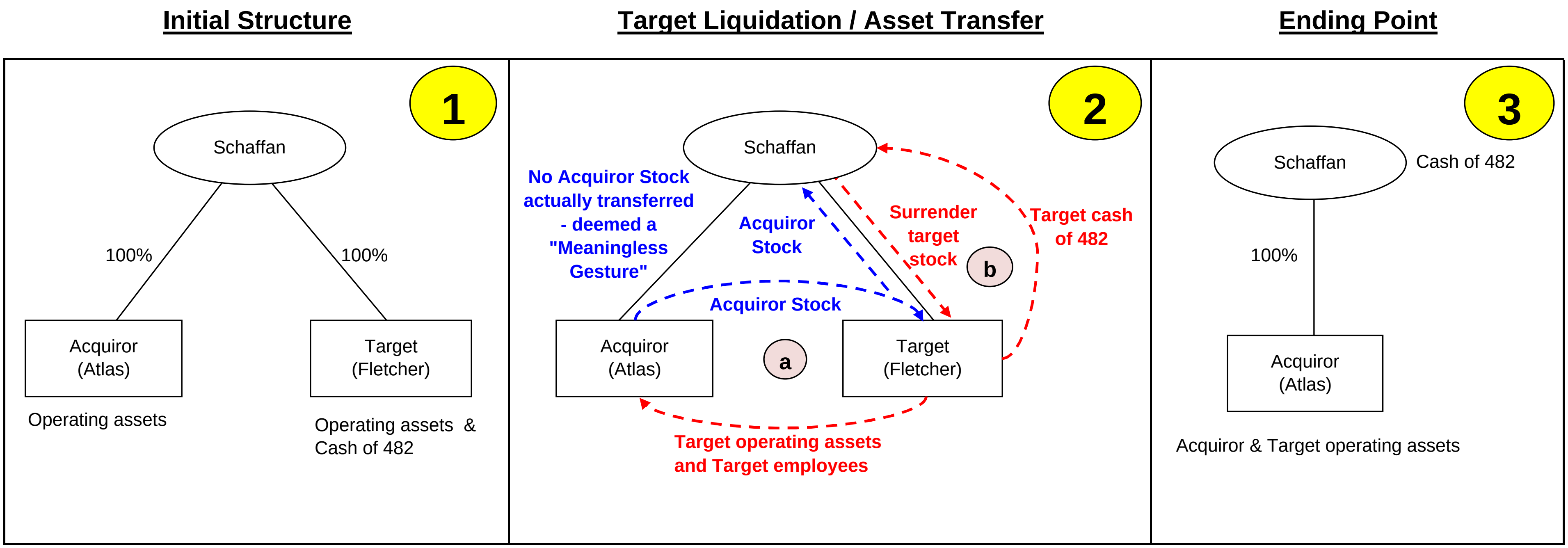
Atlas Tool Co. v. Commissioner
614 F.2d 860 (3rd Cir. 1980)

D Reorg with Boot



Target was liquidated. Cash of 482 was distributed to Schaffan. Target operating assets worth 115 were transferred to sister company (Acquiror / Atlas). Target had E&P of 440. Schaffan argued 331 / 337 liquidation and capital gain treatment on receipt of the cash.

IRS argued and the Tax Court held (and the 3rd Circuit affirmed) that it was a 368(a)(1)(D) reorganization. IRS argued that you should look to both Target's and Acquiror's E&P to determine the amount of boot (in this case, the cash) that is recharacterized as a dividend under section 356(a)(2). However, the Tax Court held and the 3rd Circuit affirmed that you only look to Target's E&P for this purpose.

To qualify as a D reorg, Target must transfer substantially all of its assets to Acquiror. However, the "substantially all" requirement is chiefly determined by focusing on the transfer of operating assets. Therefore, the transfer of substantial cash from Target to Schaffan did not violate the substantially all requirement.