

# CONTENTS

<i>About the author</i>	<i>page vii</i>
<i>Acknowledgements</i>	<i>viii</i>
<b>1 Introduction</b>	<b>1</b>
The art of problem solving	1
Beyond acronyms	2
Legal and ethical answers	3
The scope of this book	6
<b>2 Fundamentals of problem solving</b>	<b>7</b>
Law as an applied predictive discipline	7
The relationship between law and evidence	8
How much law?	9
Choice of law determines the elements of proof	11
The iceberg principle	13
The role of evidence	15
Evidence is essential to the application of law	16
The elements of the offence	17
The hidden law in the elements	20
Key points	23
<b>3 Fact finding</b>	<b>24</b>
Using evidence principles to think about facts	24
Sources of evidence	30
The burden of proof	35
The standard of proof	38
<b>4 Statutory interpretation and the criminal law</b>	<b>42</b>
General principles	42
Interpretation Acts	44
Special rules and principles that apply to criminal statutes	45
<b>5 Analysing a problem</b>	<b>55</b>
Basic problem analysis	55
Advanced problem analysis	58
Tentative conclusion	66
<b>6 Putting it all together</b>	<b>68</b>
Apply law to facts, or facts to law?	68
Jurisdiction	68
Identify the harms and procedures	70
Scope the law	71

Identify the elements of the proposed offence	72
Preliminary interpretation	76
Identify the evidence	79
Associate and evaluate the elements and the evidence	82
Reject the weak, embrace the strong	86
Resolve factual uncertainties	86
Resolve legal uncertainties	89
Defence(s)	89
Alternatives	91
Procedural considerations	92
Sentencing	94
Tentative conclusion	95
<b>7 Writing it up</b>	<b>97</b>
Purpose and audience	97
Format	98
Attend to the writing process	99
Engage with the law	100
Guiding principles	101
<i>Appendix A: Hypothetical example problem 1</i>	103
<i>Appendix B: Hypothetical example problem 1 guided response</i>	105
<i>Appendix C: Hypothetical example problem 2 and guided response</i>	114
<i>Appendix D: Hypothetical example problem 2: Memorandum of advice     in the matter of DPP v Ray Smith</i>	118
<i>Index</i>	123