

**THE PROTECTION OF PRE-REGISTRATION RIGHTS IN LAND:
A COMPARATIVE STUDY OF GAZUMPING IN AUSTRALIAN AND OTHER
JURISDICTIONS**

by
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ABSTRACT

The purpose of this thesis is to examine the problem of gazumping, to consider the various factors which give rise to it, to examine the adequacy of existing legal doctrine in redressing it, to explore statutory provisions designed to reduce gazumping and to propose reform of the law to address the problem.

The term gazumping refers to a practice by which a vendor accepts a purchaser's offer to purchase land or property, and before exchanging contracts, withdraws from the existing agreement in order to accept a higher price from another purchaser.

This thesis proceeds on the assumption that gazumping is an undesirable practice, particularly from the prospective purchaser' perspective. The practice of gazumping initially boomed in a volatile property market with constantly rising house prices and where demand exceeded supply. A purchaser who believes he or she has secured the purchase of his or her desired property may suffer emotional stress and significant costs which cannot be recovered when the vendor reneges on his or her agreement.

The thesis notes that gazumping occurs at the pre-contractual stage in the sale of property because there is no legally binding relationship before the formal exchange of contracts. The thesis posits that the existing law in various Australian jurisdictions offers inadequate protection to prospective purchasers of property. The thesis examines the inadequacy of existing legal doctrines and remedies in addressing the problem of gazumping at the pre-contractual stage and arrives at the conclusion that existing legal doctrine is inadequate. The thesis notes legislative and other measures in response to gazumping in Australia and other common law jurisdictions and concludes that these too were inadequate in not going far enough to eliminate or reduce gazumping. The competing merits of these approaches are considered.

The thesis establishes that the solution to gazumping lies in an early protection of the purchaser's interest in land. This is because as soon as an agreement is enforceable the purchaser acquires an equitable interest and in the event of any breach of the agreement by the vendor, the purchaser, as a general rule, can obtain either damages or specific performance.

The thesis raises seven key recommendations for law reform aimed to minimise the occurrence of gazumping and to provide the purchaser with tools against the practice of gazumping. It considers that the recommendations can minimise the undesirable practice of gazumping where the current law is inadequate and also achieve several other objectives.

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