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Кухта Андрей Андреевич — кандидат юридических наук, доцент, начальник Новгородского 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 техника обслуживает потребности в правильном понимании и применении закона. А тем, что касается установления фактических обстоятельств дела, выяснения юридических фактов, заведует теория доказательства. Ученые, которые занимаются теорией доказательства, никогда не включали в число ее проблем вопросы, связанные с толкованием законов, восполнением его пробелов и т. п.

Постмодернистская правовая мысль сводит деятельность юристов к одной из языковых игр¹. 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 техники доказывания. Сама речь есть техника изобретения мыслей и слов.

Отсюда и своеобразная трактовка юридической техники. Юридическая техника — это и самые правила этой речевой, персонифицированной 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.

Техника исключения, градуирования, систематизации элементов речевой фактуры, основанные на языке, есть техника доказывания, то есть техника 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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Table of Contents Sistema Sredstv Dokazyvaniia Po Ugolovnym Delam Monografiia

1. Understanding the eBook Sistema Sredstv Dokazyvaniia Po Ugolovnym Delam Monografiia
 - The Rise of Digital Reading Sistema Sredstv Dokazyvaniia Po Ugolovnym Delam Monografiia
 - Advantages of eBooks Over Traditional Books
2. Identifying Sistema Sredstv Dokazyvaniia Po Ugolovnym Delam Monografiia
 - Exploring Different Genres
 - Considering Fiction vs. Non-Fiction
 - Determining Your Reading Goals
3. Choosing the Right eBook Platform
 - Popular eBook Platforms
 - Features to Look for in an Sistema Sredstv Dokazyvaniia Po Ugolovnym Delam Monografiia
 - User-Friendly Interface
4. Exploring eBook Recommendations from Sistema Sredstv Dokazyvaniia Po Ugolovnym Delam Monografiia
 - Personalized Recommendations
 - Sistema Sredstv Dokazyvaniia Po Ugolovnym Delam Monografiia User Reviews and Ratings
 - Sistema Sredstv Dokazyvaniia Po Ugolovnym Delam Monografiia and Bestseller Lists
5. Accessing Sistema Sredstv Dokazyvaniia Po Ugolovnym Delam Monografiia Free and Paid eBooks
 - Sistema Sredstv Dokazyvaniia Po Ugolovnym Delam Monografiia Public Domain eBooks
 - Sistema Sredstv Dokazyvaniia Po Ugolovnym Delam Monografiia eBook Subscription Services
 - Sistema Sredstv Dokazyvaniia Po Ugolovnym Delam Monografiia Budget-Friendly Options

6. Navigating Sistema Sredstv Dokazyvaniia Po Ugolovnym Delam Monografiia eBook Formats
 - ePub, PDF, MOBI, and More
 - Sistema Sredstv Dokazyvaniia Po Ugolovnym Delam Monografiia Compatibility with Devices
 - Sistema Sredstv Dokazyvaniia Po Ugolovnym Delam Monografiia Enhanced eBook Features
7. Enhancing Your Reading Experience
 - Adjustable Fonts and Text Sizes of Sistema Sredstv Dokazyvaniia Po Ugolovnym Delam Monografiia
 - Highlighting and Note-Taking Sistema Sredstv Dokazyvaniia Po Ugolovnym Delam Monografiia
 - Interactive Elements Sistema Sredstv Dokazyvaniia Po Ugolovnym Delam Monografiia
8. Staying Engaged with Sistema Sredstv Dokazyvaniia Po Ugolovnym Delam Monografiia
 - Joining Online Reading Communities
 - Participating in Virtual Book Clubs
 - Following Authors and Publishers Sistema Sredstv Dokazyvaniia Po Ugolovnym Delam Monografiia
9. Balancing eBooks and Physical Books Sistema Sredstv Dokazyvaniia Po Ugolovnym Delam Monografiia
 - Benefits of a Digital Library
 - Creating a Diverse Reading Collection Sistema Sredstv Dokazyvaniia Po Ugolovnym Delam Monografiia
10. Overcoming Reading Challenges
 - Dealing with Digital Eye Strain
 - Minimizing Distractions
 - Managing Screen Time
11. Cultivating a Reading Routine Sistema Sredstv Dokazyvaniia Po Ugolovnym Delam Monografiia
 - Setting Reading Goals Sistema Sredstv Dokazyvaniia Po Ugolovnym Delam Monografiia
 - Carving Out Dedicated Reading Time
12. Sourcing Reliable Information of Sistema Sredstv Dokazyvaniia Po Ugolovnym Delam Monografiia
 - Fact-Checking eBook Content of Sistema Sredstv Dokazyvaniia Po Ugolovnym Delam Monografiia
 - Distinguishing Credible Sources
13. Promoting Lifelong Learning
 - Utilizing eBooks for Skill Development
 - Exploring Educational eBooks
14. Embracing eBook Trends
 - Integration of Multimedia Elements

- Interactive and Gamified eBooks

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