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A Study on the Legitimacy of Secondary Presumptions in Civil Procedure

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Abstract. "Secondary presumption" is a not uncommon judicial phenomenon in civil trial practice. Prohibiting secondary presumption on the grounds of "increasing the uncertainty of the conclusion" would unreasonably restrict the free evaluation of evidence. The root cause of this issue lies in the failure to recognize that factual presumptions constitute the fundamental units of indirect proof, concurrently neglecting the repercussions of positing rationales on the categorical nature of legal presumptions.. From a typological perspective, secondary presumptions can be classified into four types: "factual presumption + factual presumption," "factual presumption + legal presumption," "legal presumption + factual presumption," and "legal presumption + legal presumption." The legitimacy of secondary presumptions in different types needs to be discussed based on the nature of internal elements. The conclusion of secondary presumptions is essentially an evidentiary fact, no different from other evidentiary facts. Judges should judge its probability, striving not to undermine the subjective status of the free evaluation of evidence.

Keywords: Civil Procedure; Secondary Presumption; Factual Presumption; Legal Presumption; Free evaluation of evidence.

1. Introduction of the Problem

Presumption is an important proof system that deduces the existence of unknown facts from known facts according to the legal or experience rule , and allows the parties to put forward counterevidence. It plays an active role in promoting the fact-finding process of civil procedure. Among them, the facts as the premises of the inference are the basic facts, and the facts obtained according to the presumption are the presumed facts.[1] In civil procedure, presumption may be employed only when methods such as judicial cognition, self- admission, direct proof, and complete indirect proof [2] are unable to establish the facts of the case and it is not suitable to negatively apply the burden of proof. The application of presumption helps improve litigation efficiency, reduce the burden of proof on one party, and avoid negative judgments. The use of presumed facts as the basis for a new presumption is referred to as "secondary presumption."

Traditional views posit that the basic facts of presumption should possess objective truth, and the presumed facts should be conclusive. Hence, the "prohibition of secondary presumption" principle has been proposed. However, with the establishment of the system of Free evaluation of evidence in China and the widespread application of indirect evidence, judges inevitably engage in various types of secondary presumptions during the process of fact-finding. The recognition and effectiveness of secondary presumptions need to be uniformly elucidated in legal theory.

There is scarce specialized research on secondary presumption or the basic facts of presumption in the academic field. Most literature on the subject is cursory. In criminal proceedings, secondary presumption is often prohibited on the grounds of safeguarding human rights, [3] while in civil procedure, it is often prohibited due to the perceived reduction in the probability of ascertaining the truth of facts and increased uncertainty of conclusions. [4] There are also some viewpoints in favor of secondary presumption,[5] but the research on the issues related to secondary presumption itself and the basic facts is weak, lacking systematic empirical analysis. Article 105 of the Interpretation of the Supreme People's Court on the Application of the Civil Procedure Law of the People's Republic of China provides only macroscopic regulations[6] and does not explicitly specify the application of presumption and secondary presumption.

From the perspective of the probability theory of judicial proof, as the chain of reasoning extends, there is a possibility of distortion in the conclusion. However, denying the substantive use of secondary presumption essentially negates this important method of indirect proof. Moreover, the nature of legal presumption is not clearly delineated, and the conflation of other norms with legal presumption is not recognized, failing to appreciate that legal presumption has a diverse construction rationale. Lastly, the nature of litigation and the standard of legal truth are not considered; the standard of civil proof is a probabilistic certainty, and even if the facts meet the evidentiary standard, they may still not correspond to objective reality. Therefore, this cannot be used to deny the application of secondary presumption.

The connotation and extension of secondary presumption, and whether different types of secondary presumptions are legitimate in application, are central questions. If secondary presumptions are permissible, how should they be regulated? In light of these considerations, this paper takes secondary presumption as its research object, builds on the foundation of civil procedure proof theory, employs empirical research methods, and delves into the legitimacy of different types of secondary presumptions. It rejects the one-size-fits-all prohibition of secondary presumptions and establishes the foundation for the legitimacy of secondary presumptions. This approach provides a new perspective for the study of presumptions and civil procedure facts with not to be proved.

2. The Connotation and Extension of Secondary Presumption

The logical principle of secondary presumption lies in inductive reasoning, constrained by the probabilistic relationship between basic facts and presumed facts, originating from experience rule. Combining the logical form of presumption, secondary presumption can be defined from the perspective of Evidence law: the process of deducing new presumed facts by using the presumed facts derived from another presumption as the basis.

It is necessary to delineate situations where secondary presumption does not apply. Firstly, secondary presumption is not a horizontal two-stage presumption but vertically presents a "progressive" two-stage presumption. The presumed facts obtained in the first instance simultaneously serve as the basis for the second presumption and can be considered as the "connecting facts" of secondary presumption. For example:

In a dispute over an insurance contract, both the insured and beneficiary died in the same incident, and the order of death cannot be determined; the plaintiff, the second heir of the insured A, requests the defendant insurance company to pay the insurance money. The insurance company argues for the application of the presumption in the Law of Succession of the People's Republic of China that presumes A died first. However, the court believes that the presumption in the Insurance Law of the People's Republic of China, which presumes B died first, should apply and mentions in the judgment that "applying the presumption in the Inheritance Law to presume A died before B and claiming the insurance money inherited by B from A belongs to secondary presumption".[7]

It can be seen that the court considers the defendant's view of applying the presumption in the Inheritance Law as "secondary presumption." Obviously, there is no vertical progressive relationship between these two legal presumptions; it is merely a conflict of views on legal application.

Secondly, regarding the internal elements of secondary presumption, basic facts and presumed facts should actually exist, distinguishing it from the application of presumptions such as apparent presumptions, interpretation of expression of will, and legal fiction. Firstly, the function of apparent presumption is to clearly allocate the burden of proof to one party, thereby relieving the other party of the burden of proof,[8] such as the good faith presumption of possession, where good faith is unconditionally recognized, and there is no acquisition and proof of basic facts. Therefore, if the facts of apparent presumption lacking basic facts are used as the basis for presumption, there is normatively only one presumption; secondly, the purpose of interpretation of expression of will is to remedy the lack or defect in the expression of intent in legal acts. It is precisely because of the lack and uncertainty of basic facts that the interpretation of intent is required, such as the interpretation of expression of

will in situations where the debt accession and guarantee is unclear. [9] If we were to use an analogy based on the structure of presumption, it is equivalent to directly obtaining the presumed fact, rendering the basic facts non-existent in this context. [10] If interpretation of expression of will lacking basic facts are used as the basis for presumption, it cannot be called secondary presumption; finally, legal fiction is substantive legal norms that point to the legal effects of acts or facts, such as provisions on civil capacity in the Civil Code[11] , and presumption norms will always point to some facts. Therefore, those legal fiction that point to legal effects do not belong to presumption and cannot be part of secondary presumption.

In conclusion, secondary presumption is a two-stage progressive reasoning process that takes the presumed facts obtained in the first instance as the basis for the second presumption, further deducing the final presumed facts. These two rounds of presumption can be both factual presumption and legal presumption, and the basic facts and new basic facts cannot be derived from interpretation of expression of will, apparent presumptions, and legal fiction.

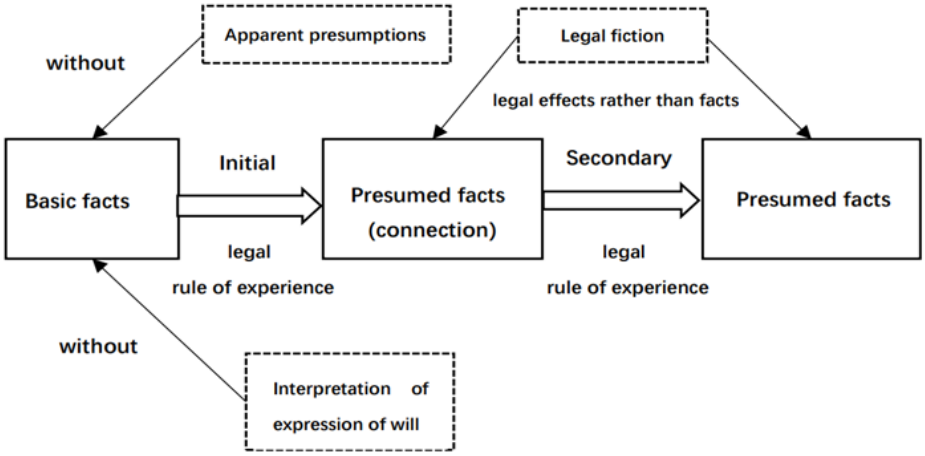

Figure 1: Structure of Secondary Presumption

3. Exploration of Typology in Secondary Presumption

In accordance with the " Provisions by the Supreme People's Court on Evidence in Civil Procedures" (hereinafter referred to as the "Evidence Provisions"), which clearly categorizes presumptions into legal presumptions and factual presumptions, the author establishes four types of secondary presumptions based on legal classification: factual presumption + factual presumption, factual presumption + legal presumption, legal presumption + factual presumption, and legal presumption + legal presumption.

3.1 Legitimacy of "Factual Presumption + Factual Presumption"

To discuss the effectiveness of secondary factual presumptions, it is essential to clarify the essence of factual presumptions. While legal presumptions unquestionably fall under the category of presumptions, there are diverse views on the nature of factual presumptions. For instance, the American scholar Wigmore argues, "Strictly speaking, all presumptions belong to the realm of legal presumptions rather than factual presumptions. Cautious judges and scholars advocate the use of appropriate terms such as inference rather than presumption."[12] In China, some scholars contend that factual presumptions are essentially a form of indirect proof, further describing it as an inference from facts[13] . This perspective posits that true inference only exists in the process of proving using indirect evidence. Inference is the process of deducing factual conclusions from indirect evidence, or, starting from the degree of generality of experience rules, categorizing various experience rules. From this viewpoint, it is argued that the process of linking evidence into an evidence chain and reaching a conclusion through simple experience rules is indirect proof.[14] However, some scholars argue that there are significant theoretical and practical differences between factual presumption and indirect

proof . For example, it is considered that there are differences between them in terms of structure, such as " determination " and "proof", and that their conclusions and the basic facts are different from "selection relation" and "one-to-one correspondence". [15]

The author believes that factual presumption is the basic unit and core content of indirect proof, and there is an inclusive relationship between the two. Firstly, both fall within the scope of the application of the free evaluation of evidence. The free evaluation of evidence includes the ability, probative force, and standard of proof, applying the principle of free evaluation to any fact-finding in a case[16]. Both factual presumption and indirect proof are methods of fact-finding. Secondly, both are based on the basic methods of free evaluation, namely, experience rules and logical rules. This is reflected in their structure: experience rules support the normal connection between basic facts (indirect facts) and presumed facts (indirect facts or main facts), meaning that every step of fact-finding needs to be based on this kind of necessary connection. Logical rules provide external logical forms for this process from known to unknown, manifesting in the extension of the inference chain and the ultimate derivation of conclusions. In comparison, other methods of proof such as legal presumptions are based on mandatory and pre-existing legal provisions, with judges having minimal leeway to freely apply experience and logical reasoning. Of course, when creating legal presumptions, empirical and logical rules are important reference factors; once legislation is established, the sole basis for legal presumptions becomes the law itself. Finally, in terms of their relationship, the basic unit and core content of indirect proof is factual presumption. Objectifying the principle of free evaluation can construct three basic models of indirect proof: simple evidence chain, complex evidence chain, and evidence loop[17]. In a simple evidence chain, the first step in determining facts is to prove indirect facts through indirect evidence, followed by a factual presumption based on indirect facts. In a complex evidence chain, subsequent steps involve two rounds of progressive factual presumptions. In an evidence loop, multiple factual presumptions at the same level are needed to collectively prove a major fact. Starting from the perspective of experience rules, whether it is an evidence chain or an evidence loop, experience rules play a role in the first step by evaluating the evidence's ability and probative force when proving indirect facts, serving as a direct proof connecting evidence and indirect facts. Subsequent steps then function in factual presumptions, providing support for the normal connection between indirect facts. Therefore, whether it is a simple or complex evidence chain or an evidence loop, breaking down various types of indirect proof, the core content and basic unit are all a single factual presumption.

Another perspective posits that the relationship between the basic facts and presumed facts in factual presumption is a matter of choice, while the relationship between indirect facts and facts to be proven in indirect proof is a one-to-one correspondence.[18] From this, it is concluded that factual presumption is temporary, meaning that presumed facts can only take effect when the adverse party cannot rebut. In contrast, indirect proof is deterministic, emphasizing the mutual confirmation of evidence and the exclusion of contradictions to meet the standard of proof for the fact to be established. However, the author believes that this view does not fully understand the complex relationship between evidence and the facts of the case. The "Mirror of Evidence" principle states that facts established by trial are the result of empirical inference or "products of thought", which determines the probability of truth and the standard of proof.[19]. The facts determined and their basis do not have a one-to-one correspondence, and other possibilities are not excluded. Therefore, this view obviously belongs to a mechanistic view of civil procedure proof, not considering the dynamics of litigation proof. Litigation proof is a dynamic and alternating process that influences the judge's free evaluation through rounds of supporting and opposing evidence, ultimately completing the dynamic and evolving process of proof. Thus, there is no apparent difference between the two in terms of proof effectiveness. Since indirect proof includes evidence chain types and evidence loop types, and there are one or more peer-level evidence or facts that mutually confirm or supplement each other, the above view only has a single basic fact—factual presumption that is independent of indirect proof. However, with the mutual confirmation and supplementation of the basic facts in the first and second presumptions, indirectly proving the presumed facts (main facts), the relationship between indirect

facts and main facts still relies on experience rules. Overall, it is still a single factual presumption. Therefore, the essence of "Factual Presumption + Factual Presumption" is the indirect proof of two inferences. This method of proof, which involves two rounds of factual presumptions, does not differ from ordinary indirect proof activities. Its standard still involves the experience rules and logical rules that judges should follow in the process of free evaluation. Whether it can meet the standard of probabilistic certainty in civil procedure proof remains to be determined by the judge; otherwise, it will fall into the quagmire of the legal evidence system. The following case can serve as an example:

Case Two: In a private lending dispute, defendant A wrote a loan note to plaintiff B, stating that A borrowed 150,000 yuan from B due to financial issues. A claimed that he did not receive the loan after writing the note, while B claimed that A's employee C introduced A to borrow 130,000 yuan. As A had not repaid for a long time, he voluntarily wrote a loan note for 150,000 yuan (principal + interest). Upon investigation, D and A were classmates, and the two jointly operated a project; B transferred 100,000 yuan to D through his bank account, and the next day, B transferred 30,000 yuan to C through WeChat, and later C transferred 30,000 yuan to D via WeChat. The court held that the evidence presented by the plaintiff formed a complete evidence chain, confirming that B had delivered the loan principal to A's partner D. It was determined that B had fulfilled the lending obligation, thus supporting B's claim.[20]

In this case, although there is bank transaction evidence, the payee is not the borrower himself but is collected through an intermediary. This results in the inability to directly prove the fact of delivery. In the end, the court inferred the fact of completed delivery based on indirect evidence, and the reasoning process is as follows: Through this set of indirect evidence, it was proven that D received a total of 130,000 yuan from B (indirect fact 1); combining indirect fact 1 and considering the relationship between the parties D and A as classmates and partners, it can be inferred that D acted as an intermediary for A to receive the money (indirect fact 2), based on the experience rule of trust relationships between parties; according to indirect fact 2, using the experience rule that "a person with a cooperative trust relationship acts as an intermediary, and the other party does not assert their rights, generally, the delivery is considered completed," it was inferred that B completed the delivery.

3.2 Legitimacy of "Factual Presumption + Legal Presumption"

As mentioned earlier, factual presumption, as the basic unit of indirect evidence, is essentially a form of factual inference. Some scholars argue that presumption should only apply to legal presumptions. Legal presumptions are further divided into factual presumptions and rights presumptions. This article, based on the procedural law perspective, confines civil legal presumptions to the level of procedural fact-finding.

From a logical perspective, compared to two consecutive factual presumptions, the second presumption in this type, "factual presumption + legal presumption," merely replaces experience rules with legal provisions as the major premise. However, from the perspective of judicial application, unlike the two stages of indirect evidence mentioned earlier, "factual presumption + legal presumption" is not two continuous stages. Factual presumption or inference falls within the realm of free evaluation of evidence; judges, when determining facts, must adhere to both experience and logical rules. On the other hand, legal presumption belongs to the realm of legal rules (legal application). To make a legal presumption, it must meet the requirements of the legal presumption standards, i.e., fulfilling the relevant requirements of the basic facts for legal presumptions. Some views suggest that the basic facts for legal presumptions must possess objective truth, [21]including well-known facts, facts acknowledged by judicial cognition, facts agreed upon by both parties, and facts proven by sufficient evidence. However, the epistemology of dialectical materialism tells us that human cognitive abilities have limitations, and the development of things is endless. The judge's understanding of the facts of a case can only reach a kind of "relative truth,"[22] namely legal truth. Correspondingly, the standard of civil procedure proof is also a kind of probabilistic certainty, indicating the degree of risk and acknowledging the law's acceptance of the risk of error, even if the proven facts meet the proof standard, they may still deviate from objective reality. Therefore, the

author believes that the facts concluded by judges in the first factual presumption or inference should have a considerable degree of probability, rather than absolute objective truth. This kind of probable fact, as the basic fact for further legal presumptions, should meet the requirements of both being highly likely and having a legal basis. This means that the facts obtained by the first presumption should be considered not as absolute objective truth but as facts with a certain level of probability, which, as basic facts, satisfy the requirements for further legal presumptions. Specifically, one can analyze it using the mathematical formula of judicial proof probability theory: In the legal presumption with probability as the main reason for creation, assuming the basic fact is A, its proof standard is a, the experience rule's necessity is R, and the presumed fact is B, then A (a) × R = B. Generally, the greater the necessity of the experience rule on which the legal presumption is based, the lower the necessity required for the basic fact. In legal presumptions mainly based on public policy, procedural convenience, etc., the basic facts often require higher necessity.Moreover, these presumed facts should also possess a legal character and should not be casually expanded or interpreted.[23] Finally, depending on whether the specific legal presumption is mandatory, the judge can make a second presumption and judge whether the conclusion meets the corresponding civil proof standard. In summary, the legitimacy standard for this type of secondary presumption should be the high probability of the conclusion of the first presumption, still judged by the judge using free evaluation of evidence. The following case can be cited as an example:

Case Three:In December 2014, individual A and company B (with A as a shareholder) borrowed 900,000 yuan from plaintiff company C and issued a "loan note." In March 2016, A, B, and C signed a "repayment agreement," stipulating that A would only repay 150,000 yuan (including 50,000 yuan in interest), and the remaining amount would be paid from A's wife D's (also a shareholder of company B) account. However, D did not sign the "repayment agreement." A and D divorced in March 2015, but after signing the repayment agreement, D made partial repayments ranging from 10,000 to 50,000 yuan through her bank account to plaintiff C. The court believed that, based on D's identity as a shareholder of company D and her multiple acts of repayment, it could be presumed that D knew that A was conducting civil legal actions in her own name. Therefore, according to Article 66 of the General Principles of the Civil Law of the People's Republic of China[24], which states that "acts without agency, beyond the agency, or after the termination of the agency, if not confirmed by the person being represented, the person being represented shall bear civil liability. Acts that are not confirmed shall be borne by the actor. If the person knows that others are acting on his behalf in civil activities and does not make a denial, it is considered as consent," D was presumed to have agreed (Ratification) to this act. [25]

In this case, the judge first inferred, based on indirect evidence of D's shareholder identity and acts of repayment, that D subjectively knew that A signed the "repayment agreement" on her behalf. At this point, the judge should judge whether this fact has a high degree of probability. If so, according to Article 66 of the General Principles of the Civil Law, it can be presumed that D agrees (Ratifications) to the "repayment agreement." If the degree of probability of this fact is not high, legal presumption cannot be applied.

3.3 Legitimacy of "Legal Presumption + Factual Presumption "

Issues in this category of secondary presumption focus on the effectiveness of the presumed facts of legal presumptions and the requirements for the basic facts of factual presumptions. In short, can the presumed facts of legal presumptions meet the requirements of factual presumptions? The author believes that by analyzing the reasons for the creation of legal presumptions, clarifying the effectiveness of legal presumptions in the fact-finding of judicial evidence, and then judging whether they can meet the requirements of basic facts for presumptions. It is important to note that the creation of a legal presumption often relies on multiple reasons.

The most important reason for creating legal presumptions is the probability connection between basic facts and presumed facts, which is the fundamental requirement for creating legal presumptions and most in line with the position of this article on evidence law. Secondly, other factors such as

public policy, social justice, and proof convenience must also be considered; these are exceptions to the creation of legal presumptions. Accordingly, the author classifies legal presumptions into five categories: the first category is legal presumptions based on a high probability connection between basic facts and presumed facts, such as the presumption of lenders misappropriating credit funds or the presumption of the authenticity of official documents[26]. The second category is legal presumptions based on the realization of social policies or the maintenance of social interests, social fairness, and public order and good customs. This type of legal presumption is common in marriage and family disputes, labor disputes, market regulation, etc., such as the presumption of market dominance[27]. The third category is legal presumptions aimed at solving the dilemma of proof or procedural deadlock, such as the presumption of medical malpractice[28].The fourth category aims to protect co-proofs, such as the "presentation of documentary evidence order"[29].

In simple cases, the presumed facts of legal presumptions are probably the disputed legal facts of the case, and there is no question of secondary presumptions. However, in complex cases, the presumed facts of legal presumptions are likely not the end of proof. In such cases, can these facts deduced by legal regulation be subject to secondary presumptions? Some views suggest that, compared with factual presumptions, legal presumptions integrate legal value and policy needs, making them legal rules and thus reducing the probability connection between basic facts and presumed facts. [30]The author believes that the facts presumed by legal presumptions can be considered a special kind of evidence with equal probative value as other evidence. Judges need to assess their relevance, truthfulness, etc., and cross-verify them with other evidence in the case. The uniqueness lies in the difference in the degree of probability of presumed facts among different types of legal presumptions: if the probability connection predominates in the reasons for creating legal presumptions, it can usually be used as the basic fact for factual presumptions. However, legal presumptions where procedural or policy factors predominate often struggle to meet the high probability requirement of basic facts for factual presumptions. Therefore, for presumed facts with insufficient probability, their probative value can be supplemented by cross-verification with other evidence in the case. Since the creation of legal presumptions is often based on multiple reasons, judges should first analyze the reasons for creating legal presumptions, then judge the probability of presumed facts based on the composition of the reasons for creating them, and if their probability reaches or is far higher than the civil proof standard, secondary presumptions can be made. Finally, judges can evaluate the probability of the second independent presumption based on the experience rule used in the factual presumption, combined with the probability of the two consecutive presumptions, to determine whether the final presumed fact meets the proof standard. The use of probability theory in judicial evidence can quantify and visualize the process of fact-finding. The following case can be cited as an example:

Case Six: In a child support dispute, plaintiff A, claiming that defendant B is the biological father of her child D, requested B to pay child support. A provided relevant evidence and requested a paternity test. B denied and provided no relevant evidence, refusing to undergo a paternity test. According to Article 39 of the "Interpretation (I) of the Supreme People's Court on the Application of the Civil Code of the People's Republic of China," [31]which states: "If a father or mother or an adult child files a lawsuit requesting confirmation of the parent-child relationship and provides necessary evidence for proof, and the other party has no contrary evidence and refuses to undergo a paternity test, the people's court may determine that the claim of the party who seeks confirmation of the parent-child relationship is established," the court presumed that the parent-child relationship between B and D asserted by A was established. Now, suppose A and C are married, and D was born during the existence of A and C's marriage. If C suspects A of infidelity and files for divorce, C can use the presumed fact of the parent-child relationship between B and D as the basic fact. According to an experience rule that men and women do not have sex without cohabitation, they will not give birth to children, it can be presumed that A had the behavior of "cohabitation with others" during the existence of the marriage with C, thus claiming damages for divorce.

In this case, the creation of the legal presumption of parent-child relationship not only covers public policy, public order and good customs, but also has the consideration of the high probability connection between the basic facts and the presumed facts. Therefore, the judge determined the reason for the creation of this legal presumption, and concluded that the fact of the establishment of parent-child relationship is highly probable by reviewing and judging other evidence. Then, the fact presumption is based on the highly probable fact that the parent-child relationship is established, and the empirical rule used in the fact presumption is also highly probable. Through two presumptions, the fact that the spouse cohabitates with others is finally concluded.

3.4 Legitimacy of "Legal Presumption + Legal Presumption"

The combination of "Legal Presumption + Legal Presumption" is relatively rare in judicial practice, and there are also issues regarding the limits of the application of judicial discretion from the perspective of judges. Some scholars, while discussing the difference in the frequency of the use of factual inference and legal presumption in criminal proceedings, argue that legal presumption can only be applied once, [32] without providing reasons for this assertion. In civil procedure, the presumed facts resulting from the first legal presumption can be considered as a special form of evidence for another legal presumption.

If a case necessitates a second presumption, then the presumed facts resulting from the first legal presumption should be regarded as a unique form of evidence. Judges should analyze the reasons behind this legal presumption to assess the conclusiveness of the evidence in proving the facts. If this special evidence meets the standard of conclusiveness in civil procedure and fulfills the legal requirement of the factual basis for another legal presumption, it can serve as the basis for another legal presumption. When conducting the second legal presumption, attention must be paid to understanding the rationale of this legal presumption and examining the relationship between the presumed facts from the first presumption and the rationale of the second legal presumption. If the probability predominates in the creation reason of the first legal presumption, then regardless of whether the probability or procedural and policy considerations predominate in the second legal presumption, generally, the necessity of the final conclusion is higher than that of the second presumption, which serves as the presumed fact in the first presumption. If the first legal presumption's creation reason is predominantly procedural or policy-driven, special attention should be paid to the creation reason in the second legal presumption. If procedures or policies predominate, the final presumption's necessity is lower, so one should preferentially use a probabilistic advantage in legal presumptions.

It's important to note that the combination of "Legal Presumption + Legal Presumption" does not substantially differ from the other types of second presumptions discussed earlier. Firstly, their logical structure is similar to other second presumptions, with the only difference being that the legal provisions serve as the major premises in both presumptions, while the experience rules or policy and procedural values are concealed behind the legal provisions. Secondly, although different from the combination of "Factual Presumption + Factual Presumption," where there is more freedom and a higher requirement for precise application of logical and experience rules, there is still a considerable degree of judicial discretion in evaluating evidence or facts, analyzing the conclusiveness of the legal presumption rationale, and determining the standard of proof.

4. Summary

In conclusion, after a thorough analysis of different types of second presumptions, the following conclusions can be drawn: (1) Factual presumption is the basic unit and core content of indirect proof, and "Factual Presumption + Factual Presumption" is a type of indirect proof, with the probability of its conclusions subject to judicial judgment. (2) In "Factual Presumption + Legal Presumption," the basic facts of legal presumptions need to meet high probability and legal definiteness, and judges should determine whether the presumed conclusions of factual presumptions meet the probability

requirements. (3) Legal presumptions have multiple reasons for their establishment, and the presumed facts of legal presumptions should be considered as a special form of evidence. Judges should analyze their rationale, judge their relevance and truthfulness, and, if meeting the proof standard, can be used as the basic facts for another legal presumption.

It is evident that the conclusions drawn from presumptions are essentially a form of evidence or fact. Therefore, whether starting with factual presumptions or legal presumptions, judges should judge whether this evidence can be used as the basic facts for a new presumption and whether the facts obtained through two presumptions meet the conclusiveness of the proof standard. Thus, the legal effect of second presumptions is equal to other methods of proof, all falling within the realm of free evaluation of evidence (In the context of the secondary presumption involving a legal presumption, since the major premise of the legal presumption already exists, the scope of judicial discretion within the realm of free evaluation of evidence will correspondingly narrow). The probability of their conclusions is not necessarily lower, and the wholesale prohibition of second presumptions is not scientifically sound.

Regarding the regulation of second presumptions, it should be approached from their inherent nature, i.e., how to regulate judicial discretion and enhance the judge's fact-finding capabilities. From the perspective of restricting second presumptions, measures such as transparency in the use of discretion, establishing procedures for initiating presumptions, and safeguarding the parties' procedural rebuttal rights are powerful. To enhance the judge's fact-finding capabilities, interdisciplinary knowledge can be leveraged to make judicial proof more scientific, such as adopting the principles of evidence-based methods, typifying experience rules and legal presumptions involved in cases, and establishing databases. These measures will contribute to ensuring the fairness and scientific nature of judicial proof.

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