analysis of how they function within the legal system. He explains that legal presumptions are meant to facilitate practical reasoning in situations of evidential uncertainty, allowing courts to proceed “as if” a presumed fact exists until contrary evidence is presented. In contrast, inferences are conclusions drawn from sufficient evidence, representing an actual belief that the inferred fact exists.

The paper also addresses the implications of understanding the “presumption of similarity” as an inference rather than a true presumption. Teo argues that this

understanding resolves various controversies surrounding its use in civil proceedings and does not render the proof of foreign law unpredictable or inconvenient in practice. The author emphasises that courts should aim to replicate the ruling a foreign court would render on similar facts, and when English law reflects a shared tradition or universal ethos, this may be enough to infer that a foreign court would render a similar ruling.

Teo's insights have significant doctrinal implications, particularly in cases where foreign law is partially proven. He explains that when a party has proven only part of the foreign law, the inference of similarity can still be drawn if the court can reliably conclude that the foreign court would likely render a ruling similar to English law's. This approach prevents parties from using the presumption as a tactical move to fill gaps in their foreign law evidence.

Marcus Teo's paper offers a fresh perspective on the "presumption of similarity" in English law, advocating for a more nuanced understanding of it as an inference. This shift in perspective not only clarifies the role of foreign law in English courts but also ensures that the application of foreign law aligns with the substantive values underlying choice-of-law rules. As legal scholars and practitioners continue to grapple with the complexities of foreign law, Teo's work provides a valuable framework for navigating these challenges.

For those interested, the article may be found [here](#)!