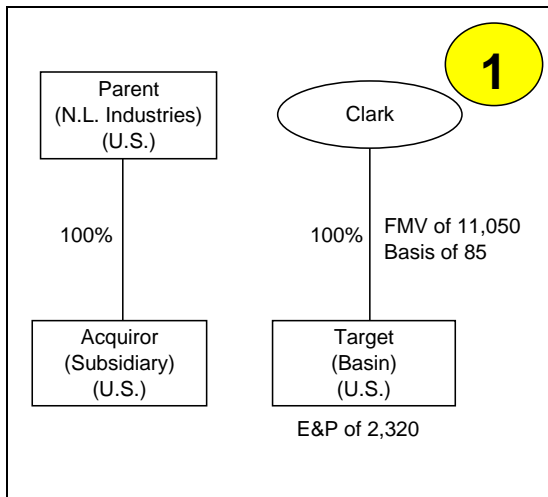


**Commissioner v. Clark**  
**489 U.S. 726 (1989)**

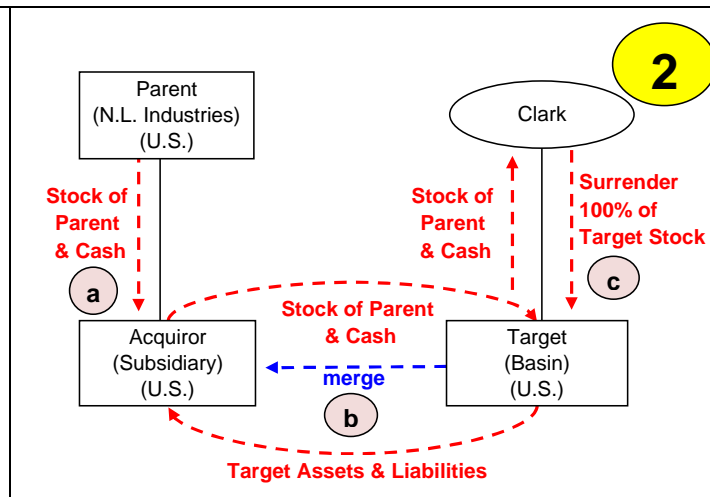
**Boot Treated As Received  
in Hypothetical Redemption**

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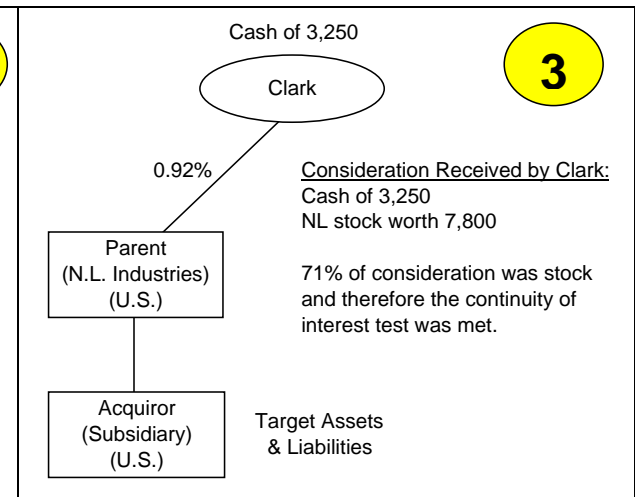
**Initial Structure**



**Forward Triangular Merger**



**Ending Point**

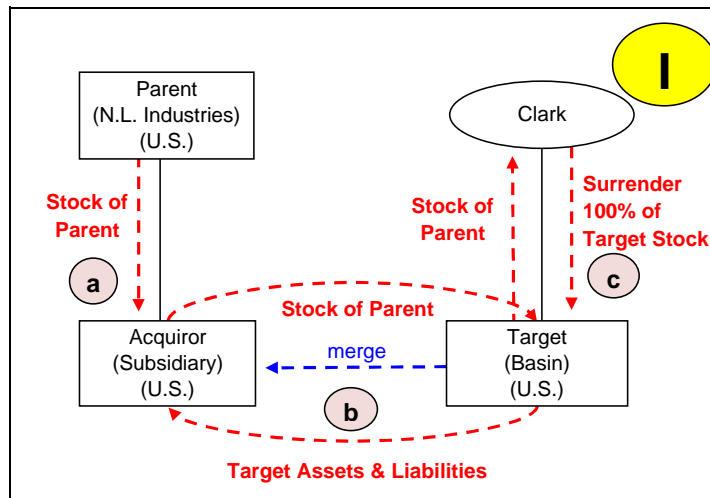


The issue in the case was whether boot in a tax free reorganization under sections 368(a)(1)(A) and (a)(2)(D) should be treated as capital gain or as dividend income. The Supreme Court held that the capital gain vs. dividend test under section 356(a) should assume (1) a hypothetical pure stock for stock exchange, (2) followed immediately by a hypothetical post-reorganization redemption of a portion of the taxpayer's shares in the acquiring corporation (NL) in return for a payment in the amount equal to the boot.

If the hypothetical redemption would qualify for capital gain treatment under section 302, then the boot received in the reorganization should receive capital gain treatment.

In Clark, the hypothetical redemption would have qualified for capital gain treatment. Thus, the boot received by Clark was treated as capital gain.

**Hypothetical "Pure" Stock-for-Stock Exchange**



**Hypothetical Redemption**

