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А.А. Кухга

Кухта Андрей Андреевич — кандидат юридических наук, доцент, начальник Новороссийского линейного управления внутренних дел на транспорте

Юридическая техника и техника доказывания по уголовным делам

Классическая правовая наука объектом приложения юридической техники видит юридическую сторону дела, а техники доказывания — фактическую сторону.

Юридическая техняка обслуживает потребности в правильном понимания и применения закона. А тем, что касается установления фактических обстовтельств дела, выяснения юридических фактов, заведует теория доказательств. Ученые, которые занимаются теория доказательств, никогда не включили в число ее проблем вопросы, связанные с толкованием закона, восполнением его пробылов и т. п.

Постмодернистская правовая мысль сводит деятельность користов к одной из явыковых игр.". Доказывание также рассматривается как игра или как борьба интерпретаций за наиболее правильное (убедительное) прочтение текста. В общем, нет ничего, кроме текста в суде, отсюда — речевая техника лежит в основе и юридической техники, и техника доказывания. Сама речь есть техника изобретения мыслей и слов.

Отсюда и своеобразная трактовка юридической техники. Юридическая техника — это и самые правила этой речевой, пероукизивной игры, и искусство владения этими правилами. Юридическая (речевая) техника имеет универсальное значение и в равной степени распространяется как на толкование закона и разрешение проблем его применения в данном конкретном случае, так и на установление фактических обстоятельств дела, подлежащего разрешению в юрисдикционном органе.

Техники исключения, градуирования, систематизации элементов речевой фактуры, основанные на языке, есть техники доказывания, то есть техники производства знания относительно предполагаемой действительности.

Владение юридической техникой — основа грамотности, мастерства юриста как профессионального пользователя юридическим языком. Изучение юридической техники подразумевает овладение юридическим языком как средством коммуникативного общения в правовой среде. Юрист —

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