

felony is there.

Conspiracy

The FELONY MURDER RULE

Under the common law view, if a person is committing a felony which is inherently dangerous (i.e. armed robbery etc.) and the risk of death from the commission thereof is foreseeable (almost always) and a death results during the commission of the felony, then the malice aforethought requirement is met and the homicide is *murder* so long as the felony is independent of the murder, i.e., aggravated battery cannot be used as the underlying felony.

Tom and Fred conspire rob a 7-11 with Tom doing the robbery and Fred standing lookout. Tom accidentally shoots and kills the clerk. Tom and Fred are guilty of felony murder. Accomplices and co-conspirators are on the hook for murder as well. You play, you pay.

A *conspiracy* is different from an attempt or a solicitation, although it looks like a little of both. The common law elements of **conspiracy** required that two or more people intentionally enter into an agreement, and the intent of the agreement is to reach some illegal objective. *NOTICE that there are TWO INTENT REQUIREMENTS!* The modern view of conspiracies (which most states use), is much the same, though it adds the requirement of an overt act, just like in an attempt. Groups of people can sit in dark rooms and plan all of

the crimes they want; that's just free speech. If they take action, that's a **conspiracy**. The *illegal objective* can be the actual commission of a crime, or it can be the achievement of some legal goal by illegal means.

Conspiracy law is complicated. For right now, you know enough once you have this last rule. If a crime, by definition, *requires* two or more people to act in order for the crime to be established, then the actors in that crime cannot be guilty of *conspiracy*. For example, pretend that the great state of Kansas created the following crime:

***Ménage* – It shall be illegal for three or more people to engage in consensual sex acts simultaneously.**