

The Ins and Outs of Aircraft Leasing

Texas Bar Aviation Committee
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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 92.23(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?



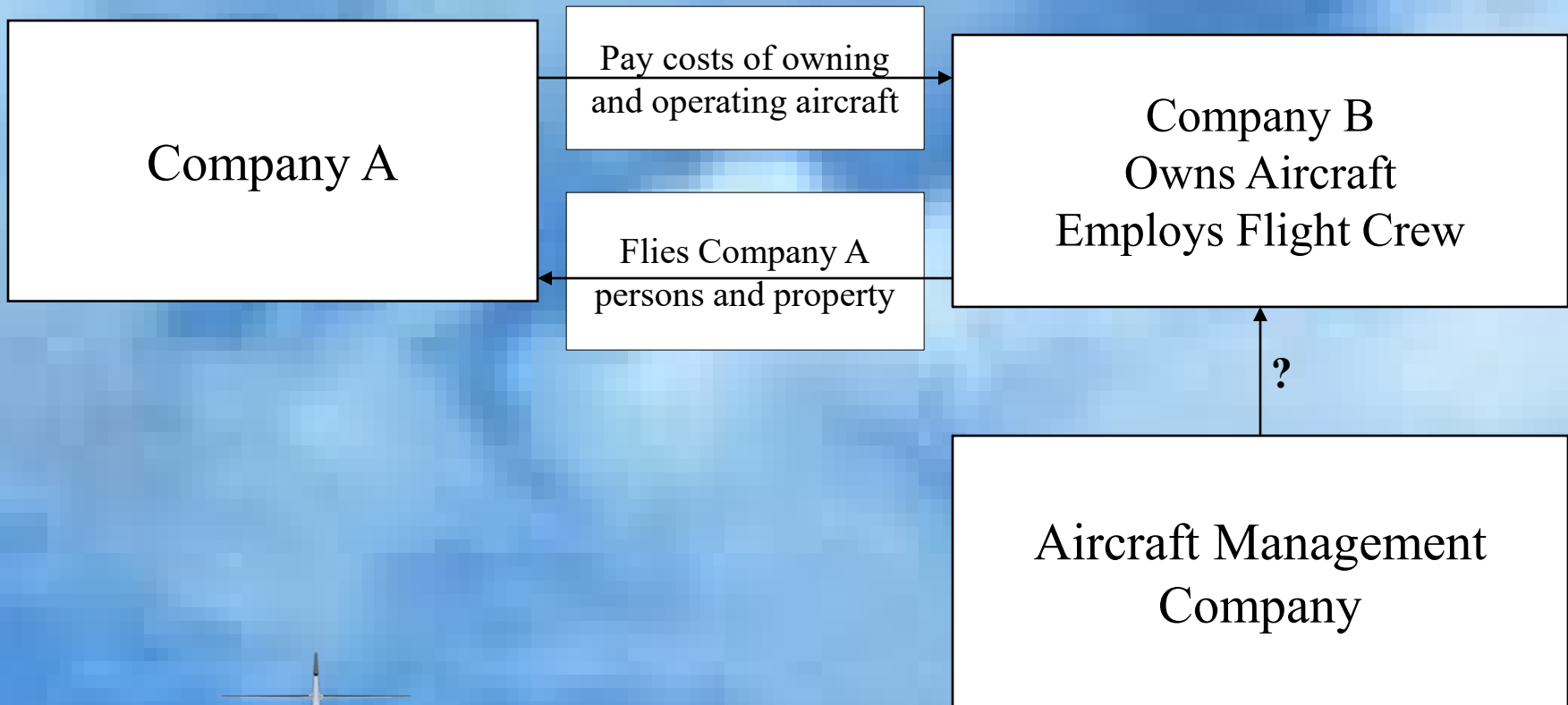
What Happens When An Aircraft Is Owned By A Single Purpose Entity?



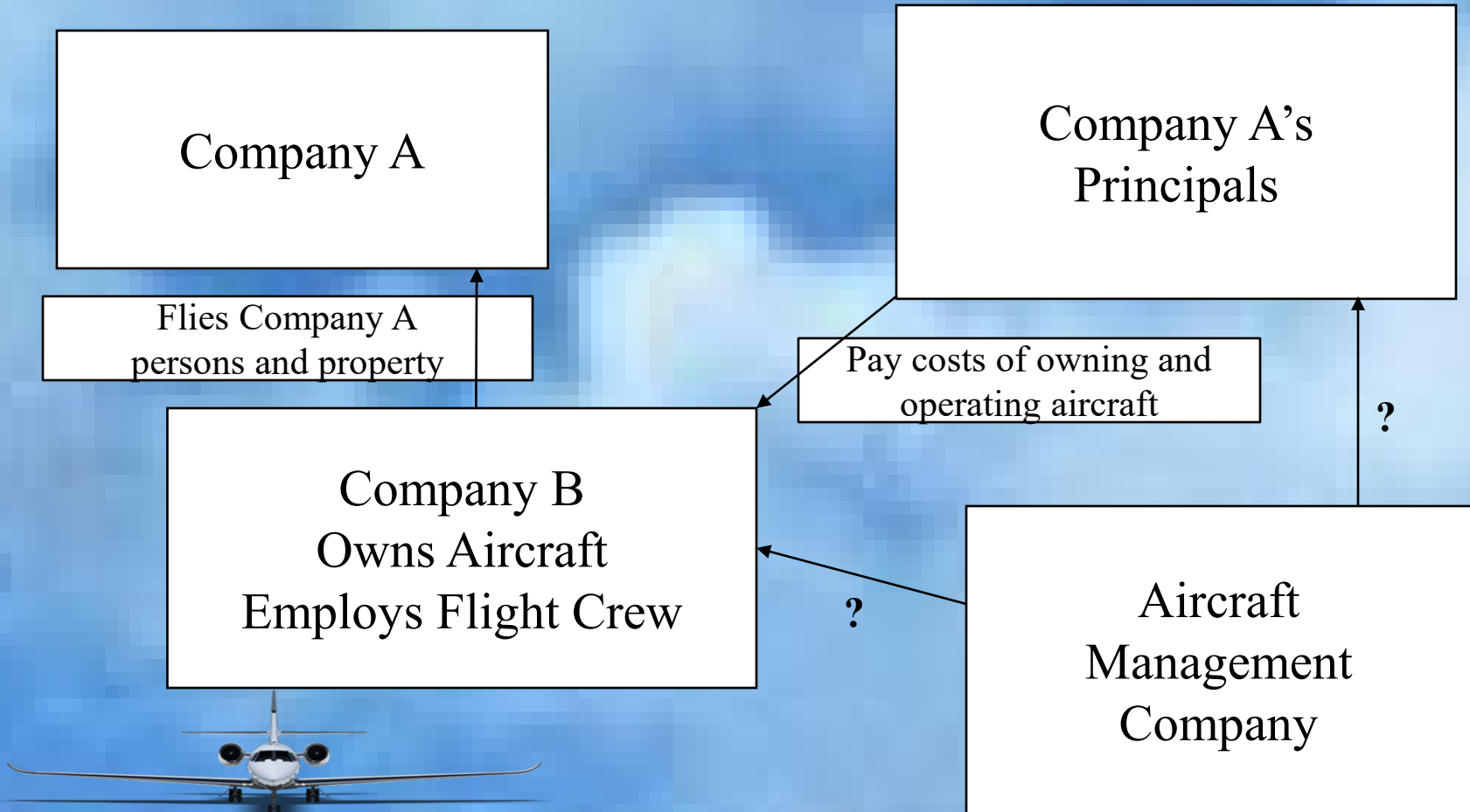
THE “FLIGHT DEPARTMENT COMPANY” TRAP!



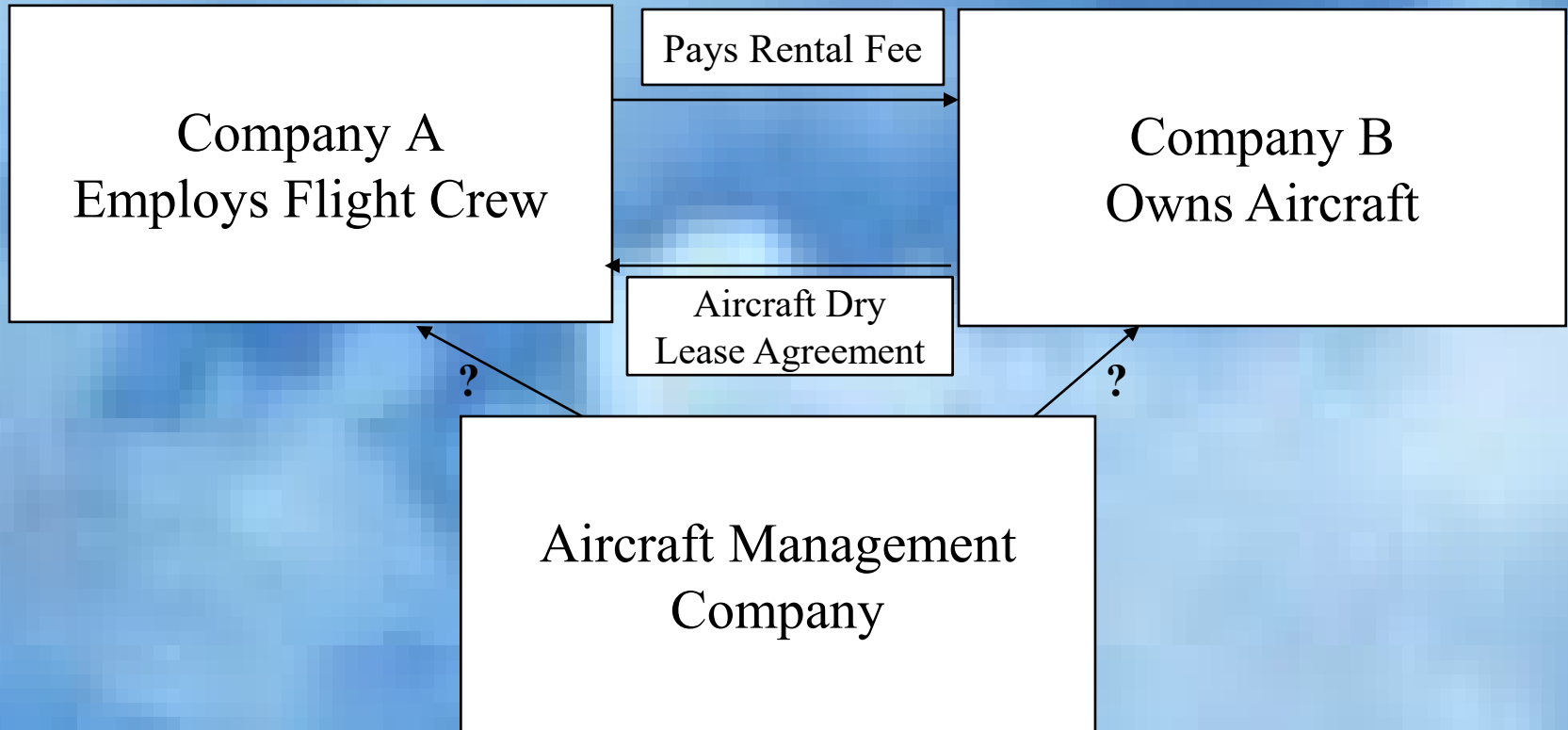
The Flight Department Company Trap



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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