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А.А. Кухта

Кухта Андрей Андрушевич — кандидат юридических наук, доцент, начальник Новороссийского линейного управления внутренних дел по Транспорту

Юридическая техника и техника доказывания по уголовным делам

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

Юридическая техника обильнейает потребности в правильном понимании и применении закона. А тем, что касается установления фактических обстоятельств дела, выявления юридических фактов, заинтересуют теория доказательства. Ученые, которые занимались теорией доказательства, никогда не изключали в число ее проблем вопросы, связанные с толкованием закона, восполнением его пробелов и т. п.

Постмодернистская правовая мысль сводит деятельность юриста 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 юридической техники, и техники доказывания. Сама речь есть техника изобретений мыслей и слов.

Отсюда и своеобразная трактовка юридической техники. Юридическая техника — это и самые правила этой речевой, переговорной игры, и искусство владения этими правилами. Юридическая (речевая) техника имеет универсальное значение и в разной степени распространяется как на толкование закона и разрешение проблем его применения в данном конкретном случае, так и на установленные фактические обстоятельства дела, подлежащие разрешению в юрисдикционном органе.

Техники исключения, предупреждения, системализации элементов речевой фактуры, основанные на языке, есть техники доказывания, то есть техники производства знания относительно предположенной 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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