

AT ISSUE

A PUBLICATION BY AND FOR THE YOUNG LAWYERS DIVISION
 OF THE PENNSYLVANIA BAR ASSOCIATION

PINCHING PENNIES AT HOME INSPECTION TIME COSTS BUYERS IN THE LONG RUN

By Angela P. Flouras

A crucial aspect of the home buying process is having the home inspected by a licensed home inspector. This procedure is inexplicably ignored by many in an effort to save a few hundred dollars. Generally, a home inspection will cost anywhere from \$300 to \$800, depending on the size of the house, the sale price, the age of the house and its location. However, the penny-pinching move of foregoing an inspection may backfire in the future and end up costing the buyer thousands of dollars for repairs or extensive work on the home that could have been discovered had a proper home inspection been conducted prior to purchase.

A typical home inspection consists of examining the heating system, central air conditioning system, interior plumbing and electrical systems, roof, attic and visible insulation, walls, ceilings, floors, foundation, basement and structural components. The inspection is generally conducted after the contract or purchase agreement is signed. However, it is imperative for the buyer to ensure that an inspection clause appears in the contract, making the final purchase contingent on the findings of the inspection.

The Real Estate Seller Disclosure Law (RESDL), 68 Pa.C.S.A. § 7301 *et. seq.*, imposes a duty on the seller to “disclose to the buyer any material defects with the property known to the seller by completing all applicable items in a property disclosure statement.” Some buyers attempt to save some closing costs by waving a home inspection, and instead

rely on the seller’s disclosure form to alert them to any potential problems with the house. However, the seller’s disclosure form, mandated by 68 Pa.C.S.A. § 7304, cannot be relied upon as the sole source for information on the home’s character. Section 7304 lists 16 subjects that the form must cover, and on its surface the list appears comprehensive. However, the seller is under no affirmative duty to investigate the home for any of the subjects included in the statute. Instead, the seller must simply alert the buyer to any defects regarding the 16 subjects that are known to him or her. Obviously, then, a problem can arise where the seller is unaware of a defect. These latent defects are precisely what a home inspection is designed to uncover.

Of course, miscommunication and disputes may arise between buyers and sellers. A common issue in these types of cases, the so-called “home inspection cases,” is an allegation that the seller said something false about the property in order to induce the sale. If the false statement is made on the disclosure form itself, Section 7311 states that the seller “shall be liable in the amount of actual damages suffered by the buyer.” Frequently, however, the seller may make an oral statement denying the existence of a specific defect. In these situations, the seller will rely on the integration clause, which is standard in most real estate agree-



ments, to prevent the admissibility of evidence concerning their statements.

In a general contract case, evidence of such statements would likely be prohibited because of the parol evidence rule. While there is an exception to the parol evidence rule permitting additional evidence when fraud is alleged, that exception does not apply where the parties have entered into an agreement with an

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continued on Page 7

SPRING 2007

WHAT'S AT ISSUE

Spring is upon us, and as the weather turns and you look to get out of the house and office, I hope you will join us for some of the upcoming events the PBA has to offer. By now, we have completed our state wide Mock Trial finals. Congratulations to the winner and thank you to all of the participating schools and volunteers who make the program possible. I would especially



Goldstein

like to thank Bill Higgins and Jennifer Clark for co-chairing the committee and also YLD Coordinator Maria Engles for her efforts. The team of editors who worked on this year's problem, including

Jonathan Grode, Roberta West, Professor Mark Rahdert, Bill Higgins, David Trevaskis, Jennifer J. Clark and team leader Jane Meyer, gave their time and talent to create the case. Their support and assistance made this competition a great success.

The next YLD program is our **Day on the Hill program**, which is scheduled for **April 24**. The PBA has increased its efforts working on behalf of Pennsylvania's citizens and lawyers over the past few years. The Day on the Hill program

Justin Goldstein is the current chair of the PBA Young Lawyers Division.

allows the YLD to do our part in making sure that our Legislature has access to relevant information and the best legal minds in the state. This year's program includes a CLE program titled "Rules of the Game: The Legislative Process from the Inside Out," followed by a discussion on "Hot Legislative Topics." There will be tours of the Capitol offered, and the evening will close with a reception in the Capitol rotunda. Also, the PBA will be holding a **Committee/Section Day on April 25**, the day after the YLD program. This is a wonderful opportunity for you to interact with your representatives and then take advantage of your PBA membership by networking and sharing information with lawyers from across the state in your substantive area. The people you will meet and information you learn will be of immediate benefit to you and your clients.

We are hopeful to arrange for caravans in Zones 1 and 12 before the end of the bar year in June. Keep an eye out on the PBA Web site calendar for when these events are scheduled. In addition to the **Annual Meeting**, to be held **June 20-22** in Philadelphia, the **PBA YLD Summer Meeting** heads to Seven Springs Mountain Resort in Champion, Pa. The Summer Meeting is scheduled for **Aug. 3-4** and will also be held in conjunction with the division's New Admittee Conference and the PBA's Committee/Section Day. This family-friendly event provides another great opportunity for you to get involved, meet new contacts, enhance your practice and have a great time.

As always, you can sign up for YLD committees right now on the PBA Web site. Just look for the YLD and click on the "About the YLD" link, then the "Committees" link.

It continues to be my privilege to serve as chair. I look forward to your participation and welcome your comments at justin.goldstein@nationalcity.com.

AT ISSUE

Editor
Hope Caldwell

At Issue is published quarterly by the PBA Young Lawyers Division. Editorial items, news material and correspondence should be sent to the PBA Communications Department, P.O. Box 186, Harrisburg, Pa. 17108-0186.

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YLD SEEKS NOMINATIONS

The YLD Nominating Committee, chaired by Nathan Prepelka, is accepting applications from YLD members interested in seeking nomination to run as candidates for division chairperson-elect, secretary, treasurer and division delegate at the 2007 Annual Meeting (June 20-22 at the Sheraton Philadelphia City Center Hotel).

If you are interested in being nominated by the Nominating Committee under Article IV, Section 2, of the bylaws, please submit your qualifications and a brief biographical sketch by April 6 to Nathan Prepelka, The Webb Law Firm, 700 Koppers Building, Pittsburgh, PA 15219; fax (412) 471-4094.

If you wish to be nominated by petition under Article IV, Section 4, of the bylaws, please send your materials with a petition signed by at least 15 members of the YLD by April 6 to the above address or fax number. Send a copy of all materials to Maria Engles, YLD Coordinator, Pennsylvania Bar Association, 100 South Street, P.O. Box 186, Harrisburg, Pa. 17108.

The YLD bylaws can be found on the PBA Web site at www.pabar.org. Nathan Prepelka can be reached at (412) 471-8815 to answer any questions you may have regarding the election process.

CHANGES TO THE PENNSYLVANIA WORKERS' COMPENSATION ACT AS MADE BY ACT 147

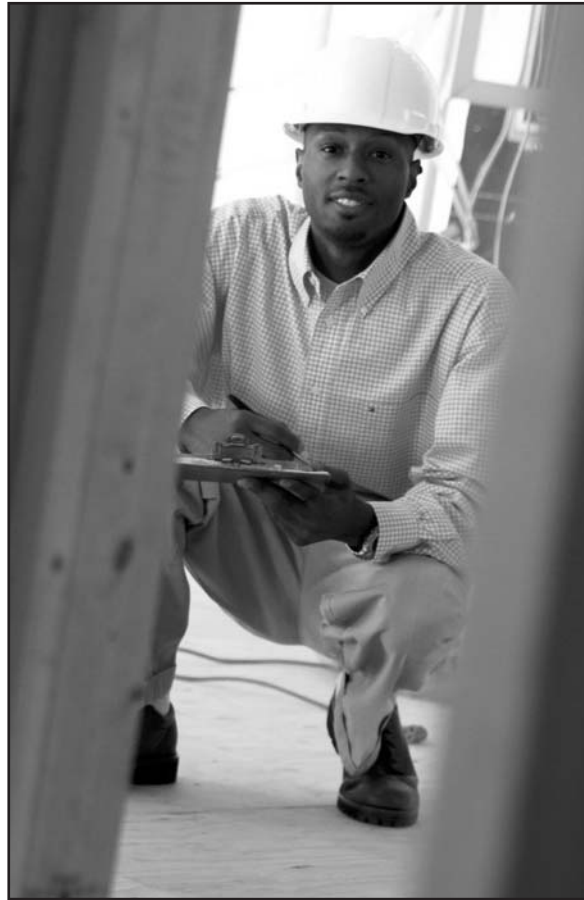
By Patrick Kenny

On Nov. 9, 2006, Gov. Edward G. Rendell signed into law Act 147 (HB 2738), legislation that amends the Workers' Compensation Act of 1915. This legislation was unanimously passed by both the Pennsylvania House and Senate. The notable amendments to the Workers' Compensation Act as a result of Act 147 include:

1. Mandatory Trial Schedule — Act 147 amends Section 401.1 of the Workers' Compensation Act to require workers' compensation judges to establish a mandatory trial schedule at the first hearing. The judge must establish deadlines for the presentation of evidence by both parties and schedule a specific date and time for a mandatory mediation conference. The schedule must be strictly adhered to and no party will be permitted to deviate from the schedule set without showing "good cause." The mandatory mediation conference shall occur no later than 30 days before the date set for filing proposed findings of facts and conclusion of law or legal briefs to the judge for final decision. The mediation conference can be conducted by any workers' compensation judge and not necessarily the judge assigned to the case. The mediation requirement can be waived only if at the first hearing, the workers' compensation judge determines that mediation would be "futile."

2. Resolution Hearing — The Pennsylvania Workers' Compensation Office of Adjudication now must create a "resolution hearing" to speed up the process of approving settlements. A compromise and release hearing is to be held within 14 days of notice of settlement. A decision on the compromise and release agreement must be rendered within five business days of the compromise and release hearing.

3. Assignment of Petitions — Act 147 adds to Section 414 of the Workers'



Compensation Act a provision precluding the assignment to any one workers' compensation judge more than 75 percent of the petitions in a particular county.

4. Increase of the Minimum Weekly Worker's Compensation rate — Act 147 amends Section 306(h) of the Workers' Compensation Act to increase the minimum weekly workers' compensation rate to \$100 if the work-related injury occurred prior to August 31, 1993, and the employee continues to receive total temporary disability benefits for the injury as of Jan. 1, 2007.

5. Creation of an Uninsured Employer's Guaranty Fund — Article XVI was added to the Workers' Compensation Act which establishes an Uninsured Employer's Guaranty Fund. This fund is established for the purpose of paying a claim where an employer who is liable for payment has failed to insure its liability at the time of the injury. The fund will have the same rights and obligations as an insurer, how-

ever, the fund will not be subject to penalties or unreasonable contest attorney's fees under Section 440 of the act. The fund is required to investigate the insurance status of the employer and if proof of insurance is not furnished by the employer within 14 days of the fund's request, there will be a rebuttal presumption that the employer is uninsured. Notwithstanding the establishment of this fund, the Department of Labor and Industry still has the power to investigate and pursue prosecution of employers who violate Section 305 of the act, which requires employers to carry workers' compensation insurance. Any restitution obtained through prosecution of uninsured employers is to be paid back to the fund.

The purpose of Act 147 was not to change the substantive rights of injured workers under the law, but rather to reform the litigation process of Workers' Compensation matters. The largest impact of Act 147 is the addition of the Uninsured Employer's Guaranty Fund, which has been long over due. The Pennsylvania Workers' Compensation

Act was designed to cover all employees who are injured at work. Since it is a no-fault system, the injured employee need only to prove that he or she was injured while working in the course and scope of employment and as a result is now disabled and cannot work. In the past, many employees who worked for employers who did not carry workers' compensation insurance were left with little to no remedy. With the establishment of the Uninsured Employer's Guaranty Fund, injured workers can receive total temporary disability benefits and payment of their reasonable, necessary and related medical treatment, even if their employer has no workers' compensation insurance.

The practical implementation of the amendments provided in Act 147 is still ongoing. Both judges and practitioners are still adjusting to the implementation of these new amendments. The effect of Act 147 to the workers' compensation litigation process continues to play out with new developments sure to follow.

Patrick Kenny is an associate with the firm Batt & Gross in Philadelphia. He represents injured workers in workers' compensation matters and can be reached at pkenny3@verizon.net.

A YEAR OF LAW-RELATED EDUCATION PRO BONO OPPORTUNITIES

By David Trevaskis

A plumber who renders public service by improving the access to plumbing of the public, either through direct service to the poor or general education about the plumbing system, is a pretty special plumber. A lawyer who renders similar public service to improve the access to justice is simply doing what every lawyer is asked to do as part of his or her professional duty.

As the PBA pro bono coordinator, I spend most of my professional life promoting direct legal services for the nearly 80 percent of the poor people in my state who do not have access to lawyers and, therefore, have limited access to our justice system. Yet Rule 6.1 on Voluntary Pro Bono Publico Service is not limited to direct legal representation of poor clients. Under our rule, lawyers "should render public interest service." A lawyer may discharge this responsibility, among other means, "by service in activities for improving the law, the legal system or the legal profession." Providing education about the law, in a nation guided by the rule of law, constitutes such public service.

Participation in law-related and civic education programs has been a growing means through which attorneys have performed for the public good. Through these programs, lawyers get out into the community and gain the chance to provide a service by teaching about the law while broadening connections with judges, other lawyers and the public as a whole.

There are many programs available through local and state bar associations for the larger community, from People's Law Schools where lawyers provide easy to understand presentations on various legal disciplines to Teen Courts where lawyers teach young people how to conduct trials of peer offenders. But the vast majority of attorney involvement in public education about the law takes place in K-12 schools. This article will look at the flow of those programs in Pennsylvania through a calendar year.

School starts each year in the fall, and for law-related and civic education that means Constitution Day (Sept. 17) is fast approaching. Mandated by the U.S.

Congress in 2004 as a day for instruction on the Constitution, Sept. 17 is the date when the Founding Fathers signed the Constitution in Philadelphia in 1789 and sent it out to the 13 states to be ratified. 2007 marks the third year of this unfunded mandate and many schools still do not seem to even know about the requirement, which makes it a great time for lawyers to call local schools and ask if the school would like some help in setting up their mandated Constitution Day programming.

GET INVOLVED!

PBA LAW DAY PROGRAMS: MAY

**PROJECT CITIZEN COMPETITION:
MAY 7**

CONSTITUTION DAY: SEPT. 17

**PBA "CELEBRATE THE
CONSTITUTION" PROGRAM:
SEPT. - NOV.**

**WE THE PEOPLE COMPETITION:
FALL SEMESTER**

**BILL OF RIGHTS WEEK:
WEEK OF DEC. 15**

**MOCK TRIAL COMPETITION:
SPRING SEMESTER**

The PBA creates special materials each year for the event, as do organizations such as the National Constitution Center (www.constitutioncenter.org) and the Bill of Rights Institute (www.billofrightsinstitute.org). Through the PBA's "Celebrate the Constitution" program, which is funded by the Pennsylvania Bar Foundation, lawyers can present lessons to individual classes or design programs for entire schools. A "Celebrate the Constitution" Lesson Plan Guide is available through the LRE coordinator's office at the PBA or via the PBA's Web site at www.pabar.org. Former PBA President Lou Teti of West Chester organizes an event every fall for students at local schools to sign copies of the Constitution after the students have participated in a program about the rule of law presented by local lawyers and

judges. For the past few years, educator Don Imler of the PBA's Law-Related Education Committee has gathered high school students, lawyers, political leaders and judges on the courthouse steps in Hollidaysburg to read the Constitution aloud, then followed that up with an assembly created by his students for every 5th grader in local state Rep. Jerry Stern's district.

Pennsylvania lawyers can jump right in after Constitution Day and start working with schools involved in the statewide High School We the People Competition coordinated nationally by the Center for Civic Education (www.civiced.org) and in the commonwealth by Freedoms Foundation of Valley Forge (www.ffvf.org). We the People is a national program in every state, though it often runs as a spring competition elsewhere. There are non-competitive opportunities to work with We the People at the elementary and middle school levels as well. Lawyers can coach teams made from entire classes who conduct mock congressional hearings before panels of lawyers, judges, political leaders and academics or they can serve on the panels.

Under a state law that provides another unfunded mandate for the schools, Pennsylvania celebrates the Bill of Rights in December in the week surrounding the Dec. 15, 1791, ratification of those first 10 amendments to the Constitution. Other states have similar requirements. This is another good time for a lawyer to reach out to local schools, since the schools usually have no clue they are violating a state law by not celebrating the Bill of Rights in some fashion that week!

Spring semester usually marks the start of mock trial season. Pennsylvania sees nearly 300 teams participate in a program that brings new meaning to the term "March Madness" as the final 12 squads travel to the state Capitol of Harrisburg the last week of March to determine a state winner, who then goes to the national championships (www.nationalmocktrial.org). 300 teams mean service opportunities for 300 attorney coaches and for thousands of lawyers and judges sitting as juries to determine the winning teams. Bedford

David Trevaskis is the PBA pro bono coordinator. He can be reached at 1-800-932-0311, Ext. 2236.

continued on Page 7

PBA MIDYEAR MEETING RECAP

By Charles Eppolito III

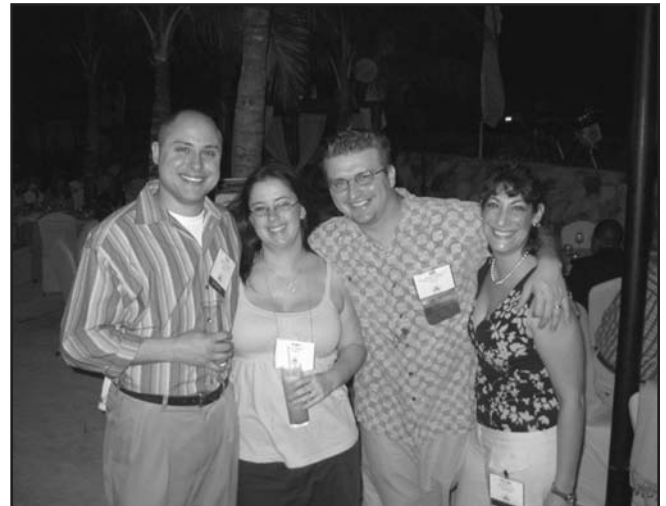
The PBA held its Midyear Meeting Jan. 24-28 at the Occidental Grand Flamenco Xcaret Resort in the Riviera Maya, Mexico. This was an outstanding opportunity to engage in both professional and personal development while enjoying the surroundings, activities and weather (sunny and warm) of Mexico.

The meeting was extremely well attended, as hundreds of lawyers and their families or guests took advantage of the many opportunities offered at the resort. There were several opportunities for networking with fellow lawyers, members of all levels of the judiciary, and legislators. The Wednesday night Welcome Reception/Dinner on the beach and the Saturday night Farewell Reception/Dinner overlooking the Caribbean Sea — both of which featured local music and fare — were among the highlights. In addition, there were nearly a dozen CLE programs, designed to appeal to any practitioner in just about every field of practice, each featuring renowned speakers in the field.

Charles Eppolito III is the 2007 PBA Midyear Meeting co-chair.

There was likewise no shortage of activities to entertain the meeting attendees in between CLE programs and the networking events. There were a number of tours, including excursions to ancient ruins, nearby islands and rainforests, and snorkeling and scuba diving. Adjacent to our resort was XCaret Park, with 25 attractions and activities (on land and sea), and a spectacular night show. For those who were less adventurous, there was no need to leave the resort, which featured its own private beach, numerous pools, a luxurious spa, and nearly a dozen restaurants and cantinas offering food and beverages from various cultures.

Those attending the meeting had a wonderful time and found it professionally rewarding as well. For those of you who attended, it was great to see you and we hope to see you next year! For those who were unable to join us, we encourage you to attend next year's Midyear Meeting in Puerto Rico!



REPORT ON FEB. 23 YLD BUSINESS MEETING

By Nicole Gerson

The Young Lawyers Division held a business meeting Feb. 23 during the Conference of County Bar Leaders (CCBL) at the Hershey Lodge. The meeting was well attended by the YLD.

After the CCBL luncheon, the YLD met to discuss several topics, notably, the upcoming Day on the Hill, an annual event at which the YLD meets with members of the state Legislature. The format this year will be different from past years. Instead of standing on its own, the Day on the Hill will be held in conjunction with PBA Committee/

Nicole Gerson is a YLD At-Large Zone chair.

Section Day. In addition, it will include a cocktail reception with the Legislature, rather than a luncheon. This should make it easier for people to mingle and meet their representatives.

We also discussed the summer meeting, which is shaping up well. This year it will be held at Seven Springs from Aug. 3-4, 2007. There will be great CLE programs offered, as well as a golf outing and an alpine slide for fun.

After the meeting, there was a dinner at the Hershey Lodge for all CCBL attendees. We all had a good time, but that was followed by an even better time going out in Harrisburg.

LAW DAY EVENTS TO START ACROSS PENNSYLVANIA

By David Trevaskis

Each spring, Pennsylvania students get to learn about the law through Law Day programs targeted to the May 1 national observance, but which run throughout the month. The PBA produces a Law Day booklet of lessons each year that are provided to lawyers, judges and educators and it maintains an online matching system to pair lawyers with interested schools (visit www.pabar.org for details). The 2007 PBA Law Day kick-off will be held April 30 in Beaver. PBA President Ken Horoho will join local lawyers and judges to celebrate Beaver County Law Day poster and essay con-

David Trevaskis is the PBA pro bono coordinator. He can be reached at 1-800-932-0311, Ext. 2236.

test winners, but that will only mark the beginning of programs across the commonwealth.

On May 1, all of the mock trial teams and their coaches from Lancaster County will be hosted at a Lancaster Bar lunch that will feature most of the county's bench and bar leadership. PBA Pro Bono Coordinator David Trevaskis will join past Lancaster Bar President Kim Smith in what has become an annual Law Day mock appellate argument.

On May 3, in Columbia County, Magisterial District Judge Donna Coombe is hosting her 30th and final Law Day celebration.

On May 4, Delaware County is hosting a Law Day luncheon program.

UPCOMING EVENTS

March 30-31 — Statewide High School Mock Trial Finals Tournament, Dauphin County Courthouse, Harrisburg

April 24 — Day on the Hill, Harrisburg

April 25 — PBA Committee/ Section Day, Harrisburg

May 3-5 — ABA YLD Spring Conference, Montreal, Quebec

June 8-9 — YLD Exec. Council Retreat, Gettysburg

June 20-22 — PBA Annual Meeting, Sheraton Philadelphia City Center Hotel, Philadelphia

Aug. 2 — PBA Board of Governors Meeting, Seven Springs

Aug. 3 — PBA Committee/ Section Day, Seven Springs Mountain Resort, Champion

Aug. 3-4 — YLD Summer Meeting, Seven Springs

Aug. 9-11 — ABA YLD Annual Meeting, San Francisco, Calif.

Nov. 28 — PBA Board of Governors Meeting, Holiday Inn East, Harrisburg

Nov. 29 — PBA Committee/ Section Day, Holiday Inn East, Harrisburg

Nov. 30 — PBA House of Delegates Meeting, Sheraton, Harrisburg

YLD SUMMER MEETING AUG. 3-4

SEVEN SPRINGS MOUNTAIN RESORT, CHAMPION, PA.

HOME INSPECTIONS

CONTINUED FROM PAGE 1

integration clause. However, in *LeDonne v. Kessler*, the Superior Court carved out an exception to this rule in home inspection cases. Despite the existence of an integration clause, the court stated that such parol evidence is admissible in a home inspection case when an inspection would not have alerted the buyer to a potential problem.

Similarly, in *Glanski v. Ervine*, the court allowed parol evidence regarding the structural soundness of the house. The *Glanski* court noted that the termites that the buyer found after closing were not “reasonably apparent” and, thus, the evidence of the oral exchange about the house’s soundness during which the seller denied the existence of termites was admissible.

It is also important to note that RESDL only requires the seller to disclose “material defects.” A material defect, defined in 68 Pa.C.S.A § 7102, is one that would “that would have a significant impact on the value of the property or that involves an unreasonable risk to people on the property.” Therefore, it is possible that less “serious” defects go unreported by the seller.

RESDL is written in a way that appears to slant in favor of sellers. Sure, it requires them to disclose certain blatant deformities with the house they’re attempting to sell, but it puts the onus of actually finding problems on the buyer. And certainly, this is the way it should be. Buying a house is not the time to cut costs — not those that are necessary and

may prevent exponentially higher costs in the future. The importance of a home inspection cannot be overstated and a buyer cannot and should not rely solely on the seller’s representations regarding the condition of the house. Whether the seller deceives the buyer intentionally or simply because he/she is not aware of certain defects, there will be something wrong with the house that is not conveyed to the buyer. Ultimately, buyers are responsible for protecting themselves and their investments.

Caveat emptor, indeed.

Cases cited can be found at:

LeDonne v. Kessler, 256 Pa.Super. 280, 389 A.2d 1123 (1978); *Glanski v. Ervine*, 269 Pa.Super. 182, 409 A.2d 425 (1979).

A YEAR OF LAW-RELATED EDUCATION

CONTINUED FROM PAGE 4

County District Attorney Bill Higgins runs the statewide mock trial program (www.pabar.org/public/yld/meetings/yld_statewidemock.asp) for the PBA Young Lawyers Division; he participated on a Cardinal Dougherty team that went to the state finals when he was in high school. Philadelphia lawyer Khadijah Scott participated on her Overbrook High team for which she has served as a lawyer coach since graduating law school. In addition, Scott works every summer to get her team members law-related jobs so they can pursue careers in the law.

The PBA sponsors its annual “Lawyers and Judges Go Back to School” program in conjunction with Law Day. Funded by the Pennsylvania Bar Foundation, this program brings together lawyers, judges, educators and students in classrooms across Pennsylvania. A special Law Day

Lesson Plan Guide is available from the PBA for all lawyers. The guide can be ordered through the LRE coordinator’s office at the PBA or via the PBA’s Web site at www.pabar.org.

Spring also brings the Project Citizen competition, sponsored by the same people who run the We the People program. The local, state and national competitions in this program are geared for upper elementary and middle school students, but noncompetitive opportunities are available here, too. Judging of the portfolios put together by Pennsylvania students to tackle public policy concerns will take place at Freedoms Foundation of Valley Forge the week of May 7. Lawyers serve many roles in Project Citizen, from judging local presentations to providing resources for the student projects. State Rep. Dwight Evans uses the Project Citizen materials with stu-

dents from schools in his district and he brings in lawyers to do a host of tasks, from helping explain the public policy process to serving as mentors to students after the competition is completed.

Pennsylvania lawyers have the privilege of being led in their law-related and civic education effort by First Lady and Third Circuit Court of Appeals Judge Marjorie Rendell, who has created PennCORD (www.pennCORD.org) as a forum for such efforts in the schools. Her leadership means that many lawyers participating in these programs in Pennsylvania find they have a highly placed supporter!

The year goes by quickly in the rush of these events and, by being involved, a lawyer fulfills his/her soul, supports his/her profession and gains a ton of contacts.

Call PBA Law Practice Management Coordinator Ellen Freedman with your questions about equipment purchases, computer technology or human-resources issues.

Call the PBA LPM Hotline: Ext. 2228 at 1-800-932-0311