

Professor Coppolla Spring 2009

Please read the fact pattern in Question One carefully. Take some time to think about the legal issues raised and then write a well-reasoned and well-written analysis of those issues in the blue book provided. Please put your examination number on your blue book. Good luck.

Question One

Hispanic residents of Chelsea, Massachusetts who are cell phone users claim that the contracts the companies make them sign are intentionally not written in easy to understand language and mandate excessive deposits for residents in certain zip codes as well as costly insurance. They also claim that wireless telephones emit an unsafe level of radiation and that Nokia Inc., ATT Wireless Inc. of Massachusetts and its retail stores, ATT Wireless at the Mall, Inc. of Delaware have fraudulently concealed all this from purchasers. Nokia claims the cell phone users' state law claims are inappropriate as federal law determines what they can and cannot do.

A cell phone is actually a radio containing a low power transmitter. When a wireless telephone is turned on, it searches for a tower within range. A series of sophisticated computers controls all of the base stations in a particular area to coordinate radio transmissions to and from wireless telephones. Numerous representations regarding the safety of this process have been made to the involved

cities and towns throughout the cell tower permitting process. Many of these towers are located in relatively poor communities with much higher mortality rates.

Wireless telephones emit a low level of radiation from their antennae when they communicate with base stations. While it is well established that exposure to high levels of radiation can cause adverse health effects, there is no scientific consensus on the effects of low-level exposure. The Federal Communications Commission requires all transmitters that emit any radiation to be authorized by the agency before they are marketed or sold.

The Chelsea cell phone users inform you that (1) in establishing the cell phone contracts and credit accounts many improper questions were asked and cell phone user below the age of 25 were required to take out costly credit insurance and pay higher base charges than other customers, (2) wireless telephones emit an unsafe level of radiation and (3) Nokia, in knowing this, negligently and fraudulently endangered the consuming public by marketing wireless telephones (4) ATT knew of all this and conspired to fraudulently misrepresent the product and induced them to purchase additional equipment necessary to make the device safer and (5) the retail outlets became part of this fraud and deceived them with false promises and assertions regarding the quality, cost and safety of the product. According to the cell phone users, they have been damaged by the companies' costly unnecessary charges and exposure to the risks of adverse biological effects from the radiation emitted by their wireless telephones. The data they have assembled indicates that residents who live in Chelsea with a zip code of 02150, on average, pay 37% more for base cell phone service. They also have evidence that cities and towns

with large non-native English speakers are twice as likely to have in excess of 5 cell phone towers in a 5 square mile radius as compared to other communities that have 2 cell phone towers per 5 square mile radius and that the incidence of cancer is significantly higher as well. The cell phone users who consult you all signed the contracts in question, pay higher base charges and were not informed of these dangers when they leased or bought their wireless telephones.

Describe how you would proceed, what issues need to be addressed and how you would expect a court to resolve the various issues raised by these facts.



Question Two

In the space provided, please define each concept fully in well-written sentences. After doing that please then explain fully how, if at all, the given concept is applicable to the facts outlined in Question One.

Magnuson-Moss Warranty Act

Deceit

Unconscionability

The "Effects Test"

Preemption

Remedies

Bait and Switch
