admits facts which constitute a defense to the action is vulnerable to attack on the ground that it does not state a cause of action. A release is a proper instrument for dissolution of a partnership and for the settlement of distribution of the partnership assets. While such release may be set aside if obtained by duress, a bare allegation of duress without stating facts which constitute such duress, is not a sufficient allegation to avoid the release. Wallner v Schmitz, ... M....., 57 NW(2d) 921.

TRADE REGULATIONS

CHAPTER 325

MANUFACTURES AND SALES

325.01 DEFINITIONS

HISTORY. 1913 c 167 s 1, 2; MS 1927 s 3966, 3967, 3976-1, 3976-42, 3976-51, 3976-83; 1929 c 358 s 1; 1937 c 116 s 2, 3; 1937 c 117 s 1; 1937 c 412 s 13; 1937 c 456 s 1; 1939 c 403 s 2; 1941 c 326 s 2.

Validity under the Robinson-Patman Act if a uniform delivered price of one seller. 31 MLR 599, 32 MLR 129.

Liability of factor for sale of goods obtained by his principal through fraud. 32 MLR 86.

Unfair competition; legality of basing point pricing; cement institute case. 33 MLR 283.

Vertical integration under the Sherman Act. 33 MLR 398.

Application of Sherman Act to major league baseball. 33 MLR 428.

Unfair competition. 33 MLR 447.

Agreements among competitors. 33 MLR 331.

Incidental and reasonable restraints of trade. 33 MLR 331.

Control of competitors. 33 MLR 349.

Relations affecting consumers. 33 MLR 353.

Agreements relating to patents. 33 MLR 360.

Simplification and standardization of products. 33 MLR 362.

Joint advertising and other public relations. 33 MLR 367.

Co-operative lobbying. 33 MLR 370.

Protection of consumers against themselves. 33 MLR 374.

Law of free enterprise. 33 MLR 672.

Federal jurisdiction over unfair competition; Lanhan Act. 37 MLR 268.

A geographical name indicative of place of manufacture cannot be appropriated as a trade-mark, but a geographical name may acquire a secondary significance that will support an action for unfair competition. To support such action for unfair competition, public consciousness of manufacturer's personal identity need not be shown, but it must be shown that the thing asserted to carry the secondary meaning has come to signify origin from a single, though anonymous, source, though newer forms of trade deceit may be developed where literal language of this rule is inadequate. California Apparel Creators v Wieder, 162 F(2d) 893.

These statutes relate to evidence or proofs. The proof is not conclusive. It is only prima facie. If a retailer is accused of selling below cost and he proves that his actual

cost is less than the cost that would be established by the formula of the prima facie evidence rules found in these and similar statutes and if there is no evidence to dispute his actual cost which is lower, then he has not offended the statute. OAG Nov. 24, 1947 (417-E).

A photographer operating a studio, catering to the photographic needs of the public, is not a retailer, as the term is defined in section 325.01, subdivision 2. OAG Oct. 25, 1948 (417-E), OAG Aug. 25, 1949 (417-E).

The cost of merchandise is the cost at which it is invoiced to the retailer. If the retailer incurs advertising expenses he would include it in its cost of doing business; but if the manufacturer or wholesaler incurs the advertising expenses, that should not be included in the cost to the retailer or in the retailer's cost of doing business. OAG June 21, 1949 (417-E).

Selling at less than cost to meet legal competition is permitted. OAG Feb. 4, 1949 (417-E).

The Fair Trade Act, being within the police power of the state, is constitutional. OAG Aug. 22, 1947 (681-B).

When creameries sell their goods at retail, as defined in section 325.01, subdivisions 2, 11, they are retailers and sections 325.02 to 325.07 apply. OAG Oct. 23, 1947 (681-B).

325.02 APPLICATION

The Fair Trade Act was adopted in promotion of a policy within the police power of the state. Selling below cost as defined for the purpose or with the effect of injuring competitors, or destroying competition, constitutes the crime of unfair discrimination and subjects the offender to the penalty provided in section 325.48. Creameries are manufacturers or producers and are not included within the term "wholesaler." It is not clear in this case that the agreement objected to has the effect of injuring competitors or if it was made for the purpose of injuring competitors, and the offense complained of is not actionable. OAG Aug. 22, 1947 (681-B).

Creameries selling goods at retail as defined in section 325.01, subdivision 2, 11, are retailers, and the provisions of sections 325.02 to 325.07 apply. OAG Oct. 23, 1947 (681-B).

325.03 DISCRIMINATION UNLAWFUL

HISTORY. 1921 c 413; 1937 c 116 pt 1 s 2.

Validity under the Robinson-Patman Act of a uniform delivered price of one seller. 31 MLR 599, 32 MLR 129.

Restraint of trade; application of Sherman Act to integrated combinations. 32 MLR 521.

Selling at less than cost to meet legal competition is permitted. OAG Feb. 4, 1949 (417-E).

325.04 SELLING BELOW COST FORBIDDEN

Validity under the Robinson-Patman Act of a uniform delivered price of one seller. 31 MLR 599, 32 MLR 129.

Monopoly; copyright combination in ASCAP; violation of Sherman Act. 33 MLR 517, 544.

Substantive due process; prohibition of business methods. 34 MLR 109.

The existence of a question of invalidity of a state law is not of itself grounds for equitable relief in federal court. Federal courts should not halt criminal proceedings in a state court in absence of great and immediate irreparable injury. Jensen v Burnquist, 107 F(2d) 446.

A practice of a photographer in advertising prizes to patrons is illegal, if sufficient facts are present to warrant the conclusion that the activity was for the purpose or with the effect of injuring competitors and destroying competition. OAG Aug. 23, 1948 (417-C).

A retailer may protect himself by proving that his cost is less than that established by the formula in statutory prima facie evidence rule. OAG Nov. 24, 1947 (417-E).

Where a retail store advertises in newspapers announcing a children's photograph contest and awarding cash prizes, such giving away of merchandise is not illegal unless there is evidence that the purpose contemplated has the effect of injuring and destroying competition. OAG Aug. 6, 1948 (417-E).

Section 325.04 is directed against the making of certain sales. If the sale is made in Minnesota this section applies, otherwise not. If a retailer in Minnesota writes a letter to a wholesaler in Milwaukee, Wisconsin, giving him an order for purchasing cigarettes and the wholesaler fills the order, it is a Wisconsin contract and is not controlled by section 325.04, but if the Wisconsin wholesaler has an office in Minnesota and the business is transacted at the Minnesota office, section 325.04 applies. OAG June 17, 1949 (417-E).

The facts submitted regarding an agreement between a retail merchant in Minnesota and a representative in Iowa engaged in the business of general photography does not indicate an intention of any purpose to injure a competitor or to destroy competition and in no way constitutes a violation of section 325.04. OAG July 20, 1949 (417-E).

A commercial photographer operating a commercial studio catering to the photographing needs of the public and selling a reasonable amount of frames and folders, the photographing and framing being to order of the customer, is not within the scope of the prohibitions contained in sections 325.01 and 325.04. OAG Aug. 25, 1949 (417-E).

Buying commodities above the market price is not prohibited by statute. OAG April 21, 1950 (417-E).

Whether processors and distributors of dairy, ice cream and frozen foods and similar agricultural products, are selling electrical refrigeration equipment to retailers at prices less than cost, is determined by the answers to the following questions: (1) Is the supposed offender a wholesaler or retailer within the definition of section 325.01, subdivision 3, 10, 11? (2) Is the offender engaged in business in this state, selling merchandise at less than the cost thereof to the vendor within the meaning of section 325.01, subdivision 5? (3) Were the sales made for the purpose or with the effect of injuring competitors and destroying competition? If the administrator or jury answers these questions in the affirmative, the conduct of the merchants is prohibited. The jury is the exclusive judge of all questions of fact. OAG May 26, 1950 (417-E).

Schwegmann Brothers v Calvert, decided by the U. S. Supreme Court May 21, 1951, invalidates section 325.12 but does not affect section 325.04. OAG May 25, 1951 (417-E).

The operation of privately-owned chain store as to prices offered the public on identical merchandise offered to the public by chain stores of the same name owned and operated by other persons is not within the provisions of section 325.04. OAG Sept. 25, 1952 (417-E).

As the plan proposed is merely a trade stimulator and no consideration is paid for the chance, and the proposed scheme is not a "gift enterprise" as defined in section 623.25 or "gambling" within the meaning of the anti-lottery statutes, and the scheme is for the purpose of destroying competition as prohibited by section 325.04, the operation of the proposed plan does not constitute a violation of any state law. OAG Feb. 15, 1949 (510-B-9).

A scheme whereby the promoter gives five tickets to anyone calling at his place of business and a prize is awarded to the holder of the lucky number is not a lottery

if the tickets are distributed free to everyone, provided that the Act is not unlawful as a gift enterprise and further provided that the scheme is not an advertisement for the purpose of effecting an injury upon a competitor or destroying competition. OAG Aug. 14, 1950 (510-B-9).

The game of "Spin-O" is not a lottery. It is not an unlawful gift enterprise. Whether it is unfair competition under section 325.04 is a question of fact. OAG Feb. 21, 1951 (510-B-9).

Where a drug store advertises various of its articles of merchandise in a newspaper and in the same display offers to give away an automobile, if the publication is for the purpose or has the effect of injuring competitors and destroying competition, an offense has been committed. OAG Oct. 20, 1947 (681-A).

Advertising to give away merchandise, if the effect of the publication is to injure competitors and destroy competition, is in violation of section 325.04. OAG Oct. 29, 1947 (681-A).

Persons other than manufacturers selling below cost for the purpose or with the effect of injuring and destroying competition constitutes the crime of unfair discrimination, and the offender is subject to the penalty prescribed in section 325.48, subdivision 2. OAG Aug. 22, 1947 (681-B).

Section 325.04 is not intended to apply to the sale of prepared meals and the services furnished in connection therewith. OAG Dec. 2, 1947 (681-B).

Where no consideration is paid by players in a bingo game the game is not a lottery and it is not prohibited unless it is played for the purpose of injuring competitors and destroying competition or if played in an establishment licensed for sale of intoxicating liquor. OAG Nov. 15, 1951 (733-G).

325.06 CLOSING OUT SALES

Selling at less than cost to meet legal competition is permitted. OAG Feb. 4, 1949 (417-E).

325.07 REMEDIES CUMULATIVE

Anti-trust legislation was originally based on the theory that the public has an interest in preserving competition because hard competition may lower prices. Prices fixed by the government are unnecessary except in the public utility field. The Sherman Act and the Clayton Act carried out this philosophy. Only when prices were driven down temporarily to force a competitor out of business was there any ban on price-cutting. The Robinson-Patman Act brought a new idea into the anti-trust law, that is the protection of competing businessmen. 37 MLR 227.

The open market. 37 MLR 245.

The commissioner of business research and development, under the provisions of Laws 1947, Chapter 587, Section 8, Subdivision 3, may sue for injunctive relief for violation of statutes enumerated in subdivision 1 of section 8. The remedies provided for in section 325.49 are not exclusive but are cumulative. OAG July 20, 1949 (417-B-2).

These statutes relate to evidence or proofs. The proof is not conclusive. It is only prima facie. If a retailer is accused of selling below cost and he proves that his actual cost is less than the cost that would be established by the formula of the prima facie evidence rules found in these and similar statutes and if there is no evidence to dispute his actual cost which is lower, then he has not offended the statute. OAG Nov. 24, 1947 (417-E).

The distributor pays the cigarette tax before he sells the cigarettes to the retailer. In that case the cost of the merchandise that the retailer pays is the invoice price of the goods plus the tax. The eight percent provision in section 325.52 applies thereto. In case where the distributor buys the cigarettes from the manufacturer and the distributor himself pays the tax before he sells, the distributor's cost is the price he pays the manufacturer, plus the state tax on the cigarettes. The fair trade law

does not require an eight percent mark-up by the retailer. Section 325.52 is a rule of evidence. It is not a hard and fast rule. It shifts the burden of going forward with the evidence. It merely establishes a prima facie evidence rule. The real thing prohibited is selling below cost with the effect mentioned in the statute. OAG July 5, 1949 (417-E).

The Fair Trade Act was adopted in promotion of a policy within the police power of the state. Selling below cost as defined for the purpose or with the effect of injuring competitors, or destroying competition, constitutes the crime of unfair discrimination and subjects the offender to the penalty provided in section 325.48. Creameries are manufacturers or producers and are not included within the term "wholesaler." It is not clear in this case that the agreement objected to has the effect of injuring competitors, and the offense complained of is not actionable. OAG Aug. 22, 1947 (681-B).

When creameries sell their goods at retail as defined in section 325.01, subdivisions 2 and 11, they are retailers and sections 325.02 and 325.07 apply. OAG Oct. 23, 1947 (681-B).

FAIR TRADE ACT

325.08 CERTAIN CONTRACTS NOT TO BE IN VIOLATION OF LAW

A contract between a wholesaler and a retailer which provides that the retailer must not sell a certain branded article at retail for less than the wholesale price, plus 55 cents, does not offend against the provisions of section 623.01 and the contract is protected by the provisions of section 325.08. OAG Aug. 6, 1948 (417-E).

The Fair Trade Act does not apply to U.S.N. exchanges, ship service stores, or post exchanges. OAG Oct. 14, 1953 (417-E).

The Fair Trade Act, sections 325.08 to 325.14, does not apply to the state nor to parties from whom the state purchases commodities. OAG Feb. 5, 1951 (681-A), OAG April 9, 1951 (681-A).

Unless found in the contract the giving of trading stamps with any sale of fair traded merchandise is not prohibited by law. OAG Dec. 27, 1947 (681-B).

A plan for issuing sale slips with each purchase so that the purchaser may accumulate them until they total $100 or more and then present them to the retail establishment making the sale, where they will be redeemed at two percent of their face value, is not prohibited by the Fair Trade Act. OAG Sept. 30, 1953 (681-B).

325.09 VIOLATIONS

Restraint of trade; application of Sherman Act to integrated combinations. 32 MLR 521.

It is the duty of the commissioner of business research and development to investigate violations or suspected violations of the Fair Trade Act and to take such steps as are necessary to cause the arrest and prosecution of all persons violating any of the statutes mentioned in section 362.14, subdivision 1, or any other laws respecting unfair, discriminatory or unlawful practice in business, commerce or trade, including those defined in sections 325.08 and 325.09. OAG Oct. 29, 1947 (417-B-2).

The Fair Trade Act does not apply to the state nor to parties from whom the state purchases commodities. OAG Feb. 5, 1951 (681-A).

325.11 LIMITATIONS

Restraint of trade; application of Sherman Act to integrated combinations. 32 MLR 521.

Minimum price of goods protected by section 325.08 may be sold by the purchaser without regard to a contract limiting minimum price, only upon strict compliance with section 325.11. OAG Sept. 15, 1949 (417-E).

325.12 UNFAIR COMPETITION

The construction of a federal act by the United States Supreme Court is binding upon the Minnesota Supreme Court. The Supreme Court has construed the Miller-Tydings Act and its construction is binding on the Minnesota court only to the limited extent of validating, as between the actual parties to a fair trade contract authorized by state law, the fixing of minimum fair trade intrastate resale prices without, however, authorizing the enforcement of such minimum resale prices against any person who is not a party to such contract. It follows that section 325.12 is invalid and inoperative insofar as it purports to authorize the enforcement of minimum fair trade resale prices against any person who is not a party to the contract by which the minimum resale prices were established, with respect to commodities in interstate commerce. Calvert Distillers v Sachs, 234 M 303, 48 NW(2d) 531.

The California unfair Cigarette Sales Act, prohibiting wholesaler from selling cigarettes at less than "cost to wholesaler" with intent to injure competition, is unreasonable, arbitrary, and unconstitutional as denying due process and equal protection of law and as divesting cash and carry wholesaler of property rights inherent in cash and carry method of doing business. Serrer v Cigarette Service Co., 74 NE(2d) 853, 148 Oh. St. 519.

A geographical name indicative of place of manufacture cannot be appropriated as a trade-mark, but a geographical name may acquire a secondary significance that will support an action for unfair competition. To support such action for unfair competition, public consciousness of manufacturer's personal identity need not be shown, but it must be shown that the thing asserted to carry the secondary meaning has come to signify origin from a single, though anonymous, source, though newer forms of trade deceit may be developed where literal language of this rule is inadequate. California Apparel Creators v Wieder, 162 F(2d) 893.

It is the duty of the commissioner of business research and development to investigate violations or suspected violations of the Fair Trade Act and to take such steps as are necessary to cause the arrest and prosecution of all persons violating any of the statutes mentioned in section 362.14, subdivision 1, or any other laws respecting unfair, discriminatory or unlawful practice in business, commerce or trade, including those defined in sections 325.08 and 325.09. OAG Oct. 29, 1947 (417-B-2).

Schwegmann Brothers v Calvert, decided by the U. S. Supreme Court May 21, 1951, invalidates M.S. 1949, Section 325.12, but does not affect section 325.04. OAG May 25, 1951 (417-E).

The effect of the Act of Congress, July 14, 1952, is to change the rule in the Schwegmann and Calvert cases so that section 325.12 is now effective and its provisions enforceable. OAG Dec. 10, 1952 (417-E).

325.14 Unnecessary.

SUPPRESSION OF CERTAIN TRADE PRACTICES

325.141 UNLAWFUL TRADE PRACTICES

HISTORY. 1943 c 144 s 1.

Agreements among competitors. 33 MLR 331.

Incidental and reasonable restraints trade. 33 MLR 331.

Control of competitors. 33 MLR 349.

Relations affecting consumers. 33 MLR 353.

Agreements relating to patents. 33 MLR 360.

Simplification and standardization of products. 33 MLR 362.

Joint advertising and other public relations. 33 MLR 367.

Co-operative lobbying. 33 MLR 370.

Protection of consumers against themselves. 33 MLR 374.

The furnishing to a retailer by a distributor, manufacturer or processor of equipment required to assist in merchandising items, either free or at a nominal rental, do not constitute an unlawful trade practice. OAG Oct. 20, 1947 (681-A).

The practice of a wholesale distributor of dairy products, frozen foods and similar commodities, of providing the retailer with service facilities by gift or wholesale cost, or nominal rental, is not necessarily unlawful trade practice unless it results in injury to competitors or destroys competition. OAG Oct. 20, 1947 (681-A).

325.144 RETAILERS NOT TO MISREPRESENT NATURE OF BUSINESS

The use of the term "manufacturing" in a corporate name is authorized even though the company does not carry on a manufacturing business. OAG Dec. 15, 1959 (417-E).

The use by a corporation of the words "manufacturer" or "manufacturing" as a part of a corporate name will not by itself constitute misrepresentation. But if it can be proved that the use of the words is made for the purpose of misrepresenting the true use of its business, a corporation guilty thereof has violated the statutory provision and may be prosecuted therefor. OAG Feb. 21, 1951 (417-E).

325.146 EMPLOYER NOT TO DISPOSE OF OTHER THAN OWN PRODUCTS

A general contractor building homes for resale may buy refrigerators or ranges or like furniture for installation in the buildings he erects for resale with the buildings as a finished product but he is forbidden to buy such merchandise for resale to his employees or to other parties. OAG Nov. 16, 1949 (417-E).

Penalties are not extended by implication to prohibit conduct not within the terms of the penal statute. OAG March 9, 1951 (417-E).

325.147 VIOLATION OF SECTIONS 325.141 TO 325.148; RESTRAINING ORDER

The use by a corporation of the words "manufacturer" or "manufacturing" as a part of a corporate name will not by itself constitute misrepresentation. But if it can be proved that the use of the words is made for the purpose of misrepresenting the true use of its business, a corporation guilty thereof has violated the statutory provision and may be prosecuted therefor. OAG Feb. 21, 1951 (417-E).

AUTOMOBILE DEALERS ANTI-COERCION ACT

325.21 PROCEEDINGS INSTITUTED

Conditions for the issuance of the writ on application and relation of the attorney general. 37 MLR 8.

Type of administrative action subject to control by a writ of quo warranto. 37 MLR 1.

325.24 Unnecessary.

325.25 USE OF SECONDHAND MATERIAL FORBIDDEN IN CERTAIN CASES

HISTORY. 1913 c 490 s 1, 3; GS 1913 s 3779, 3781; GS 1923 s 3973, 3975; MS 3973, 3975; 1929 c 358 s 2; M Supp s 3976-2.

325.26 SALE OF BEDDING

HISTORY. 1913 c 490 s 1; GS 1913 s 3779; GS 1923 s 3973; MS s 3973; 1929 c 358 s 3; M Supp s 3976-3.

325.45 PRISON-MADE GOODS MUST BE MARKED

License number plates are not sold and are merely evidence of the payment of a registered tax. The plates are not subject to the provisions of sections 325.45 and 325.46. OAG June 30, 1948 (385-B-3).

325.48 VIOLATIONS; PENALTIES

HISTORY. 1913 c 167 s 7; MS 1927 s 3972; 1929 c 300 s 4; 1929 c 358 s 11; 1935 c 268 s 4; 1937 c 116 pt 3 s 1; 1937 c 196 s 4; 1937 c 412 s 9; 1939 c 403 s 4; 1941 c 326 s 4.

Federal jurisdiction over unfair competition; Lanhan Act. 37 MLR 368.

Judicial review of federal trade commission findings. 37 MLR 620.

In an action to collect a guarantee on a promissory note where plaintiff's agent had heard the defendant specifically instruct the maker that the note was to be delivered to plaintiff only upon consummation of the contract at a price of $13,000, and the plaintiff remained silent when the contract was consummated for a price of $18,000, an instruction that if the makers were making misrepresentations it was for the jury to say whether the representations were to be charged against the plaintiff or not, was not erroneous. Grocers, Inc. v Horstman, 233 M 192, 45 NW(2d) 254.

Where an agent makes an unauthorized contract, the principal must accept or reject it as a whole; he cannot enforce provisions beneficial to himself and repudiate those beneficial to the other party. Knaus v Donaldson, 235 M 453, 51 NW(2d) 99.

That the merchant participating in the give-away program failed to show great and irreparable injury if state restrained such program as violative of allegedly unconstitutional state law forbidding such program precludes intervention of the federal district court to restrain enforcement of state statute yet untested in the state court. Jensen v Burnquist, 107 F(2d) 446.

The Fair Trade Act was adopted in promotion of a policy within the police power of the state. Selling below cost as defined for the purpose or with the effect of injuring competitors, or destroying competition, constitutes the crime of unfair discrimination and subjects the offender to the penalty provided in section 325.48. Creameries are manufacturers or producers and are not included within the term "wholesaler." It is not clear in this case that the agreement objected to has the effect of injuring competitors, and the offense complained of is not actionable. OAG Aug. 22, 1947 (681-B).

Advertising to give away merchandise if the effect of the publication is to injure competitors and destroy competition is in violation of section 325.04. OAG Oct. 20, 1947 (681-A).

Persons other than manufacturers selling below cost for the purpose or with the effect of injuring and destroying competition constitutes the crime of unfair discrimination, and the offender is subject to the penalty prescribed in section 325.48, subdivision 2. OAG Aug. 22, 1947 (681-B).

325.49 INJUNCTIVE RELIEF

Self incrimination; confession covered by police; legislative investigations; production of writings; bodily or mental examination; jurisdictional limits of the privilege; waiver by testifying. 34 MLR 1.

Anti-trust legislation was originally based on the theory that the public has an interest in preserving competition because hard competition may lower prices. Prices fixed by the government are unnecessary except in the public utility field. The Sherman Act and the Clayton Act carried out this philosophy. Only when prices were driven down temporarily to force a competitor out of business was there any ban on price-cutting. The Robinson-Patman Act brought a new idea into the anti-trust law, that is the protection of competing businessmen. 37 MLR 227.

The open market. 37 MLR 245.

Under the provisions of Laws 1947, Chapter 587, Section 8, Subdivision 3, the commissioner of business research and development may sue for injunctive relief for violation of the statutes enumerated in subdivision 1 thereof. The remedies provided for in section 325.49 are not exclusive but are cumulative. OAG July 20, 1949 (417-B-2).

325.52 CERTAIN SALES AS PRIMA FACIE EVIDENCE; WHEN INJUNCTIVE RELIEF FORBIDDEN

These statutes relate to evidence or proofs. The proof is not conclusive. It is only prima facie. If a retailer is accused of selling below cost and he proves that his actual cost is less than the cost that would be established by the formula of the prima facie evidence rules found in these and similar statutes and if there is no evidence to dispute his actual cost which is lower, then he has not offended the statute. OAG Nov. 24, 1947 (417-E).

A retailer may protect himself by proving that his cost is less than that established by the formula in statutory prima facie evidence rule. OAG Nov. 24, 1947 (417-E).

Whether processors and distributors of dairy, ice cream and frozen foods and similar agricultural products, are selling electrical refrigeration equipment to retailers at prices less than cost, is determined by the answers to the following questions: (1) Is the supposed offender a wholesaler or retailer within the definition of section 325.01, subdivisions 3, 10, 11? (2) Is the offender engaged in business in this state, selling merchandise at less than the cost thereof to the vendor within the meaning of section 325.01, subdivision 5? (3) Were the sales made for the purpose or with the effect of injuring competitors and destroying competition? If the administrator or jury answers these questions in the affirmative, the conduct of the merchants is prohibited. The jury is the exclusive judge of all questions of fact. OAG May 26, 1950 (417-E).

The giving away of a free article by a wholesaler in combination with goods sold is not illegal if the sale price of the goods sold is not less than two percent above the wholesaler's cost of the free article and the goods sold combined. OAG Aug. 10, 1951 (417-E).

It is for the triers of fact to determine whether a sale at less price than that permitted by statute has been made for the purpose or with the effect of injuring competitors or destroying competition. OAG Nov. 8, 1946 (681-A).

Whether a sale at a price less than permitted by statute has been made for the purpose or with the intent of injuring competitors or destroying competition, is a fact question. OAG Nov. 8, 1946 (681-A).

The Fair Trade Act was adopted in promotion of a policy within the police power of the state. Selling below cost as defined for the purpose or with the effect of injuring competitors, or destroying competition, constitutes the crime of unfair discrimination and subjects the offender to the penalty provided in section 325.48. Creameries are manufacturers or producers and are not included within the term "wholesaler." It is not clear in this case that the agreement objected to has the effect of injuring competitors, and the offense complained of is not actionable. OAG Aug. 22, 1947 (681-B).

GAMBLING DEVICES

REVOCATION OF LICENSE

325.53 DEFINITIONS

Revocation of the licenses or persons carrying on any business, trade, vocation or commercial enterprise by reason of operation of gambling device. (Anti-slot-machine bill.) 33 MLR 50.

Agreements among competitors. 33 MLR 331.

Incidental and reasonable restraints trade. 33 MLR 331.

Control of competitors. 33 MLR 349.

Relations affecting consumers. 33 MLR 353.

Agreements relating to patents. 33 MLR 360.

Simplification and standardization of products. 33 MLR 362.

Joint advertising and other public relations. 33 MLR 367.

Cooperative lobbying. 33 MLR 370.

Protection of consumers against themselves. 33 MLR 374.

The sale of perfume at the price determined by a punch board is lottery within the provisions of section 614.01; and the board used is a gambling device as defined in section 325.53. OAG July 11, 1949 (733-B).

Pinball machines which return tokens not redeemable in cash or merchandise or anything of value are not gambling devices within the meaning of section 325.53. OAG May 19, 1947 (733-D).

The words of the statute "which return coins or slugs, chips or tokens of any kind, redeemable in merchandise or cash" applies to all of the devices enumerated as gambling devices irrespective of the form or shape of the devices. Pinball machines come within this category. OAG April 3, 1948 (733-D).

Persons possessing and being responsible for the operation of gambling devices such as slot machines on property leased to the federal government in Itasca State Park are subject to prosecution under the state law. OAG June 3, 1948 (733-D).

Laws 1947, Chapter 586, providing for the revocation of licenses where gambling devices therein defined are found in the possession of any licensee, did not repeal any of the provisions of the other sections of the statutes relating to gambling. All such sections are still in effect. The legislative intention in enacting chapter 586 was to furnish an additional and more effectual method of law enforcement by passing an act which clearly provides for the mandatory revocation of licenses if any of the gambling devices defined therein should be found in licensed premises. In the instant case the possessor of the pinball machine as therein described is a violator of section 614.06, regardless of any interpretation of the definition of a gambling device found in Laws 1947, Chapter 586. OAG March 16, 1950 (733-D).

The words "slot machine", as defined, is a broad term and is construed to include a spinning reel gaming device which serves the same purpose as the ordinary slot machine. OAG April 12, 1950 (733-D).

Awarding to a player who makes a specified score on a pinball machine a chance to draw a number for a merchandise award is a "gambling device". OAG April 10, 1951 (733-D).

The equipment used for playing bingo is not a gambling device under section 325.53. OAG Oct. 8, 1947 (733-G).

325.54 GAMBLING DEVICES; ISSUING AUTHORITY TO REVOKE

A device designated "Turf" operated successfully by the skill of the operator is not a gambling device per se. OAG June 13, 1951 (510-B).

Laws 1947, Chapter 586, providing for the revocation of licenses where gambling devices therein defined are found in the possession of any licensee, did not repeal any of the provisions of the other sections of the statutes relating to gambling. All such sections are still in effect. The legislative intention in enacting chapter 586 was to furnish an additional and more effectual method of law enforcement by passing an act which clearly provides for the mandatory revocation of licenses if any of the gambling devices defined therein should be found in licensed premises. In the instant case the possessor of the pinball machine as therein described is a violator of section 614.06, regardless of any interpretation of the definition of a gambling device found in Laws 1947, Chapter 586. OAG March 16, 1950 (733-D).

White persons committing crimes on Indian reservations are subject to state laws. This includes the operation of slot machines. OAG May 14, 1948 (738-D).

325.56 PEACE OFFICERS TO OBSERVE AND INSPECT PREMISES

A sheriff, deputy sheriff, constable, marshal, policeman, police officer or peace officer, are required to notify the licensing bureau after a gambling raid so that the proper proceedings may be instituted for the revocation of the license. OAG Oct. 14, 1947 (733).

325.57 PROCEEDINGS BEFORE ISSUING AUTHORITY; ORDER TO SHOW CAUSE

The requirements of service required by section 325.57 were complied with when a copy of the order to show cause why the license should not be revoked because of the keeping of a gambling device on the premises was served on the defendant eight days prior to the date of hearing and the copy of the order mailed to the owner on the premises. OAG June 2, 1947 (733).

325.58 REVOCATION OF LICENSE

If the owner of the business is without knowledge of the existence of the gambling device on his premises, he cannot be held responsible for a violation of the law by his employees. OAG May 12, 1947 (733).

On appeal from a revocation of license, the district court may permit the continuance of the same business on the premises but may require a bond. OAG May 12, 1947 (733).

In proceedings to revoke a license under sections 325.53, 325.54, and 325.58, it is not necessary to resort to the definitions of gambling devices in prior statutes, such as sections 614.053 and 614.054. OAG May 26, 1947 (736-D).

CHAPTER 326

EMPLOYMENTS LICENSED BY STATE

326.01 DEFINITIONS

HISTORY. 1899 c 312 s 1-5, 13; RL 1905 s 2357; 1907 c 457 s 8; 1913 c 554 s 1; GS 1913 s 5082, 5097; GS 1923 s 5872, 5887; MS 1927 s 5872, 5887; 1933 c 349 s 5; 1937 c 314 s 1; 1937 c 367 s 1, 6; 1937 c 370 s 4; 1941 c 460 s 1; 1943 c 474 s 1; 1947 c 253 s 1.

Judicial review of federal trade commission findings. 37 MLR 620.

Where the terms of a written contract are uncertain and ambiguous and susceptible of more than one interpretation, parol evidence may be introduced to show what was in the minds of the parties when the contract was made and the actual situation that then existed to the knowledge of both parties. The basic rate of an architect's compensation which under the written contract was to be based upon the total cost of work defined as a contract, sums incurred for execution of the work, could be determined only after construction of the contract had been let and could not be based on a rejected bid substantially in excess of the limitation placed by the owner on the cost of the work. Wick v Murphy, 237 M 447, 54 NW(2d) 805.

A person performing work in connection with the erection and installation of radio broadcasting towers is not required to hold an electrician's license. OAG Dec. 9, 1948 (188-C).

Any person over 21 years of age is eligible to take an examination for a license as a contracting steam fitter who possesses sufficient education to read and compre-