



CRIMINAL LAW



HOMICIDE




MURDER

Under the common law, for one to be convicted of **murder**, the killing of a human being, it was essential that she had acted with **malice aforethought**. *Malice* is a term of art and does not mean hatred, ill-will, spite or revenge. Rather, it encompasses a set of intents that willfully place human life in danger and if these intents are carried out, there is a high probability death will result. **Malice** exists when it is shown that the defendant acted with any of the following intents:


- Intent to kill;
- Intent to cause severe bodily harm;
- Intent to engage in conduct which indicates a reckless indifference to the value of human life under circumstances which create a grave risk death will result (malignant heart); and
- Intent to commit a felony.

In order to sustain a charge of **murder**, one of the above intents must be carried out in the absence of **justification, excuse or mitigation**.

If the killing was not carried out with any of the above intents necessary for common law murder, the defendant would be guilty of **involuntary manslaughter**. **Involuntary manslaughter** occurs when the killing is committed with **criminal** negligence or during the commission of an unlawful act [*misdemeanor-manslaughter rule*, misdemeanor must be **malum in se** and the death foreseeable].

 Justifiable killings are those authorized by law. Excusable killings are those where there is a defense to criminal liability.

* Use of a deadly weapon (could be a human fist) **infers** an intent to kill.

 The killing must be of a human being - watch for this trick area!!

* The killing of an **unborn child** was not a homicide under the common law.

< Add appropriate, *Causation, Degrees of Murder, FMR, or Mitigation* **Bullet** >

- * The term **common law** is a reference not only to the ancient unwritten law of England, but also to that body of law created and preserved by the decisions of courts, as distinguished from law created by the enactment of statutes by the legislature.



DEGREES OF MURDER/FELONY MURDER RULE

The common law did not divide murder into different categories. However many modern statutes divide murder into *first* and *second degrees*. To establish **first degree murder**, it is required that either the killing occurred during the: 1) **perpetration of an enumerated felony** (*the felony murder rule*) or 2) was **deliberated and premeditated** - that is the killer had a fully formed intent such that the idea to kill had a period of incubation in the mind sufficient for a cool and calculated killing.

For **premeditation and deliberation** to be established, the decision to kill must have come after a reflection of the pros and cons. The duration of time elapsed is not important, what matters is the extent of reflection. The decision to kill may not be sustained in the “twinkling of an eye.”

The felony murder rule is designed to hold those who perpetrate or attempt to perpetrate certain dangerous felonies strictly accountable for all accidental killings that are causally connected to the felony. This rule of *strict accountability* is designed to deter people from engaging in felonies where there is a high probability death will result.

Modern law divides the felony murder rule into **first** and **second-degree felony murder**. First degree felony murder occurs if the killing happened during the perpetration or attempted perpetration of certain **enumerated** felonies such as arson, robbery, burglary etc. When the killing results from a *non-enumerated dangerous felony*, the courts will find the defendant guilty of second degree felony murder.

- * The felony murder rule is a powerful prosecutorial tool, as co-felons are all responsible for death (except of a co-felon) that results from their commission of a dangerous felony, even though, there was **no** intent to kill and the felons did not want anyone to be harmed.

< If felony murder, apply Limitations **Bullet** >