

THOMAS · MORE · CHAMBERS

RECENT DEVELOPMENTS IN THE PRIVY COUNCIL: CASES, TIPS, AND TACTICS

SAVINGS/ EXISTING LAWS CLAUSE - A LOOK AT TWO APPROACHES

INTRODUCTION

1. In the case of **Chandler (Appellant) v The State (Respondent) No 2 (Trinidad and Tobago)** “Chandler” [2022] UKPC, the Board granted permission to appeal on the issue concerning whether the mandatory death penalty for murder is contrary to the 1976 Constitution of Trinidad and Tobago.
2. The Board had considered the constitutional validity of a mandatory death sentence for murder on several occasions. In particular, the Board convened an enlarged panel of nine judges to rehear the appeals in the cases of **Boyce v R (Barbados)** [2005] 1 AC 400 (“Boyce”); **Matthew v The State of Trinidad and Tobago** [2005] 1 AC 43 (“Matthew”); and **Watson v The Queen (Jamaica)** [2005] 1 AC 472 (“Watson”). These cases in turn arose due to doubts expressed about the correctness of the decision in **Roodal v The State of Trinidad and Tobago** [2005] 1 AC 328 (“Roodal”).
3. In **Matthew**, the majority held that the savings clause in section 6 of the 1976 Constitution of Jamaica preserved the lawfulness of the mandatory death penalty despite its inconsistency with fundamental rights which that Constitution would otherwise protect.
4. The Board granted permission to appeal in the case of **Chandler** in order to review its decisions in **Boyce**, **Matthew** and **Watson**, in light of the recent decisions of the Caribbean Court of Justice (“the CCJ”) in **Nervais v R** [2018] CCJ 9 (AJ), an appeal from Barbados (“Nervais”), and **Mc Ewan v Attorney General of Guyana** [2018] CCJ 30 (AJ) (“McEwan”), an appeal from Guyana, which departed from the Board’s decision in **Matthew**.
5. I will discuss the reasoning behind the Board’s decision and the impact that the Board perceived that this will realistically have on all existing laws. I will also explore the reasoning behind the CCJ’s two decisions and explore the innovative argument advanced on behalf of the appellants in **Day v Day** [2002] UKPC 6.

The Author

I was born in Guyana with parents from St Lucia, French Guiana, and the Bahamas. I studied law in the UK and was called to the Bar in England and Wales in 1998. I am also called to the St Lucia Bar with the ability to practice in most of the Caribbean.

In addition to appearing before the Judicial Committee of the Privy Council here in London in relation to appeals from the Caribbean, most recently the Bahamas, I also regularly undertake work in the Caribbean, and have successfully appeared before the Court of Appeal, Eastern Caribbean Supreme Court.

I sit in a number of quasi-judicial roles in the regulatory sector and love back packing around the world.

Here is a link to my chambers profile: <https://www.thomasmore.co.uk/Profile/desiree-artesi>

I am happy to be contacted just to troubleshoot an interesting point of law.



