Analysis of Theft and Allied Offences under the English Laws: The Many "Whys" That Make the Nigeria Jurisprudence Preferable?

Peter A. Ocheme

Professor, School of Law, American University of Nigeria, Yola, Adamawa State, Nigeria

***Abstract*: By way of breaking away from the traditional convention of legal validity even without codification, more particularly with respect to criminal justice administration, the English Parliament has evolved a trend to continually review their laws relating to theft and allied offences alongside the speed by which the offences/crimes are technologically carried out. The research undertakes a doctrinal review of the genealogical improvements associated with the legal regimes vis-a-vis the technological appliances being employed by those who engage in these criminal activities, which includes the Internet... The discoveries are not only in respect of the changes interrelating between law and practical realities, but also in respect of the variety of properties – visible and invisible; tangible and intangible, and including Land, that are now capable of being stolen. The research also reveals that unlike the situations in England -- not even Wales, let alone the United Kingdom as a whole -- the Nigerian laws in respect of Theft and allied offences have remain as static as they were first drafted before Independence, whereas the technologies which aid and abet the commission of these offences are all put in use in Nigeria as in England. The contributions to knowledge to be derived from this study are in the sphere of the current scope of proprietary criminal laws in England which inversely mirrors their Nigerian contemporaries as rather lame ducks; while absurdly, they all seemingly are operating within the same Common Law and also the Commonwealth league of Nations.**

I. INTRODUCTION:

The chosen theatre by this Paper, which is to examine the English Law on the crime of Theft and allied offences, in specific isolation of the Nigerian arena, has been predicated on a number of reasons. First, *per* force of law, there are still the pseudo and neo-colonial strings through which the Nigerian legal systems (even in their supposed independence) have shared unwittingly, so to say, umbilical ties with the English, such that even long after her Independence (almost 51 years ago), each time an in-depth study of any Nigerian law is embarked upon, the aetiology is a normal detour to the Laws of England. Secondly, notwithstanding that Nigerian local statutes have sought to be indigenous in outlook, the Common Law of England along with its Doctrines of Equity, are still applicable in Nigeria[1]. Thirdly, the English have had to codify their own laws on the crime of Theft and allied offences[2], (even when they rejected a common penological code of criminal law for themselves) – a step which suggests admitting the wisdom of codification as they saw it fit for some of their erstwhile colonies, including Nigeria[3]. The third reason perhaps, has one added advantage that makes for a definite source and certainty in the law.

II. THE DEVELOPMENT OF THE ENGLISH LAW ON THEFT

Prior to the current law of Theft in England[4], there were various legislative amendments to the Larceny Acts of 1861 and 1916. In that earlier legislation, there was the dilemma of stipulating whether a thing could be stolen from an owner who was not in possession and whether a person in possession *bona fide* but not being an owner could steal the same thing in his possession. The position of the law then was that possessors could not technically steal, under the English Larceny Acts. This was so because it was not the contemplation of the law of larceny that a possessor could misappropriate a thing which was already, *bona fide*, in his custody. The notion held then was that possession by a servant of his master's goods was regarded as possession still by the master who alone could validly complain of its theft even in the circumstances where the servant was the one deprived of such goods without his consent.

The second dilemma with the Larceny Acts of England was that theft was confined to the taking of only tangible and corporeal things. According to Williams[5], the practical realities of enforcing the Larceny Acts revealed the artificiality of the law as law then tried to contort itself in a way which showed its reliance on a premise that was socially unsustainable[6].

The various amendments then sought to correct these imbalances were done in the manner of adding at different times such sundry offences as obtaining by false pretences, embezzlement, fraudulent conversion, obtaining credit by

[1] See for example, Section 28 of the High Court Law, Cap 67, Laws of Kaduna State, 1991.

[2] Such other allied offence so codified is the Fraud Act, 2006.

[3] See Karibi-White, A.G. *History and Sources of Nigerian Criminal Law*, Spectrum Books Ltd., Ibadan, (1993) p.8

[4] English Theft Acts of1868 and 1978

[5] Williams, G., *Textbook of Criminal Law* (2nd ed.) Stevens and Sons, London (1983)

[6] Ibid., at page 700.

fraud, false accounting, larceny by a bailee, etc[7]. Although the Criminal Law Revision Committee (CLRC)[8] considered it advantageous, to retain the Larceny Acts with all its necessary amendments, yet recommended that it was high time for a new law on theft and allied offences in England, based on a fundamental reconsideration of the principles underlying the specified branch of law which are of necessity to be embodied in a modern statute[9]. In a more decisive Opinion, Lord Diplock in **Treaacy v. DPP**[10], gave the aims for the current English Theft Acts as follows:

> … primarily to codify the law relating to the most significant of the offences against property (other than criminal damage), to replace the old complex offence of larceny with the offence of theft, to move the emphasis away from taking property to the infringement of a person's rights in property and to do so by drafting the legislation in a simple language as used and understood by ordinary literate men and women (and to avoid) as far as possible those terms of art which have acquired a special meaning understood only by lawyers in which many of the penal enactments were couched[11].

Incidentally, if the aim was that of simplifying the law, this has apparently not been achieved, as evidenced by the complex body of case law that has developed since its enactment, particularly in respect of key concepts such as appropriation, property belonging to another, and intangible and incorporeal properties as better owned than the physical ones in the English economy, if not internationally.

Even under the current English Theft Act, major difficulties still arise, which justify this research Paper. In the consideration of this researcher, under the English law, although theft-type offences involve infringement of property rights, most property rights are governed not by the criminal law but by the civil law of property and contract. For example, property may only be stolen if it belongs to another, but whether it does so is largely governed by the civil law and any changes in the civil law of ownership will necessarily affect a principled consideration of the criminal law in question. Equally perplexing is that under the English Theft Act, some words which would seem not to be particularly complex or term of art, such as dishonesty, are not defined in the statute and have thus been left to juries to determine. This must have led to the problems of interpretation and inconsistency in decisions. It is for such reasons that there have been calls[12] for another reform of the Theft Act. It is worthy of note that as this Paper is being written, the English Law Revision Commission is currently reviewing the Theft Act[13], among others.

III. THE INGRIDIENTS OF THEFT UNDER THE ENGLISH LAW:

Unlike the legal specificities accorded to Theft[14] and Stealing[15] under the Nigerian Laws, the technical characteristics of Theft under the English Law are far, wide, and uncorrelated. Under the English Theft Act, there are mixtures of what would, in comparison to the Nigerian versions, appear to be derivatives of property offences not necessarily anchoring on theft or stealing. The same Act provides for various offences by which property may be obtained by deception. For example, the Act provides for obtaining a pecuniary advantage by deception[16] - (what in Nigeria would have been either cheating[17] or obtaining property by false pretences[18]); obtaining services by deception[19], and even obtaining the evasion of a liability by deception[20]. The English Theft Act also provides for other wide ranging property offences like robbery[21]; burglary[22]; taking a conveyance without the owner's consent[23] or abstracting electricity[24], etc, Whereas the Nigerian Codes provide distinctively for such property offences, under the English law, all these are classified as theft since "theft" and "stealing" are to be construed correspondingly under the English Theft Act[25]. Even with this all inclusively characteristic classification of various property deceptive acts as theft under the English Law, there still appears to be serious lacunae. For example, the offence of Forgery was not one of such crimes under the Act until it came under a different and subsequent legislation[26].

A second characteristic of the English Theft Act lies in the merit that codification does away with the need of any further reference to the Common Law on theft. Thus, in England today, as in Nigeria, Theft is strictly a statutory approach that a person shall not be convicted of a criminal offence unless that offence is defined and the penalty therefore is prescribed in a written law[27]. This characteristic was expressed stated as follows:

[7] For a comprehensive view of these amendments, see the Eighth Report: *Theft and Related Offences*, of the Criminal Law Revision Committee Her Majesty's Stationery Office (HMSO). London (1967) Cmnd 2877.
[8] Ibid.
[9] The Thirteenth Report, HMSO , London, (1977) Cmnd 6733.
[10] (1971) 1 ALL ER 110
[11] Supra, at page 145.
[12] See for example, the dicta of Beldam L.J. in Hallam (1994) Crim.L.R., 323, who described the Law as being "in urgent need of simplification and modernisation"
[13] As at the 1st of September, 2011,
[14] See Section 286 of the Penal Code Act, Chapter 53, Laws of the Federation of Nigeria (LFN), (Abuja)
[15] See Section 383 of the Criminal Code Act, Cap 77 LFN, 1990, now Cap. C38 LFN, 2004.
[16] See Section 16 of the English Theft Act 1968.
[17] See for example, Section 421 of the Criminal Code.
[18] See for examples, Sections 419A and 420 of the Criminal Code
[19] Section 1 of the English Theft Act, 1978.
[20] Section 2 of the English Theft Act, 1978.
[21] Section 8 of the 1968 Act.
[22] Ibid., Section 9.
[23] Ibid., Sections 12 and 14 respectively.
[24] Ibid., Section 13.
[25] See the definition of Theft given under Section 1(1) of the 1968 Theft Act.
[26] See Forgery and Counterfeiting Act, 1981.
[27] See Section 36(12) of the Constitution of the Federal Republic of Nigeria (CFRN) 1999 (as amended) which is a carry forward of Section 22(10) of the Nigerian Republican Constitution, 1963.

> "…a person is guilty of theft if he dishonestly appropriates property belonging to another with the intention of permanently depriving the other of it, and thief and 'steal' shall be construed accordingly."[28]

Thirdly, and more pointedly, the Act[29] specified the legal ingredients necessary for the proof of Theft, while on the other hand providing specific punishments[30] for the offence. These will, however, be considered in greater details when we examine the scope of the offence in subsequent paragraphs.

III. THE CONCEPTUAL ISSUES ELUCIDATING THE CRIME OF THEFT UNDER THE ENGLISH LAW

This Paper proposes the following five conceptual issues for analysis in finding the scope of the crime of Theft under the current English law:

i. The concept of appropriation;
ii. The constituents of property capable of being stolen;
iii. The concept of the property belonging to another;
iv. The concept of intention to permanently deprive; and
v. The concept of dishonesty.

The proof of each of the above requirements is necessary to validate the allegation of the crime of Theft under the English Law, and *ipso facto*, conjunctively they form the legal scope of the Offence under that law. For the purpose of this Paper, the above issues also collectively form the bedrock of our investigations and analysis as in the subsequent pages.

i) The concept of appropriation:

This is the current legislative language for the hitherto concept of "asportation" for the crime of larceny under the English law. Asportation was understood to statutorily require the physical removal of a thing from one place to another. Secondly, it also meant the carrying away of the goods. In other words, goods as goods (not as things) were the only objects or subjects which can be physically carried away in order to constitute the offence of larceny. "Asportation" was thus one of the circumstances necessary to be established for the offence of larceny. The 1916 Larceny Act[31] particularly clarified the expression "carries away" to "include any removal of anything from the place which it occupies…"[32]. In this way, asportation suggested that thereby a distance (even if not substantial) between where the goods was taken away from and to where it was received or utilized to the detriment of the owner's right in order to constitute the offence of larceny. Thirdly, asportation, as it then applied to the offence of larceny, required that the entire property, not just any part thereof, must be moved. This property in its entirety to be so moved, in that context, must be property in its legal or equitable nature, in its physical as well as valuable nature and not just a constructive property.

Asportation is no longer a condition for theft under the current English law. We can therefore, safely conclude that "appropriation" has replaced "asportation" in the same way that "Theft" (with all its ramifications) has replaced "Larceny" under the English law. By virtue of the definition of "Theft" under the Theft Act 1968, "a person is guilty of theft if he dishonestly **appropriates** property belonging to another person…." The ordinary interpretation of the word "appropriates" conveys the idea of treating something as one's own to the exclusion of the owner[33]. For example, where the defendant asserts a right to the property which is inconsistent with the owner's right, at least for a time, the defendant will be exercising dominion over the property and treating himself as the owner and in that way, he is laying claim to the property[34]. However, this concept has been given a wider interpretation in recent times. The law as it is now obtainable in England is that "any assumption of the rights of an owner amounts to an appropriation"[35]. In this research, three cases[36] were discovered to have engaged the attention of the House of Lords as to the proper construction of how assumption of the rights of an owner may amount to appropriation and ipso facto theft under the English Theft Act of 1968. However, it may be appropriate that before discussing the three instances, to see first what the Act provides in this regard. Initially, the Act states:

> "Any assumption by a person of the rights of an owner amounts to an appropriation, and this includes, where he has come by the property (innocently or not) without stealing it, any later assumption of a right to it by keeping or dealing with it as owner"[37].

And by way of clarification, it continues:

> "Where property or a right or interest in property is or purports to be transferred for value to a person acting in good faith, no later assumption by him of rights which he believed himself to be acquiring shall by reason of any defect in the transferor's title, amount to theft of the property"[38].

Now, we can logically consider the cases before the House of Lords, which centred on what constitutes appropriation sufficiently to be an element of theft under the English law. In **R. v. Morris** the Court of Appeal[39], and later the House of Lords[40] considered the meaning of "appropriation" within the context of the Theft Act. The case itself concerned the appeals lodged by two prisoners against

[28] See Section 1 of the English Theft Act 1968.
[29] Under Sections 2 to 6.
[30] Under Section 7.
[31] See Statutes Nos. 6 & 7, Geo. 5c.50.
[32] Ibid., at Section 1.
[33] For example, see *Oxford Advanced Learner's Dictionary of Current English* (6th Ed.)Oxford University Press, London (1998) at page 47.
[34] For example, see the case of **Lancershire & Yorkshire Railway Co. v. Mac Nicole** (1918) 88 L.J. KB 601 per Atkin, J.
[35] Especially following the provisions of Section 3 of the Theft Act 1968.
[36] **R. v. Morris** (983) Crim. L.R.,813 H.L.; **Lawrence v. Metropolitan Police Commissioner** (1971) 2 All ER 1253 H.L.; **R. v. Gomez** (1993) 1 All ER 1. H.L.
[37] See Sub-section of Section 3 of the Act.
[38] Ibid., in Sub-section 2.
[39] (1983) 2 All ER 448.
[40] (1983) Crim. L.R. 813 H.L.

their conviction for theft. In a brief statement of the facts, both had, in their bid to avoid paying the actual prices fixed to the goods displayed for sale, substituted the lower price label for a higher price label by switching the labels before proceeding to pay for the goods at the cash point.

There was a further technical issue as to what time the offence was committed, because as the evidence went, the first accused was arrested after he had passed through the check-out point, while the second accused arrested before he had passed through the check-out point. The counsel to the first accused argued that his client could, therefore, not have been guilty of obtaining by deception goods which he had already stole, and for the second accused, it was also argued that he might have been convicted for attempting to obtain by deception if his conduct was sufficiently proximate and that by merely switching the price labels, the second accused had not appropriated the goods in the articles to amount to theft.

The argument which found favour with the House of Lords in **Morris** is that a shopper does not appropriate when he merely takes goods from a supermarket shelf. The owner impliedly consents to and authorises such a taking. The view that appropriate requires "an adverse interference with or a usurpation of the right of the owner" means that the owner's consent would normally negative appropriation because it would prevent these elements from being present in theft.

In **Lawrence v. Metropolitan Police Commissioner**[41], a similar case involving this principle, the House of Lords stated categorically that consent was irrelevant to the question of appropriation and that there could be appropriation even though the owner consented. In that case, the defendant, a London taxi driver, took an Italian student who could barely speak English and who had newly arrived at Victoria Station, for a ride. He demanded the fare at the outset and when the student gave him a Pound Note from his wallet, the defendant helped himself to a further six Pounds from the wallet with the student tacitly consenting to this. The correct regulated fare was just over 50 pence. The House of Lords in the briefest of judgments (which may now account for its opacity) found no difficulty in holding that on any view of these facts, the different appropriated the student's pound notes. Consent was irrelevant to appropriation so that even if the student had consented to the defendant's taking, it made no difference.

Thus, **Lawrence** and **Morris** were essentially inconsistent with each other and as a consequence of this inconsistency, there flowed a spate of several Court of Appeal cases some[42] following **Morris** and several others[43] following **Lawrence**. However, there is little purpose for us here to rehearse these cases since the conflict has now been resolved by the House of Lords' decision in **R. v. Gomez**[44]. Perhaps it is instructive, at this stage, to now examine in details the reconciliation in **Gomez**. In that case, Edwin Gomez was employed as Assistant Manager, at an electrical goods shop and was persuaded by Jit Balley, his acquaintance, to supply goods from the shop and to accept payment by two stolen Building Society cheques, one for £7,950 and another for £9,250. Which were undated and bore no payer's name? Gomez agreed, and prepared a list of goods to the value of 7,950 which he submitted to the Director, Mr. Gilbert, saying that it represented a genuine order by one Jobal and asked the Director to supply of the goods in return for the cheque in that sum. Mr. Gilbert instructed Gomez to confirm with the bank that the cheque was acceptable, and the latter, of course, being aware of worthless nature of the cheque, informed his Director that he had done so and even added that "such a cheque was as good as cash". Mr. Gilbert agreed to the transaction, following which Mr. Gomez, the accused, paid the cheque into the bank and a few days later, Bailey took possession of the goods, with the accused helping him to load them into Bailey's vehicle. Thereafter, a further consignment of goods to the value of the second cheque was ordered and supplied in similar manner, without raising any more eyebrows from the Director. Eventually, the two cheques were returned by the Bank marked "Ordered not to pay on stolen cheques". Following the complaint of Mr. Gilbert the Director, Edwin Gomez, his friend Bailey and another employee of the Shop – Raj, were arrested and later tried on an indictment, in the counts which all three were charged for theft contrary to Section 1(1) of the Theft Act, 1968.

After evidence had been led by the prosecution, counsel to Mr. Gomez submitted that there was no case for his client to answer on the theft charge because the Director of the shop had authorised the transactions, so that there had been no appropriation within the meaning of the Act. The trial Judge rejected his submission, whereupon the accused was convicted and sentenced to 2 years imprisonment on each count to run concurrently. He appealed to the Court of Appeal, Criminal Division, at which all the three Justices (Lord Lane C.J., Hutchinson and Mantell JJ) quashed the conviction[45]. Lord Lane C.J. delivering the judgment of the Court of Appeal, stated:

> What in fact happened was that the owner was induced by deceit to agree to the goods being transferred to Bailey. If that is the case, and if in these circumstances the (respondent) is guilty of theft, it must follow that anyone who obtains goods in return for a cheque which he knows will be dishonoured on presentation, or indeed by way of any other similar pretence, would be guilty of theft. That does not seem to be the law. R. v. Morris decides that when a person by dishonest deception induces the owner to transfer his entire proprietary interests that is not theft. There is no appropriation at the moment when he takes possession of the goods because he was entitled to do so under the terms of the contract of sale, a contract which is , it is true, avoidable, but has not been avoided at the time

[41] Supra
[42] See for example R. v. Fritschy (1985) Crim.L.R. 745.
[43] For example, see the case of R. v. McPherson (1973) Crim. L.R. 191
[44] (1991) 1 W.L.R. 1334 when it laid at the Court of Appeal.
[45] Ibid., at page 1340.

> the goods are handed over. We, therefore, conclude that there was a de factor, albeit avoidable, contract between the owners and Bailey, that it was by virtue of that contract that Bailey took possession of the goods, that accordingly the transfer of the goods to him was with the consent and express authority of the owner and that accordingly there was no lack of authorization and no appropriation.[46]

The Court of Appeal later granted a certificate under the relevant provisions of its appellate rules that a point of law of general public importance was involved in their decision, which is that:

> When theft is alleged and that which is alleged to be stolen passes to the defendant with the consent of the owner, but that consent has been obtained by a false representation, has, (a) an appropriation within the meaning of section 1(1) of the Theft Act 1968 taken place, or (b) must such a passing of property necessarily involve an element of adverse interference with or usurpation of some right of the owner?[47]

Being conscious of the above points of law, the Court of Appeal directed that the case be stated to the House of Lords for clarifications. Following this directive, the Crown appealed to the House of Lords[48], and by the Lead judgement contained in the Speech of Lord Keith of Kinkel (with Lord Lawry dissenting) the majority of their Lordships held, *inter alia*, that:

> On the facts of the present case, however, it can be said, by analogy with Lawrence's case, that although the plaintiff permitted and allowed his property to be taken by the rogue, he had not in truth consented to the rogue becoming owner without giving a valid draft drawn the building society for the price. On the basis of this, I conclude that the plaintiff is able to show an appropriation sufficient to satisfy section 1(1) of the 1968 Theft Act when the rogue accepted delivery of the articles.[49]

In his dissenting Speech, on the relevant issue, Lord Lowry stated, *inter alia*

> To be guilty of theft the offender, as I shall call him, must act dishonestly and must have the intention of permanently depriving the owner of property. Section 3 shows that in order to interpret the word "appropriates" (and thereby to define theft), sections 1 to 6 must be read together. The ordinary and natural meaning of "appropriate": is to take for oneself, or to treat as one's own, property which belongs to someone else. The primary dictionary meaning is "take possession of, take to oneself, especially without authority", and that is in my opinion, the meaning which the word bears in Section 1(1). The act of appropriating property is a one-sided act, done without the consent or authority of the owner. And if the owner consents to transfer property to the offender or to a third party, the offender does not appropriate the property, even if the owner's consent has been obtained by fraud. This statement represents the old doctrine in regard to obtaining property by false pretences, to which I shall advert presently. The references in Sections 2, 3 and 4 qualify but do not impair the meaning of the words "appropriates" and "appropriation" as they are used in Section 1. Section 2(1) does not change the meaning of appropriation but it tells us when appropriation is not to be regarded as dishonest (and so does not amount to stealing). Paragraphs (a), (b) and (c) of the subsection all describe unilateral, though honest acts of the appropriator, who takes the property for himself and treated it as his own. For the benefit of those who would suggest that Section 2(1)(b) shows that appropriation is something which can be done with the consent of the owner, I would paraphrase that provision by saying "If he appropriates the property in the belief that he would have the other's consent if the other knew what he had done and the circumstances in which he did it". The opportunity for confusion arises from the use of the word "appropriates" in a clearly unilateral sense followed by the word "appropriation" (describing what the appropriator has unilaterally done) hypothetically linked to the idea of consent. Coming now to Section 3, the primary meaning of "assumption" is "taking on oneself", again a unilateral act, and this meaning is consistent with sub-sections (1) and (2). To use the word in its secondary, neutral sense would neutralize the word "appropriation", to which assumption is here equated, and would lead to a number of strange results.[50]

As if he was himself unsure of his reasoning, Lord Lawry went on to say that if the meaning of "appropriation" was ambiguous, it was permissible to refer to the Report of the Criminal Law Reform Commission (CLRC) to resolve that ambiguity.[51] A reference to that Report, as made by this researcher, reveals that the CLRC had considered subsuming deception in a broadly based definition of theft but had itself rejected it.[52] While the CLRC had recognised that some cases of deception would also be theft (e.g. where the effect of the deception was such as to prevent ownership of the goods passing to the offender) it would not be theft where the offender obtained ownership of the goods.[53]

Therefore, the point of difference between the majority view and that of the dissenting Lord Justice is that Lord Lowry was prepared to look at the Report of the CLRC to ascertain the intent of Parliament, and the majority were not so prepared. Who was then right? Perhaps a glimpse at what Lord Browne-Wilkinson said may reveal the wisdom behind the majority view of the House of Lords on the meaning of

[46] Ibid., a toages1338-9
[47] Ibid at page 1341.
[48] (1993) 1 All ER 1, H.L.
[49] Ibid at page 8.
[50] Ibid., at page 17.
[51] Ibid, at page 18.
[52] The Thirteenth Report (1977). Cmnd 6733, particularly at Paragraph F, page 38.
[53] Ibid., at page 19.

"appropriation" as contained in Section 1(1) of the 1968 Theft Act:.

> The fact that Parliament used that composite phrase "dishonest appropriation" in my judgement, casts light on what is meant by the word "appropriation". The views expressed (obiter) by this House in **R. v. Morris** that "appropriation" involves an act by way of adverse interference with or usurpation of the rights of the owner treats the word "appropriation" as being tantamount to "misappropriation". The concept of adverse interference with or usurpation of rights introduces into the word "appropriation" the mental state of both the owner and the accused. So far as it concerns the mental state of the owner (did he consent?), the 1968 Act expressly refers to such consent which it is a material factor: see sections 2(1) (b), 11(1), 12(1) and 13. So far as it concerns the mental state of the accused, the composite phrase in section 1(1) itself indicates that the requirement is dishonesty. For myself, therefore, I regard the word "appropriation" in isolation as being an objective description of the act done irrespective of the mental state of either the owner or the accused. It is impossible to reconcile the decision in **Lawrence** (that the question of consent is irrelevant in considering whether this has been an appropriation) with the views expressed in **Morris**, which latter views, in my judgement, were incorrect."[54]

Given the facts of this case, the question that arises is: when did appropriation take place? Was it:

1) When the manager agreed to the transaction?; or
2) When the accused paid the cheque into the bank? Or
3) When Bailey took possession of the goods by loading the van?

Another interesting post **Gomez**'s case was that of **R. v. Atakpu**[55]. In this case, the accused persons hired cars in Belgium and Germany using false Passports and driving licences. They then drove the cars to England intending to sell them to unsuspecting buyers. They were arrested whiles still within the hiring period and charged with conspiracy to steal. Applying the decision in **Gomez**, the Court of Appeal held that the cars were appropriated as soon as they were hired, it being irrelevant that the owner consented to them being driven off by the accused. The theft, as it were, occurred before their entry into England.

This leads us conveniently, in this research, to the next important question on appropriation – is appropriation instantaneous or continuing? Having regard to Atakpu's facts, could it be said that the appropriation which occurred out of the jurisdiction of the English courts continued whilst they drove the cars to and within England, in order to confer jurisdiction on the English court of trial? The Court of Appeal held that no theft was committed in England, but, at the same time, supported the idea that appropriation could be regarded as continuing to a limited extent As a matter of policy and fact, the court preferred to leave that question for the common sense of the jury to decide that the appropriation can continue for as long as the thief can sensibly be regarded as being in the act of stealing or in more understandable words, so long as he is 'on the job'[56]. This seems to be a sensible and pragmatic compromise which regards stealing as a process continuing while the accused is still on the job, e.g., ransacking a house. On this note, the process of stealing in **Atakpu** had come to an end when the accused persons got clear of the hiring premises and long before they reached England. The 'continuing appropriation' theory, however, does not stop the accused from being guilty of theft immediately he commits the first act of dishonest appropriation. For example, a burglar will steal jewels as soon as he takes them from the drawer and puts them into his pocket. The continuing appropriation theory would simply say that he continues to steal them until the 'job' ends, and presumably, when he quits the premises.

ii) The Concept of Property Capable of Being Stolen:

It may be appear elementary to say that only a property is capable of being stolen. But what constitutes a property is not only complex in law but also in economics, and this is why it is beneficial to examine the English law on the subject. We have seen how far-reaching the decision in **Gomez** is and if that is taken literarily, it would designate any conduct which inimically does anything to or with someone else's property as an appropriation. Assuming always that the accused acted as at the time dishonestly, such conduct would likely result to theft. However, it is also likely that other cases will throw up some limitations on this seemingly expansive concept under the English law of theft and it is, therefore, the strategy of this Paper to simulate such possibilities.

The English Theft Act does not give a comprehensive definition of "property" but rather it indicates that a wide range of variety of things can be stolen, when it stated that: "Property includes money and all other property, real or personal, including things in action and other intangible property"[57]. We cannot regard the above as a comprehensive definition because of two reasons: (1) the word sought to be defined i.e. "property" is itself repeated twice in the definition; (2) "Property" is in fact and in law known to include other than the listed items in the definition, yet the listed items are not themselves of the same genre. In this context, it is, therefore, appropriate that we examine the types of property specified in the Act, since we must restrict our tools of understanding 'theft' under the English law to the concepts provided by the Act, and in the order in which they appeared.

ii.(a) **Money**: Money as known in its ordinary meaning is not found only in its physically identifiable forms of currency Notes and Coins. Suppose someone dishonestly takes a cheque leaf from another's book, makes it out for £1

[54] Op. cit. at 39
[55] (1993) 4 All ER 215 C.A.
[56] Ibid., at page 219.
[57] Section 4(1). This is notably in contradistinction with Section 382 of the Nigerian Criminal Code.

(as in England) in his favour and deposits the cheque into his own account. Has any money been stolen so far? There are rather two things so far stolen: first, the cheque leaf and secondly the proceeds (money) derived there from. In other words, the contemplation of 'money' in the provisions of the Act is *ab initio* money in its physically identifiable forms, i.e. the Note or the Coin denoting the English Pound and or Shilling or any other foreign currency recognizably exchangeable in England. However, because the sub-section mentions other forms of property such as 'things in action', thus, money as held in debts and or negotiable instruments.

Ii(b) **Real Property**: In law, this comprises of land and things attached to land. The term connotes among other things, buildings, fixtures, and such other things as the central heating systems or built-in electrical, gas or water vaults. However, the Act[58] clarifies the circumstances where land and things forming part of land may be stolen. It is against this background that this researcher elsewhere[59] advocated that Land and its derivatives can, under certain circumstances, be stolen under the Nigerian Law.

Ii (c): **Personal property**: This covers any item with a physical existence apart from land and includes all the most common items often stolen such as radios, videos, cars, clothing and works of art, etc. Interestingly, money itself is also an example of personal property, even though it was not specifically included since it had already been identified distinctively as discussed in (a) above. In the contemplation of law, such personal properties could also include such intangible things which are only expressed in another form of a physical existence, such as copyright, trademarks, patents, stocks, bonds, goodwill, etc. These are in practical terms treated in the laws of amortization. In this connection, it is instructive to remember "things in action" in the definition of property under the Act. These things often called "choses-in-action" would in themselves qualify under "personal right of property "enforceable by legal action even though they do not have any physical entity by themselves.

Under the English law, the question arose in the case of **Oxford v. Moss**[60] as to the criminal responsibility for stealing confidential information by a student who, without taking away the original examination question paper, merely photocopied it from the paper which the lecturer had carelessly left over. Two among the issues for determination by the English Court of Criminal Appeals, which are relevant to this Paper, were stated as follows:

1. Whether the contents of an examination question paper would be classified as a confidential information within the meaning of intangible property capable of being stolen; and
2. Whether the photocopying of such an information question paper is an act which permanently deprives the owner of his right to the confidential information in order to constitute theft.

In answer to issue (1) above, it was held that confidential information is not a form of intangible property as opposed to property in the paper itself, and that confidence consisted in the right to control the publication of the proof paper and was a right over others as a form of intangible property[61]. It was reasoned that there was no property in the information capable of being a subject of the charge of theft. In other words it was not a tangible property within the meaning of Section 4 of the Act.

In answer to issue (2) above, it was held because the accused student did not intend to permanently deprive the lecturer (nay the University Senate) the ownership of the question paper he has not stolen it by the act of photocopying.[62]

Another pertinent question in this regard, and for which the Act did not advert to, is whether the human body or its living part are such personal properties capable of being stolen. It appears we have a positive answer in the case of **R. v. Hibbert**[63] where it was held that the accused stole a girl's hair when he cut off a lock without her consent. It is, of course, a settled law that parts of human body extracted and stored in laboratories, e.g. blood samples, urine or even corpses kept in the mortuary are regarded as properties, even though they no longer are the properties of the persons from whom they were initially and with authority so extracted but of the custodian, and from the latter can be stolen.

Similarly, even when we go away from our residences, the contents of our homes remain in our possession. In the case of **Hibbert v. McKiernan**[64], it was held that a Golf Club possessed or controlled golf balls earlier lost or presumably abandoned by their wayward owners/members. Thus, even though the balls were apparently ownerless while missing, they nonetheless technically belonged to the Golf Club for the purposes of theft and could be stolen from the Club by anyone who finds and picks them up from the golf field or its adjoining premises. Although this was a case before the Theft Act of 1968, the current position remains the same[65].

The legal deductions that can be made from the **Hibbert'**s case indicate that properties can sometimes become ownerless if abandoned by their owners. From what is now a neighbouring jurisdiction[66], the Nigerian criminal judiciary received a comparable case[67] from the then Western

[58] See sub-section 2 of Section 4 of the English 1968 Theft Act.
[59] See Ocheme, P.A., "A Jurisprudential Analysis of the Doctrine of Proprietary Possession Derivable under the Common Law": Zaria Bar Journal (ZABAJO) Vol. 1 No.2, Zaria – Nigeria, 2010.
[60] (1979) Crim. L.R.119 QBD.
[61] Ibid., at page 210.
[62] Ibid.
[63] (1960) Crim. L. J. 163.
[64] (1948) 1 All E.R.860.
[65] See for example, the case of **R. v. Woodman** (1974) 2All E.R. 955.
[66] The Cameroonian territory from where this case arose, was at the material time, part of what later became Nigeria.
[67] **R. v. Veg**a (1938) 4 W.A.C.A.8

Cameroon, in respect of which appeal was decided in the then Eastern Nigeria that the appellant should not have been held liable for taking away some 29 years old corrugated iron sheets which sheets the appellant honestly believed were abandoned by the Government department[68]. But in yet another classical case[69], (though not within criminal jurisprudence), involving property picked up from a dustbin, it was held that the property in question was not abandoned by the householder but remained in his ownership until the bin was collected, at which point, the ownership transfers to the local refuse collection authority. Interestingly in this same case, it was held that if rubbish is dishonestly taken and sold by a dustbin collector, he would be guilty of theft[70]. It thus appear that a scavenger who, upon visiting the refuse dump, finds something of value and who thereafter, instead of putting it in the general refuse collection provided by the refuse authority (which body may not find it latter for ownership) but decides to put what he found to his own use or perhaps sold it for a fee, would be guilty of theft. This argument may very well survive in a welfare state like England where the scavenger is not expected to take undue advantage of any situation, including what he finds at a refuse dump. It is hardly expected that such a principle would be supported in an economy such as Nigerian.

In law, abandonment involves a deliberate decision to relinquish ownership, whereas loosing something, no matter how hopelessly one may give up the hope of getting it back, does not mean that the looser has relinquished his ownership of it. In this analogy, since putting a thing in one's dustbin is almost as same as abandonment, it would appear hard put to reason that the person should still seek a right over what he has earlier thrown in the dustbin. This brings us to the next logical issue in the legal constituents of what makes up theft under the English Law – that the property should belong to another person.

iii. The Property Belonging to Another Person:

The legal requirement under the English criminal justice that the property capable of being stolen should belong to another person is codified as follows:

> Property shall be regarded as belonging to any person having possession or control of it. Or having in it any proprietary right or interest (not being an equitable interest arising only from an apparent to transfer or grant an interest)[71].

Thus, only a property belonging to another at the moment of dishonest appropriation can be stolen.

At this point, one may be tempted to argue that the bundle of rights in the property belongs exclusively to its owner, but this is very far from being the case at law. The law of theft seeks to protect rights of not only the owners of property but also those with lesser interests in it. In other words, if a man hires a car for a week the property can be stolen from him as well as from the car firm from which he hired it. From the wordings of the Act[72], it is evident that the legal meaning of the phrase "belonging to another" portends a wider scope than the ordinary interpretation in everyday life. The import of this doctrine is that property belongs to anyone having possession or control of it. This entails having physical control of it on the one hand and where, on the other hand, only a constructive possession of it. The precise boundary between the two accounts of possession is not easy to draw; but fortunately for us at criminal law, it is not even important to draw such a line because in either case, the property will in any of such circumstances, belong to another for the purpose of theft. Another example could be the usual scenario which obtains in a restaurant. Although the patron has the physical control of the cutlery being used to eat the meal, yet throughout the course of his eating the meal, the legal possession of such cutlery remains in the owner of the restaurant.

A secondary problem with this principle of "belonging to another" presents itself in the circumstance where the property in question is jointly owned, as in the case of Partnership, where it is possible for one of the joint owners to steal from the other partner[73]. Equally, at Common Law[74], a pledgee has a right of lien which gives him an equitable proprietary right in the goods pledged to him, and if such goods are stolen by a third party while it is still under the pledge, he would be entitled to complain successfully for the theft of the item. This is because he has a right to retain possession of the goods until the loan is repaid. In the like manner, a trustee who dishonestly appropriates the trust property would have stolen it from the beneficiaries, and if someone else appropriated the trust property, the property would be regarded as having been stolen from both the trustee and the beneficiaries[75]. There is only one equitable interest which by the express terms of the Act, is not protected[76]. This is an equitable interest arising from an agreement to transfer or grant an interest.

It is submitted that such an agreement being executory in nature ought to have been regarded as a possible equity and not an impossible one. This submission is founded on the practical realities of legal practice where transactions involving the sale of shares in a company or even land are usually concluded in at least two stages. When the initial contract to sell is made, at this stage, the vendor becomes a trustee for the buyer, who at that point obtains an equitable right of specific performance to have the sale completed by the actual transfer of the shares or land to him. This is what, in the law of Conveyance, is known as an Escrow. Thus, the provision of the Theft Act excluding such executory equitable

[68] Ibid., at page 12.
[69] **Williams v. Phillips** (1957) Crim.. App. Rep. 5 DC.
[70] Ibid., at page 21
[71] See Section 5(1) of the Theft Act, 1968.
[72] Ibid.
[73] See for example, the case of **R. v. Bonner** (1970) 2 All ER 97 C.A.
[7474] **R v. Pearlberg** (1992) Crim. L.R. 829 (Crown Court)
[75] See **Stapylton v. O'Callaghan** (1973) 2 All ER 782.
[76] See Section 5(1) of the Act.

interest from among properties protected by the crime of theft, means that the property (i.e. shares or land) will not belong to the intending buyer unless and until the sale goes through. In other words, if notwithstanding the contract to sell, the vendor dishonestly sells the shares or land to another person, he would not have stolen from the buyer in escrow.

It is the proposition of this Paper that any attempt to exclude the others' right in a thing no matter howsoever indefinite the interest may be will be sufficient to sustain the complaint of theft. And this brings out an absurdity of the crime of theft under the Act which leads inevitably to the situation where the owner may be held to have stolen his own property.

In the case of **R. v. Turner**[77] the appellant took his car to a garage for repairs. After the repairs the garage owner parked the car on the road. The appellant surreptitiously using his own spare keys and without paying for his bills, drove away in the car. Since the garage owner still had the keys earlier handed to him by the appellant as at the time the car was discovered missing, he reported the disappearance of the car to the Police. As expected, the garage owner went around the neighbourhood to see if he could find the car and sure enough, on the fateful Sunday morning, he found it parked in a street near the appellant's flat. What the garage owner then did was, using the keys in his possession he drove the car back to the garage, took out the engine and then towed it back less the engine to the place from where he earlier found it. . At the charge leading to his conviction of the owner for theft of his car, the following two issues of law which are also germane to this Paper, were considered by the English Court of Appeal:

1) Whether it is immaterial that the garage owner had possession or control of the car and how his property in the car, if any, could be distinguished on the ground that his possession is superior to that of the car owner (the appellant);

In resolving this issue, the trial judge, who was later adjudged by the Court of Appeal as having rightly done so,[78] asked the jury not to be concerned in any way with lien but that the sole question for determination was whether the garage owner had possession or control of the car while it was at park. It was the considered view of the trial judge, and upheld by the Court of Appeal, that so long as the car was at the material time parked at the risks of the garage owner, which risks included its unauthorised removal by the appellant, he (the garage owner) was entitled to complain of such removal which at law amounted to theft of the car by the appellant, the car owner.

2. The second issue was whether it was necessary for the prosecutor to prove dishonesty on the part of the appellant, against the back ground of the provisions of the Act which states:

> "A person's appropriation of property belonging to another is not to be regarded as dishonest…if he appropriates the property in the belief that he has in law the right to deprive the other of it, on behalf of himself or of a third person[79]".

Grappling with this issue, the trial judge said: "…it must be proved that the appellant did what he did dishonestly and this may be one of the issues which lie very close to the heart of this case"[80]. The trial judge emphasized that it was immaterial whether or not there existed any basis in law for such a belief by the appellant, and reminded the jury that the appellant had said so much so in his evidence when he stated that "I believe that I was entitled in law to do what I did". The Court of Appeal then held that the jury was appropriately directed when told that if the appellant believed that he had a right, albeit there was none, he would nonetheless fail to be acquitted. The appeal against conviction was therefore dismissed, although tribute was paid to the manner in which the appellant counsel summed up the issues raised on appeal.

By way of shedding further light on this issue, it may well be inferred that the appellant had the defence of a claim of right to the car, although he was expected to exercise such a right in circumstances devoid of fraudulent intent. In this case, even if raised, this defence would be defeated by his knowledge of the outstanding bill he owed to the garage owner for the repairs, and the fact that the unsettled bills clothed the garage owner with the right of lien. As one writer[81] puts it, if A takes his suit to a tailor for mending and then in order to avoid paying the bill, he subsequently removes it secretly, this is stealing because he has already deprived the tailor of his special property in the suit – called a lien[82].

iv) The intention to permanently deprive the owner/possessor of the property

The crime of Theft under the English law requires, *inter alia*, an intention on the part of the offender, at the time of taking the property, to permanently deprive the owner and or possessor of the property in question. By way of distinguishing Theft from other similar property offences, the Act[83] elaborately reserves from theft, the instances where certain temporary deprivation of property will amount to another distinct offence. This distinctive feature of the statutory crime of Theft[84] is derivative from the Common Law principle which sought to protect the right of a person who, even if he was not the owner, may still have some special

[77] (1972) 2 All ER 441.
[78] Ibid
[79] Section 2(1)
[80] Quoted by Parker, C.J. in his Lead Judgment at 444.
[81] Okonkwo C. O., Okonkwo & Naish On Criminal Law In Nigeria, Spectrum Law Publishing, Ibadan (1992).
[82] Ibid., at page 293.
[83] Particularly in Sections 11 and 12.
[84] See Section 1(1) of the Act.

interest in the property in question, for example, the pledge of goods[85].

When the temporary deprivation may become a permanent one is a matter of fact, which has to be proved in each case. And since the devil himself knows not the intention of a man[86], and worse still, since the state of a man's mind is as much a fact as the state of his digestion[87], the intention by the offender to either permanently or temporarily deprive the owner of the property may, it is submitted, only be inferred from the surrounding circumstances of each case, except where he admits the obvious.

v) The Concept of Dishonesty:

In the intricate web of legal tissues constituting Theft under the English law, we find yet another thorny thread, that which requires the accused person to have a dishonest mind at the time of appropriating the property belonging to another and doing so with the intent to permanently deprive him of it. Thus, even if it has been proved that the accused person appropriated the property which belonged to another and that he did so with the intention of keeping it (i.e. permanently depriving the owner of it) all these would still not sufficient evidence of theft unless and except he did so dishonestly.

The Statute[88] in a peculiar style provided for this litmus test of dishonesty for the offence of theft by distinguishing honesty in certain situations that would amount to dishonesty[89]. By this style of legislative drafting "dishonesty" which is much more of a Common Law principle, has received a statutory flavour, and the situations in which there is absence of dishonesty, have impliedly become statutory defences for the charge of Theft under the English law. This style of statutory defence is better appreciated when we examine the provisions of the Act which, for the purpose of clarification, are reproduced below as follows:

> A person's appropriation of property belonging to another is **not to be regarded as dishonest:** (a) if he appropriates the property in the belief that he has in law the right to deprive the other of it, on behalf of himself or of a third party; or (b) if he appropriates the property in the belief that he would have the other's consent if the other knew of the appropriation and the circumstances of it; or (c) (except where the property came to him as trustee or personal representative) if he appropriates the property in the belief that the person to whom the property belongs cannot be discovered by taking reasonable steps[90]. (underline supplied for emphasis).

The above appears to be a statutory re-statement of the Common Law principle requiring the accused person to have not only the knowledge that he is appropriating property belonging to another, but also that he disregards that other's title to it before he can be convicted for Theft. In other words, not only would a mistake of fact, but even so a mistake of the law can negative dishonesty on the part of the defendant who takes someone's sandals at the door post of the Mosque after Jummat prayers, believing it to be his own, or on behalf of a third person known to him?

In each of the above three sets of subjective beliefs, and by force of the statutory distinctions, the trial judge must direct the jury to hold the defendant acquitted upon a charge of theft if he satisfies the conditions attending to either situation. In the circumstance of sub-paragraph (a) above, the defendant's belief is as to his mistaken title in law (not in fact). This means that if he believes that in law, either for himself or on behalf of a third person, he has a right to deprive the complainant of the property, then he is not guilty of Theft. The pertinent question one may ask at this juncture is: under which law is this belief excusable? Could it both the law of crimes as well as the law of property in the goods? William[91]s seemingly answering this question, stated that "it is no excuse for a defendant that he did not know of the existence of the basic law of Theft"[92]. In his view, this seemingly a defence of ignorance of the law covers "not only a mistaken belief that one owns the property in question but also a mistaken belief that one is otherwise entitled to it"[93]. In one of his synoptic answered questions, Glanville Williams excused the creditor who took a wallet from the debtor's pocket at knife point, and extracted the exact sum of the debt owed to him before returning the wallet[94]. In his submission, such an honest ruffian or forcible take, though not guilty of theft or robbery, would be guilty of assault.

The provisions of paragraph (b) in Section 2(1) of the Act, above quoted, on the other hand, contemplates a situation of familiarity between the complainant and the accused, at least with regards to the subject matter of Theft. It is a common practice among residents of an estate compound or the "face- me- I- face- you" (dormitory style of residential houses in Nigeria), to pick on one another's pieces of washing soap, perfume or detergent in the absence of the owner-neighbour, in the belief that the owner-neighbour would not object to such a taking or use of the soap, perfume or detergent if she was around or on her return. In this circumstance, the item was appropriated without a dishonest intention even though by such appropriation, the owner-neighbour has been permanently deprived either of the whole

[85] See for example the case of Amory v. Delamirie (1722) Stra.502., (as recounted by Williams, G., Op. Cit., at page 703).
[86] As per Bryan C.J. in a medieval English case, recounted by Okonkwo, C.O., Op cit., at page 53.
[87] As per Bowen, C.J. in Edington v. Fitzmanrice (1885) 29 Ch. D 459 at page 483.
[88] The English Theft Act 1968.
[89] In this style, the draftsman differentiates the presence of dishonesty (as negativism) from the positive honest appropriation in one and the same sentence.
[90] Section 2(1) of the 1968 Theft Act.
[91] Williams, G., Op cit.
[92] Ibid., at page 725.
[93] Ibid., at page 724
[94] Ibid., at page 725

or the quantity used, and the appropriation had occurred in his absence or without his consent. The ambit of the provision in paragraph (b) is wide enough to accommodate other circumstances which, in the view of this researcher, should be restricted only to disposable items. It is doubtful if the accused would be so excused upon such a belief in respect of such valuable items as a gold ring or costly sandals.

The third objective belief under paragraph © above quoted, acquitting the person who so appropriates a property belonging to another and who does so with the intention to permanently deprive the other of it, relates to a situation in which the property itself cannot be reasonably traced to its owner when it was found by the accused person[95]. In this situation, the law requires the defendant to take some reasonable steps to discover the owner and unless such an abortive attempt was made, he would be guilty of Theft. The English Act, on this principle, appears to have borrowed this principle from the Nigerian Penal Code[96].

IV. OTHER OFFENCES ALLIED TO THEFT UNDER THE ENGLISH LAW

The thematic and preliminary problems one encounters when distinguishing theft-related offences from Theft itself is how to consolidate to a single phraseology the series of traditionally distinct offences known as larceny, embezzlement, obtaining property by false pretences, cheating, robbery, extortion, etc. Interestingly, however, the one common thread which runs through each of these offences allied to Theft is the involuntary transfer of property. In other words, the actor (offender) either appropriates converts or usurps the property of the victim (owner) without the latter's consent or with consent obtained by fraud or deception or coercion.

It is instructive, therefore, to first trace their genealogy in order to explain their differences. The legal distinctions between these property crimes are explicable in terms of the long expansive evolution of the features of criminal law in protecting proprietary interests. The evolution that began with the concern for simple theft has expanded to the crimes of taking by violence, i.e. robbery. The criminal law later expanded via the ancient quasi-criminal writ of trespass, and went on to cover all sorts of taking another's property from possession without consent, even though no force was used, e.g. cheating. It expanded once more, through some famous judicial pronouncements on the concept of possession, to embrace appropriation of goods by persons who already had them in their physical control and with the consent of the owner, for examples, servants and bailees, as held in certain queer and peculiarly defined circumstances[97].

The attempt in this Paper at the aetiology of the Theft under English law reveals first the culmination of initiatives from the Courts to the Legislature. It was not until the 18th century that the English Parliament over took the judiciary in the legislators' quest for enhanced prestige and power, and in that grand style, converted most of what was "natural law" from instruments for the judges' defiance of the Monarchy to a restraint jupon the judges themselves, thereby leaving them to become only interpreters of immemorial customs rather than framers of policies[98]. Thereafter, under these legislative initiatives, the crime of Theft in England continued to expand through a series of embezzlement statutes, beginning with narrowly defined groups like clerks in banks[99], and moving on to agents, attorneys, bailees, fiduciaries, public officers, partners, mortgagors in possession[100], among others, to call for the recent legislation on fraudulent conversions, punishing misappropriation by anyone who receives or has in his possession or control the property of another or a property which someone else is entitled to receive and have. Thus, the fiduciary who makes forbidden investment[101], the official who deposits public funds in an unauthorised depository[102], the financial adviser who betrays his client into paying more for a property than the seller was willing to sell for[103], call all be designated as embezzlers.

The various offences involving deception in England are today codified under the Theft Acts. They are similar to each other through the common thread of deception but differ only in relation to what may be obtained by the deception. The criminality of this deception, as opposed to mere misrepresentation as found in the civil law of Tort or Contract, flows from the following:

1. That the victim was deceived by the accused;
2. That the accused must have obtained something (property or service);
3. That the property or service was obtained as a result of the deception; and
4. That the accused acted dishonestly.

The lingering problems associated with the crimes of deception arose from the indefinite scope of what deception may be used to procure. Even the seemingly compounding outlook of deception given in the 1968 Theft Act, to wit: "any deception (whether deliberate or reckless) by words or conduct as to the fact or as to law, including a deception as to the present intention of the person using the deception or any other person…[104]" still appears interminable. Given such an

[95] See Section 2(1) (c) of the Act.
[96] See Illustration (f) to Section 308 of the Penal Code in Sir Richardson, S.S., Introduction to Penal Code, Northern Nigerian .Publishing Corporation, Zaria (1960).
[97] See for example the pronouncement by Lord Herschell in the famous case of **Bank of England v. Vagliano Brothers** (1891) AC 107 at page 144.
[98] See Smith J. "Civil Law Concepts in the Criminal Law", (1972) *Criminal Law Journal*, at page 197.
[99] See Brazier, J., "The Theft Act: Three Principles of Interpretation" (1974) Criminal Law Review, at page 701.
[100] Ibid.
[101] See Williams G., "Theft, Consent and Illegality" (1977) Criminal Law Review 127 at page 205.
[102] Ibid., but on this point, Brazier, op.cit., disagreed at his page 708.
[103] See **Anderton v. Wish (**1980) Crim. L.R. 657.
[104] See Section l5(4) of the 1968 Theft Act.

open-ended definition, whatever act is complained of as trick, device or tactics used by the accused person or any other person, may be understood by the jury to be a deception cognate to constitute an offence.

In **DPP v. Ray**[105], Lord Reid stated that the respondent who, after eating in a restaurant, ran off without paying for his meal, did not act in the subtlety of deception, and to argue that his remaining in the room until the waiter had left the dining room for the kitchen (i.e. until the coast was clear) amounted to a representation to the waiter, is to introduce an artificiality which should have no place under the law[106]. In the same case, Lord MacDermott raised two questions with regard to the alleged deception by the defendant who after finishing his meal remained in the dining room for a while until the waiter had left to the kitchen before he ran off. First, whether the facts justify a finding that by remaining for a while, the respondent had practiced a deception on the waiter. And second, if he did, whether his evasion of the debt was obtained by that deception.[107] In providing answers to these questions, MacDermott L.J. stated that the first involved either words spoken or written, and he reasoned that if there was deception on the part of the respondent it was by his conduct which, being in the form of an extremely common feature of the transaction in question, leaves much to be implied by conduct. For the second, he opined that judging the period between the time the respondent finished his mean and the tie time he (and his companions) decided to evade payment, whether such time was sufficient to show that he was then practising deception on the waiter. He further reasoned that except if the appearance of other customers after eating their means would be strange to the waiter, nothing can be imputed to deception from the conduct of the respondent who waited after his meal[108].

V. CONCLUSIONS;

Theft under the English Law is no longer what Larceny stood for. The various ingredients of proof for Larceny Act, and under the Common Law such as "Asportation" (which due to their uncertainty, bedevilled the proof of the offence in those days) were avoided in the revised states, thus making Theft and its allied offences, more ascertainable crimes in England. Theft today in England is relatively devoid of the various Common Law lacunae.

The identified and analysed constituents of Theft and allied offences under the English law, are apparently still premised on the two old Common Law pillars or principles of criminal justice:

1) The *actus reus:* which encompasses the acts of appropriation of a thing; which thing must be capable of being stolen; and which thing itself must belong to another person.; and
2) The *mens rea*: which can be seen in elements of the accused intending to permanently deprive the owner of the goods and that he does so dishonestly.

[105] (1973) 3 All E.R. 131.
[106] Ibid., at page 133.
[107] Ibid., at page 138.
[108] Ibid., at page 140.