Brief facts:

Mubbi while in a supermarket picked a bottle of mineral water and placed it in a shopping basket .He then picked a handkerchief and two bars of chocolate and put them in the pocket. When he got to the cashier he only stated that he had picked the mineral water without mentioning the handkerchief and the two bars of chocolate. As he walked out he was stopped by the security guard who had watched everything on a closed circuit TV

ISSUES:

1) whether mubbi is liable for the offence of theft

1. Whether Mubbi had a fraudulent intent or not.
2. Whether Mubbi picked the items without claim of right
3. Whether there was taking of items by Mubbi
4. Whether the items that Mubbi picked where things capable of being stolen.
5. Whether there was conversion of the things by Mubbi

LAW APPLICABLE

1. The 1995 constitution of the Republic of Uganda as amended
2. The Penal code act cap 120 as amended
3. Case Law

RESOLUTIONS

Issue 1 : whether mubbi is liable for the offence of theft

The constitution provide for the right to property and he who deinies another of that right is said to have stolen that property

The penal code defines theft as (254)

Issue 1a;

Fraudulent intent is brought out in the act as the intention of permanently depriving the general or special owner of the thing. The import of this is that it is not theft if the intent is to temporarily deprive the owner of a thing.

In the case of **R V Halloway** it was held it could not amount to theft because there was no intention to deprive the owner wholly or permanently of their property.

Back to our facts Mubbi is seen pocketing the handkerchief and chocolate and further declares only the mineral water bottle without mentioning what he had pocketed. His intention was clearly not to pay for the same thus permanently depriving the owner of their property.

**Issue 2;**

A person has a claim of right where he or she honestly asserts what he or she believes to be a lawful claim as such one has a belief in a legal right to take a thing however absurd it may be it may prevent the taking from being theft. The act provides that a person is not criminally responsible in respect of an offence related to property if the act done or to be done by a person was done in the exercise of an honest claim of right and without intention to defraud.In the case of R V Malamula, court held that the offence was not proved because the persecution had failed to negative the accused’s claim that he honestly believed that he has a right to take the bicycle as a means of security.

In **ngavan v r** it was stated that the prosecution had to prove both the ownership and the theft

Thus the defense of claim of right cannot work for Mubbi due to the fact that it wasn’t an honest claim and he had the intention to defraud this intension to defraud is brought out when he does not present the handkerchief and chocolate

Issue 3;

the act provides that a person shall not be deemed to take a thing unless he or she moves the thing or causes it to move.That is where a thing lives a place in which it was.

The case of Kifuko v R it was held that the element of taking is proved once the stolen article is completely removed from its place.

In the case of **r v sherry** where the accuse d was charged with stealing of a bell was acquitted because the bell was not moved

Thus Mubbi in this instance the mere fact that he picked the handkerchief and chocolate and placed them in his pocket brings out the element of taking. For he shifted them that is moved them.

Issue 4;

The act defines things that are capable of being stolen as being inanimate things which are property of any person and which are movable In general most inanimate things are presumed to have an owner unless there have been abandoned for example water has been held to be anything capable of being stolen in the case **of R v Ndesario.**

In the case of Herbert v McKiernan it was held that the lost balls on the golf course were held to be property of the golf club and capable of being stolen.

Thus in this instance Mubbi took in his possession something capable of being stolen for they are movable and were a property of another. The chocolate and handkerchief at the moment where property of the supermarket Mubbi pocketing them brought out

Issue 5

;the case of **R V Burns** further brings out the meaning covert which is brought out as dealing with goods in a manner which is in consistent with the rights of the true owner provided that’s its established that there is an intension of denying the owner right to the property.

Thus in this instance the element of conversion is portrayed by Mubbi in a way that he brought he dealt with the goods in manner that was inconsistent with the

True owner by putting the goods in the pocket with the intension of denying the owner the right to the property.

CONCLUSION.

Inconclusion, the criminal liability of Mubbi in this case is theft for according to section 254(1) it provides that a person who fraudulently and without claim of right takes anything capable of being stolen or fraudulently converts to the use of any person other than the general or special owner there of anything capable of being stolen is said to steal that thing.With regards to the facts above the elements of theft are clearly brought out where Mubbi fraudulently without claim of right takes the chocolates and handkerchief with an aim of permanently depriving the special owner of the goods.

b) BRIEF FACTS

Miwunyu went to Apollo’s residence at about 7:30am.finding the entire house locked he managed to pull out the kitchen window. He inserted a long hook in an attempt to pull out an electric kettle although he was un able to take it.

ISSUES

1whether miwunyo is liable for the offence of house break or buglary

1. Whether there was breaking of a house by miwunyu
2. Whether there was entering into Apollo’s residence by Miwunyu.
3. Whether the property entered in to is a dwelling house or not
4. Whether Miwunyu had the intension to commit a felony
5. Whether the time Miwunyu enter in to Apollo’s residence was day or night.

LAW APPLICABLE

1) Penal code act cap 120

2) Law applicable.

RESOLUTIONS.

Issue 1 : whether miwunyo is liable for the offence of house break or burglary the penal (cpde 295hose berak and burglary )

S 295 (2) at nyt its burglary

Issue 1a;

Breaking is defined in the act as opening by unlocking, pulling, pushing, lifting anything intended to cover and open and opening whether external or internal in a buildingbreaking basically refers to interfering with security of a building.

Issue b;

Entering is provided for in that a person is deemed to have entered a building as soon as any part of the instrument used by him or her is within the buildingthe case of **R V Browns** further brings out effective entry where by in this case the accused was found standing on the pavement with the top half of his body inside the shop rummaging among goods.it was help that there was effective entry.

Thus the mere fact that miwunyu used along hook in trying to get the kettle bought out the element of entering. For the a hook used by him was an instrument used to enter

Issue c;

dwelling house is defined in the act as any building or structure or part of a building. In the case of Bakali v ug it was held that the expression of a building must be regarded as some sort of structure intended for offering some sort of structure intended for afford some sort of protection to the person dwelling inside it.in the case of **Masenu Butiti v Republic** it was held that since there was no entry and a garage is not generally aware house so the conviction was wrong.

Thus the regards to the facts above a kitchen is dwelling house for its part of a building used as security

Issue d;

For the offence to be committed the accused person must have the intent to commit a felony with in the building and this intent must exist at the time of the felony .intent is further brought out in the case of **R v chandler** it was held that the appellant was rigidly convicted of entering and breaking the intent to steal there in.

In this instance with regards to the facts above the mere fact that Miwunyu broke and enter Apollo’s residence portrays the fact that he had the intension.

Issue e)

the act defines time where night time is defined as the interval between half past six o clock in the evening and half past six o clock in the morning.

Thus the mere fact that Miwunyu committed the act at 7:30 am which is day time amounts to housebreaking.

CONCLUSION

In conclusion Miwunyu is criminally liable for the offense of House breaking this is due to the fact that the time the offense was committed was day there was the breaking and entering a dwelling house with the intension to commit a felony.