Larceny: Spouse vs. Spouse Edition

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I was recently asked whether one spouse can properly be charged with larceny for stealing joint property from the other spouse. Apparently, this question comes up frequently with separated spouses. For example, assume that Harry and Sally are separated. Sally lives at the house they formerly shared, and Harry lives in an apartment nearby. If Harry comes to the house one day while Sally's at work, and takes the BBQ grill from the back yard, has he committed a larceny?

Generally, the answer is no. If the BBQ grill is joint property, not Sally's family heirloom that she had way before she met Harry, Harry has just as much right to it as Sally does, and if he wants to take it, he can. It isn't a larceny because it isn't the property of another. But there are some interesting caveats to that general rule.

1. Work-arounds. Sally can tell Harry, "don't come on this property ever again," and then Harry's trespassing if he comes to get the BBQ grill. And even absent such an instruction, if Harry goes into the house, there's likely a breaking or entering charge. So there are some things that Sally, as a practical matter, can do to keep Harry's paws off the grill.

2. Separation agreements. If there's a separation agreement in place that says that Sally gets the grill, then Harry's definitely committing a larceny if he takes it. *Cf. State v. Lindley*, 81 N.C. App. 490 (1986).

3. Not playing nice. The most interesting and controversial exception is what I hereby term the "not playing nice" exception. If Harry's not just taking the BBQ grill to use it -- which, again, he's entitled to do just as much as Sally is -- but is taking the BBQ grill intending to (1) make it his own, exclusively, and thereby deprive Sally of her interest in it, or (2) destroy it in bad faith, several courts have sustained criminal charges. *See*, *e.g.*, *People v. Llamas*, 51 Cal.App.4th 1729 (Cal. Ct. App. 4 Dist. 1997) (when one spouse "tak[es] . . . [property], even with the intent to temporarily deprive [the other] spouse of its use, the actor does not exceed his or her property right and the problem is properly viewed as a domestic and not a criminal one," but when the spouse intends permanently to deprive the other spouse of the property, a crime has been committed); *LaParle v. State*, 957 P.2d 330 (Alaska Ct. App. 1998) (recognizing that "[i]n most instances, both spouses have equal right to possess, use, or dispose of marital property. Thus, one spouse's unilateral decision to draw funds from a joint checking account or to give away or sell a marital possession normally will not constitute theft," but finding otherwise where a husband secreted the contents of a marital checking account in anticipation of a divorce).

I confess that the cited cases aren't from North Carolina. I don't know of an in-state case on point, but nothing in the cited cases depends on distinctive features of the forum states' laws. I suspect that in sufficiently compelling circumstances our appellate courts would rule similarly, though my impression is that some of my colleagues disagree. Even if I'm right, the exact contours of the "not playing nice" exception are unclear. If one separated spouse joins an ascetic cult and gives all the couple's joint property to charity, is that OK? Time will tell.