

Answers to practical exercises

Chapter 18: Mooting skills

Page 424

1. If you search for *Entores* on Westlaw, you will be given a summary of 'cases citing this case' as follows:

Applied by

Brinkibon v Stahag Stahl und Stahlwarenhandels GmbH
[1983] 2 AC 34; [1982] 2 WLR. 264; [1982] 1 All E.R. 293; [1982] 1 Lloyd's Rep. 217;
[1982] Com. LR 72; [1982] ECC 322; (1982) 126 SJ 116; (HL)

Approved by

Robophone Facilities Ltd v Blank
[1966] 1 WLR 1428; [1966] 3 All ER 128; (1966) 110 SJ 544; (CA)

Considered by

Korbetis v Transgrain Shipping BV
[2005] EWHC 1345; (QBD)

On LexisNexis Butterworths, if you firstly find *Entores* and then select 'Find related cases' from the 'Next Steps' drop-down list you will get a longer list of 22 cases (with some duplicates as cases reported in more than one series of law reports are duplicated), but you will not be told in the summary how the court disposed of *Entores* in each of them. Westlaw is therefore of more immediate use, although Lexis does return more 'related' cases:

Ark Therapeutics plc v True North Capital Ltd [2006] 1 All ER (Comm) 138

Apple Corps Ltd v Apple Computer Inc [2004] All ER (D) 107 (Apr)
JSC Zestafoni G Nikoladze Ferroalloy Plant v Ronly Holdings Ltd [2004] All ER (D) 258 (Feb)
Carlyle Finance Ltd v Pallas Industrial Finance [1999] 1 All ER (Comm) 659
Brinkibon Ltd v Stahag Stahl GmbH [1983] 2 A.C. 34
Diamond v. Bank of London and Montreal Ltd [1979] Q.B. 333
BP Exploration Co (Libya) Ltd v Hunt [1976] 3 All ER 879
New Hart Builders Ltd v. Brindley [1975] Ch. 342
Harrison and another v Battye and another [1974] 3 All ER 830
The Brimnes [1975] Q.B. 929
Holwell Securities Ltd v Hughes [1974] 1 All ER 161
Robophone Facilities Ltd v Blank [1966] 3 All ER 128
Société Cooperative Sidmetal v. Titan International Ltd [1966] 1 Q.B. 828

2. Given that *Entores* was decided in the Court of Appeal it is particularly interesting to note the case of *Brinkibon v Stahag Stahl* in which *Entores* was approved by the House of Lords. This is particularly useful for a moot since it establishes a higher source of authority for the point you are trying to make than *Entores* itself.

The key point from *Brinkibon* can be found in the judgment of Lord Wilberforce who stated that:

Since 1955 the use of Telex communication has been greatly expanded, and there are many variants on it. The senders and recipients may not be the principals to the contemplated contract. They may be servants or agents with limited authority. The message may not reach, or be intended to reach, the designated recipient immediately: messages may be sent out of office hours, or at night, with the intention, or on the assumption that they will be read at a later time. There may be some error or default at the recipient's end which prevents receipt at the time contemplated and believed in by the sender. The message may have been sent and/or received through machines operated by third persons. And many other variants may occur. ***No universal rule can cover all such cases; they must be resolved by reference to the intentions of the parties, by sound business practice and in some cases by a judgement where the risks should lie.***

You could therefore use this principle to support your position.