

Occupiers Liability

The deceased and his assistant had been trimming shrubbery on the defendants' property in *Johnson & Anor v Hancock* [2014] QCA 130. The work was being undertaken at the defendant's request and close to the rear boundary of the property. Under the area where the work was taking place lay a drainage pipe covered by a metal lid and metal grate, which the deceased was unaware of. This structure collapsed under the deceased's weight and he fell and later died. The trial judge was satisfied that the defendants were aware of the existence of the danger. A compensation to relatives claim was brought by the deceased's family after his death. The deceased had himself given instructions to solicitors before his death. The deceased had said that leaf litter and debris had covered the ground and accordingly he was unaware of what lay underneath including, as it transpired, the drainage pipe. The plaintiff succeeded against the defendant owners of the property at first instance. The defendants subsequently appealed. They claimed that they were unaware of the drainage pipe, which had not been marked on the drainage easement. The trial judge had found that an inspection was undertaken around the time that the defendants purchased the property, and that it was more likely than not that if the pipe had been there then, it would have been found. It followed that the pipe had been subsequently placed there and it was likely that the defendants would have been aware of it. The trial judge had significant concerns about the credibility of the defendants. He rejected the evidence of the female defendant and preferred the statement of the deceased to his solicitor post-accident and prior to death regarding the work he had been asked to undertake in that vicinity. The appellants submitted that the trial judge erred in inferring that they had knowledge of the drainage pipe. The Queensland Court of Appeal found that it was open to the trial judge to infer knowledge on the part of the defendants. Accordingly, their appeal was dismissed with costs. A reasonable person in the position of the defendants would have inspected the area and located the drainage works, which were then clear of litter and debris, though they subsequently became covered.

Jurisdiction/Foreign State Immunity

The issue in *Li v Zhou* [2013] NSWSC 12 was whether the NSW Supreme Court had jurisdiction in respect of claims for damages from Falun Gong adherents arising from their alleged arrest, detention and physical and mental abuse by government officials in the People's Republic of China. The plaintiffs argued that this treatment amounted to torture under international law. The plaintiffs alleged that the defendant was the former secretary of the Chinese Communist Party of Sichuan Province, Minister of Public Security of the People's Republic of China and head of the Central Political and Legislative Committee. They also alleged that he had overseen the systematic arrest, interrogation, detention and torture of Falun Gong practitioners. The claim was served upon the defendant pursuant to section 24 of the *Foreign States Immunities Act* 1985 (Cth), however the defendant did not enter an appearance and the plaintiffs sought default judgment. Leave to intervene was granted to the Commonwealth Attorney-General who contended that the defendant enjoyed foreign state immunity from the proceedings. Under s 10(2) of the Act, there was an exception to the general immunity where a foreign state has submitted to the jurisdiction. Because China had become a party to and ratified the Convention against Torture and Other Cruel, Inhuman or Degrading

Treatment or Punishment, it was argued that this amounted to such submission under Article 14 of the Convention. However, McCallum J was not satisfied that subscription to Article 14 of the torture treaty clearly involved submission to the court's jurisdiction. Accordingly, the Chinese State was held to be immune from suit and the proceedings were dismissed.

Issue Estoppel

There is a useful discussion of the circumstances in which a concession in previous proceedings can give rise to a strike out application on the basis of abuse of process or issue estoppel contained in *State of NSW v Williams* [2014] NSWCA 177.