

hay, grain, horses, cattle, goods, wares or merchandise, shall be murder in the first degree.

See notes to section 362.

1904, art. 27, sec. 332. 1888, art. 27, sec. 213. 1860, art. 30, sec. 140.
1809, ch. 138, sec. 3.

365. All murder which shall be committed in the perpetration of, or attempt to perpetrate any rape, sodomy, mayhem, robbery, or burglary shall be murder in the first degree.

See notes to section 362.

Ibid. sec. 333. 1888, art. 27, sec. 214. 1860, art. 30, sec. 142.
1809, ch. 138, sec. 3.

366. All other kinds of murder shall be deemed murder in the second degree.

See notes to section 362.

Ibid. sec. 334. 1888, art. 27, sec. 215. 1860, art. 30, sec. 143.
1809, ch. 138, sec. 3.

367. And the jury before whom any person indicted for murder shall be tried shall if they find such person guilty thereof ascertain in their verdict whether it be murder in the first or second degree; but if such person be convicted by confession, the court shall proceed, by examination of witnesses, to determine the degree of the crime, and to give sentence accordingly; and every person liable to be prosecuted for petit treason shall in future be indicted, proceeded against and punished as is directed in other kinds of murder, according to the degree.

In a trial for murder, a verdict of "guilty" is insufficient, since the jury must determine in their verdict the degree of the crime. Where the opinion of the trial court set out in the record shows that the jury did not at any time find the prisoner "guilty of murder in the first degree," a judgment sentencing the prisoner to be hanged may be reviewed, although the docket entries show a verdict in due form of "guilty of murder in the first degree." In case of a mistrial, the indictment being good, the prisoner may be tried anew on the same indictment. *Ford v. State*, 12 Md. 543. And see *Williams v. State*, 60 Md. 403.

The traverser is entitled as a matter of right to a poll of the jury, and may only be convicted upon the concurrence of each juror. How a poll should be conducted. *Williams v. State*, 60 Md. 403. And see *Ford v. State*, 12 Md. 543.

See notes to section 362.

Ibid. sec. 335. 1888, art. 27, sec. 216. 1860, art. 30, sec. 144. 1809, ch. 138,
sec. 4. 1908, ch. 115.

368. Every person convicted of murder in the first degree, his or her aiders, abettors and counsellors shall suffer death, or undergo a confinement in the penitentiary of the State for the period of their natural life, in the discretion of the court before whom such person may be tried.

See notes to section 362.