

# The Ins and Outs of Aircraft Leasing

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**Shackelford Bowen McKinley & Norton LLP**

*Gregory J. Reigel*  
*Shackelford, Bowen, McKinley & Norton, LLP*  
*9201 N. Central Expressway, Fourth Floor*  
*Dallas, Texas 75231*  
*Direct: (214) 780-1482*  
*greigel@Shackelford.law*

# Overview

- ➔ **Types of Leases**
- ➔ **Operational Control**
- ➔ **Truth in Leasing**
- ➔ **Flight Department Company**
- ➔ **Practice Tips**



# Types of Leases

→ **Wet Lease**

→ **Dry Lease**



# Types of Leases



# “Wet” Leases

- “Wet Lease” [14 C.F.R. § 110.2 & Advisory Circular 91.37B]
- “Leasing arrangement whereby a person agrees to provide an entire aircraft and at least one crew member”
- Lessor Exercises Operational Control



# “Dry” Leases

- **“Dry Lease”**: Transfer of Possession of Aircraft For Compensation or Hire [FAR 91.23(e) & AC 91.37B]
- **Without Any Crew Member Being Provided**
- **Lessee Exercises Operational Control**



# Operational Control

- **14 C.F.R § 1.1**
  - **“initiate, conduct and terminate”**
- **FAA Legal Interpretations**
- **Case Law**
- **AC 91.37B**



# Indicia of Operational Control

- Who decides crewmember and aircraft assignments?
- Who accepts flight requests?
- Who actually initiates, conducts, and terminates flights?





# Indicia of Operational Control

- ➔ Are the pilots direct employees or agents for the lessor, the lessee, or someone else?
- ➔ Who is responsible for aircraft maintenance and where is that maintenance performed?



# Indicia of Operational Control

- ➔ Who decides when/where maintenance is accomplished, and who pays the maintenance provider for that service?
- ➔ Prior to departure, who ensures the flight, aircraft, and crew comply with regulations?



# Indicia of Operational Control

- Who determines weather/fuel requirements, and who pays for the fuel at the pump?
- Who directly pays for the airport fees, parking/hangar costs, food service, and/or rental cars?



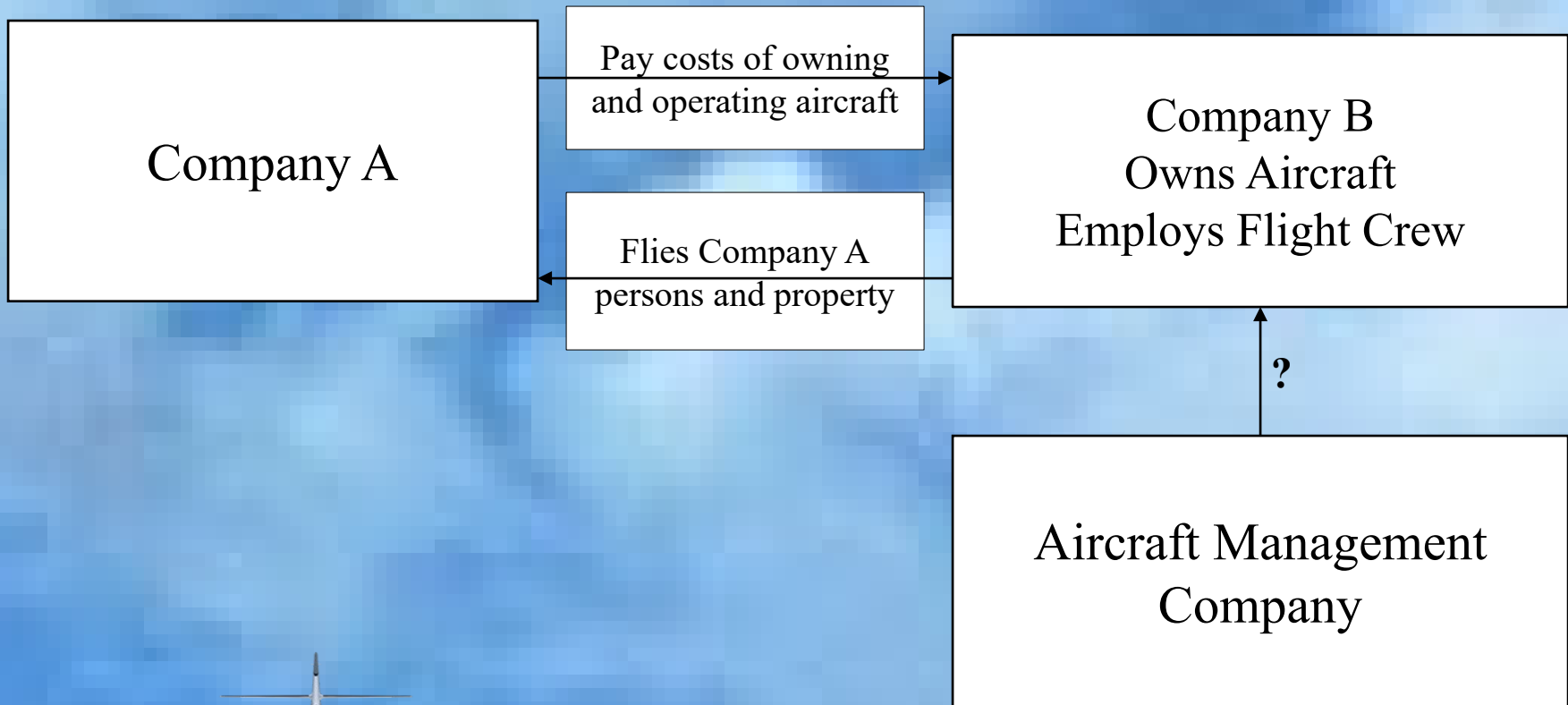
# What Happens When An Aircraft Is Owned By A Single Purpose Entity?



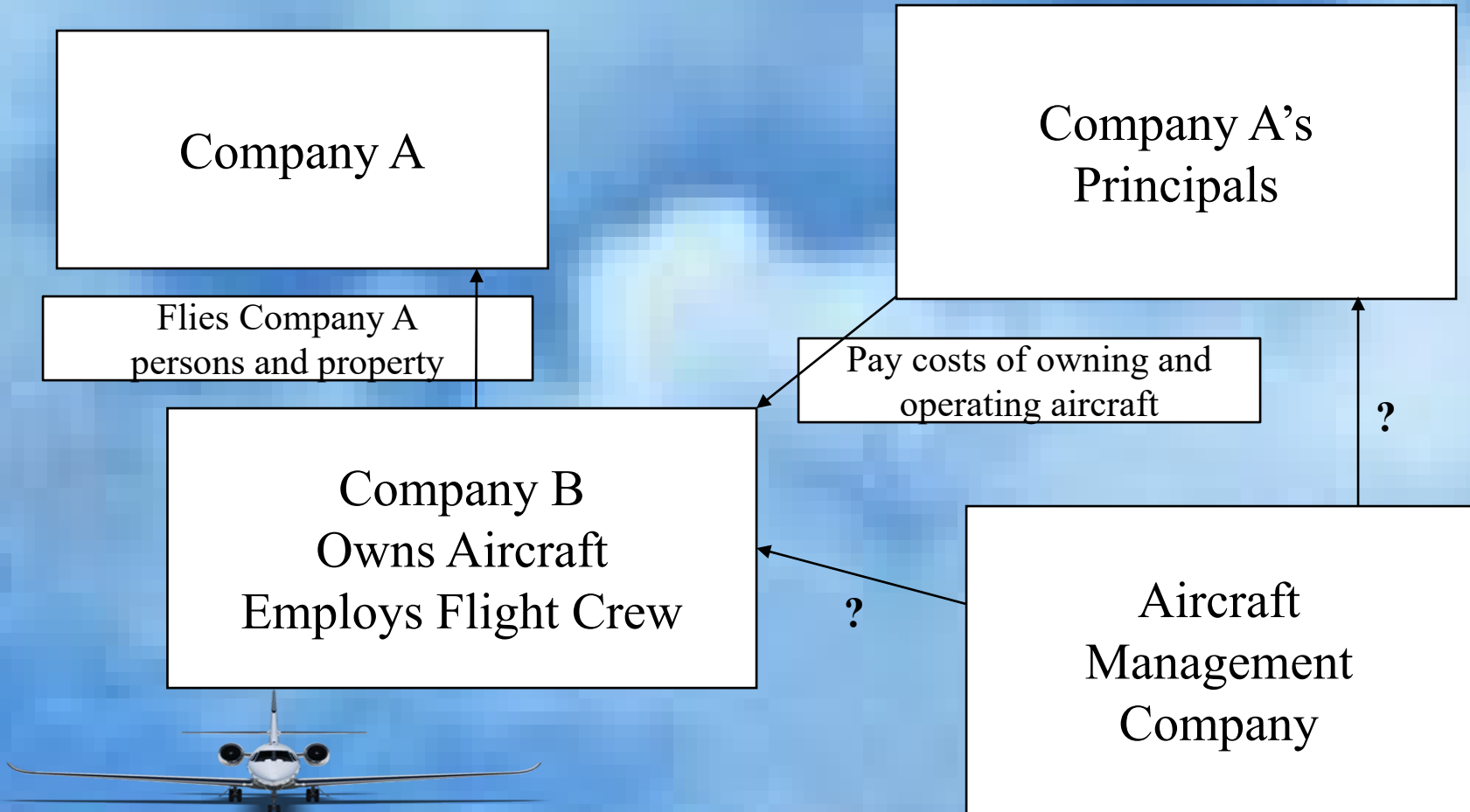
# THE “FLIGHT DEPARTMENT COMPANY” TRAP!



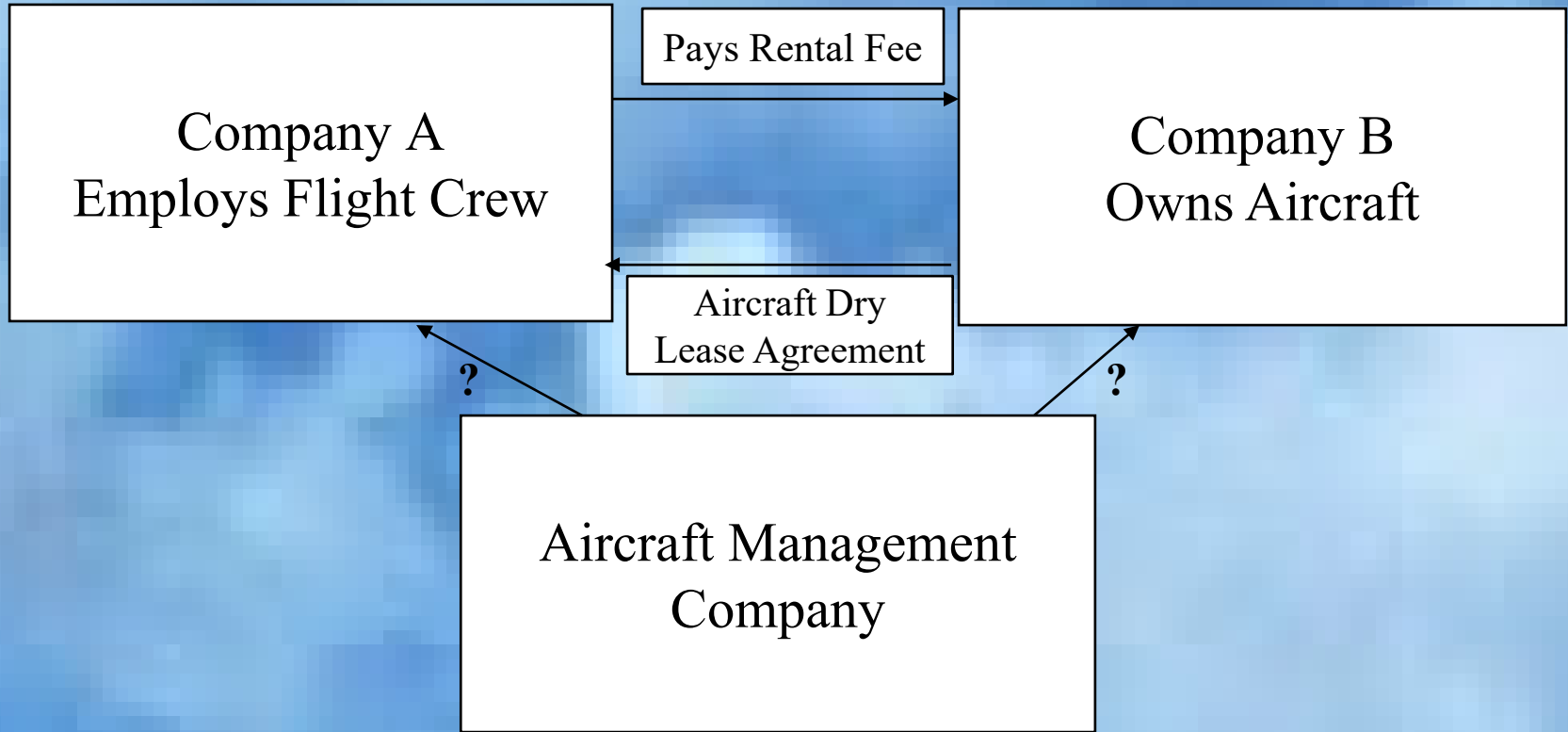
# The Flight Department Company Trap



# The Flight Department Company Trap



# Part 91 Dry Lease





# Truth In Leasing

→ **14 C.F.R. § 91.23**

→ **Mandatory For Large Aircraft**

→ **Not for Part 121, 125, 135, or 141**

→ **TIL Clause Before Signature**

→ **Filing and Notice**

→ **What Qualifies As A Lease**



# Truth In Leasing

## Filing with FAA

- **Within 24 hours of signing**
- **Financial Terms Not Required**
- **Copy of Lease in Aircraft**



# Truth In Leasing

## FSDO Notice

- **At Least 48 Hours Before First Flight**
  - **Departure Date, Time & Location**
- **Copy of Proof of Notice in Aircraft**



# FAA's Approach

**Clueless – Careless - Criminal**



# Practical Considerations

- ➔ **Aircraft Leases Are Not Bad or Illegal**
- ➔ **Make Sure Lessee Understands Operational Control**
- ➔ **Operational Control Briefing for Passengers**
- ➔ **Function Over Form**



# Questions?



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