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was defrauded. *R. v. Brown (Kevin)* (1984) 79 Cr. App. R. 115, [1984] C.L.Y. 524 and *R. v. Hanson (Paul)* [1996] 2 Cr. App. R. 554, [1996] 1 C.L.Y. 1563 considered. The contention that F and M were at risk of being convicted of three conspiracies was therefore rejected.

R. v. FUSSELL (SIMON ANTHONY); *R. v. ASSIZ DE MENDONCA (RUDOLPH)*, Trans. Ref. 96/4236/X4, 96/4238/X4, July 9, 1997, Otton, L.J., CA (Crim Div).

1188. Criminal damage—defences—whether duress of circumstances could extend to the fear of psychological harm

[Criminal Law Act 1967 s.3; Child Abduction Act 1984 s.2; Criminal Damage Act 1971 s.5(2)(b)]

B and her husband, W, appealed against convictions of criminal damage to the front door of a house, where the father of B's daughter was holding the child having refused to return her after a contact visit. B contended that (1) the defence of necessity had been widened in *R. v. Pommell* [1995] 2 Cr. App. R. 607, [1995] 1 C.L.Y. 1258 and could include circumstances other than those where there was an immediate fear of death or serious injury; (2) under the Criminal Law Act 1967 s.3 the force was lawful because it was used in the prevention of the crimes of kidnapping, child abduction or false imprisonment; and (3) the Criminal Damage Act 1971 s.5(2)(b) provided a defence where such force was used to protect the property of an accused from damage and a fortiori would be a defence where the child of an accused was at risk.

Held, dismissing the appeals, that (1) duress of circumstances could not be extended to circumstances where the defendant had feared serious psychological injury. There was a pressing need for Parliament to codify the defences of duress in line with the recommendations of the Law Commission to prevent such cases clogging the system; (2) no criminal act had been committed by the father because he had a defence under the Child Abduction Act 1984 s.2(3)(i)(a) or s.2(3)(i)(b) and (3) the child clearly did not represent property within the meaning of s.5(2)(b) of the 1971 Act. *R. v. Pommell* distinguished as merely accepting that necessity might be extended from driving cases to other charges except murder, attempted murder and treason.

R. v. BAKER (JANET); *R. v. WILKINS (CARL)* [1997] Crim L.R. 497, Brooke, L.J., CA (Crim Div).

1189. Criminal injuries compensation—grave injury to infant—calculation of future loss

C applied for judicial review to quash an award of £628,872 compensation for criminal injuries. C contended that the CICB had erred in its assessment of future loss having reduced the award by some £250,000 and having failed to afford C the opportunity to address it on either the facts or the law.

Held, allowing the application and granting certiorari to quash the decision and mandamus for the CICB to reconsider the claim, that the CICB had failed to allow C an opportunity to address it before making such substantial reductions from his claim. However, it was important to recognise that this case turned on its own facts.

R. v. CRIMINAL INJURIES COMPENSATION BOARD, ex p. CATTERALL [1997] P.I.Q.R. P128, Ognall, J., QBD.

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1190. Criminal injuries compensation—rape—standard of proof required as to consent

SD sought judicial review of a decision of the CICB refusing her claim for compensation on the ground that the Board was not satisfied SD had not consented to sexual intercourse with three men she alleged had raped her when she was drunk. SD contended that in dealing with a rape complaint CICB should not take account of the characteristic of rape that required the prosecution to prove that the defendant knew the victim, did not consent or was reckless as to whether she

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consented or not, and that by failing to give due weight to the evidence the decision was *Wednesbury* unreasonable.

Held, refusing the application, that by ignoring the criminal element necessary in rape, the CICB could, if finding other facts in an applicant's favour, make a compensation award even if no crime had occurred. The CICB heard the application as a tribunal of fact and considered evidence from SD and other witnesses so that the court could not conclude that the CICB had been *Wednesbury* unreasonable in finding that SD was not so drunk that she could not have consented to intercourse.

R. v. CRIMINAL INJURIES COMPENSATION BOARD, *ex p.* SD, Trans. Ref: CO/201/96, June 4, 1997, Laws, J., QBD.

1191. Criminal injuries compensation—unlawful sexual intercourse—offence not a violent crime—use of force not probative of violence

P sought judicial review of a decision of the CICB refusing her claim for compensation under the 1990 CICB Scheme following L's conviction for having unlawful sexual intercourse with her. By virtue of para.4(a) of the scheme an *ex gratia* payment application would be entertained from a victim of a crime of violence. Although L's not guilty plea to a charge of rape was accepted, P, who was 12 at the time of the incident, contended that she had not consented to intercourse and that medical evidence showed that force had been used.

Held, refusing the application, that although consent by a female under 16 to sexual intercourse or indecent touching was not recognised by law, it did not follow that the commission of either offence involved violence. P had sustained a bruise which could have resulted from the use of force, but that force was not necessarily violent. L's admission that intercourse had taken place did not amount to an admission of violence towards P. Each case had to be decided on its own facts.

R. v. CRIMINAL INJURIES COMPENSATION BOARD, *ex p.* P, Trans. Ref: CO/399/96, April 14, 1997, McCullough, J., QBD.

1192. Cultural property—unlawful removal

RETURN OF CULTURAL OBJECTS (AMENDMENT) REGULATIONS 1997, SI 1997 1719; made under the European Communities Act 1972 s.2. In force: September 1, 1997; £0.65.

These Regulations implement Council Directive 96/100 ([1996] OJ L60/59) which amends the Annex to the Council Directive 93/7 ([1993] OJ L74/74) on the return of cultural objects unlawfully removed from the territory of a Member State, which in turn was implemented by the Return of Cultural Objects Regulations 1994 (SI 1994 501). They amend the definition of "the Directive" in the 1994 Regulations so that it includes a reference to Directive 96/100 and introduce an additional category of objects which may constitute a national treasure for the purposes of the 1994 Regulations provided the monetary value of any such object is above the specified financial threshold.

1193. Curfew orders—responsible officers

CURFEW ORDER (RESPONSIBLE OFFICER) ORDER 1997, SI 1997 2351; made under the Criminal Justice Act 1991 s.12, s.30. In force: October 1, 1997; £0.65.

This Order describes the persons who are to be made responsible, by a curfew order relating to a place of curfew in Berkshire, Cambridgeshire, Greater Manchester, the London Borough of Barnet, Brent, Ealing, Enfield, Haringey, Harrow, Hillingdon or Hounslow, Norfolk, Suffolk, or West Yorkshire, for monitoring an offender's whereabouts during the curfew periods. The Curfew Order (Responsible Officer) (Berkshire, Greater Manchester and Norfolk) Order 1995 (SI 1995 2840) is revoked.

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