

全国高等院校法律英语精品系列教材

法律英语证书 (LEC) 全国统一考试指定用书

法律英语证书 (LEC) 全国统一考试指导委员会 / 编

法律英语

综合教程

A Comprehensive
Course in
Legal English

中国法制出版社
CHINA LEGAL PUBLISHING HOUSE

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前 言

随着我国入世和改革开放程度不断加深，越来越多的外资进入中国市场，越来越多的中国企业走出国门寻找商机。无论是“迎进来”，还是“走出去”，法律问题是这些企业都须面临的问题，而这些法律问题中的大多数又都属于涉外法律的工作范畴。由于法律文化、法律条款的差异，中外双方在合作过程中不可避免地会出现许多矛盾分歧，减少、化解这些矛盾分歧需要沟通谈判，甚至需要通过法律手段来解决。所有这些工作都需要法律工作者通过专业外语完成。因此，在国际化趋势日见凸显的今天，掌握专业外语已经成为法律人必备的职业素质。

众所周知，美国法是英美法系的典型代表，其法律体系完整、内容丰富，既有传统的普通法，又有新兴的成文法；既有统一的联邦法，又有各州的法律。同时，美国法在世界范围内影响深远，学习研究美国法意义重大，这不仅表现为许多国家都在研究美国的法律规则，借鉴其成熟做法，还表现为许多国际公约也参照美国法的理念、原则、规则制定。

因此，本书作为学习法律英语的精读教材，主要介绍美国法，希望读者通过学习权威、实用的美国法律知识，掌握地道、纯正的法律英语。一般的语言教材都会系统地讲授语法知识，但本书的编写设想学生已经完成了从中学英语到大学一、二年级的基础英语学习，系统掌握了英语语法等基础知识并有不低于六千的英语词汇量。本书具有以下特点：

首先，编者参考了大量的美国原版法学书籍，包括美国法学院教材及大量判例，力求实现教材内容的权威性和丰富性。

其次，本书引用了许多极具代表性的英文案例。英美法系是判例法系，无论是法官还是律师都特别注重对判例的研究，因此学习美国法不能绕过案例，通过研究案例更有利于掌握标准的法律英语，也更容易掌握美国法的精髓。本书选取了十几个经典案例，以期最大程度地展现美国法原貌。

再次，本书在每部分后面都附有相关练习题，以期帮助读者检查自己学习掌握法律英语术语、基础美国法知识和逻辑推理知识的程度，查漏补缺。

本书共分十三部分。第一、二部分首先介绍了基本法律英语词汇的特点、美国的法律体系，这是学好法律英语的基础。第三至第十二部分分别介绍了美国主干部门法：

合同法部分对合同的成立、有效性、违约以及救济进行了详细的阐述；侵权法主要介绍了故意侵权、过失侵权、近因原则、共同侵权、代理人责任、严格责任以及抗辩等；知识产权法主要介绍了商业秘密、版权、专利、商标的概念及其保护；商法是美国法的精华，该部分除了介绍股份有限公司、有限责任公司、合伙等基本的商业组织形式，还介绍了我国合伙企业法中特殊的普通合伙——有限责任合伙（LLP）；票据法则主要介绍了在票据流通过程中的几种重要法律行为的概念及意义；证券法主要介绍了美国关于证券业的成文立法，着重介绍了著名的 10b-5 规则。此外本书还对美国宪法、刑法、刑事诉讼法、民事程序法、证据法、财产法等法律进行了概括介绍。本书最后一部分简单介绍了逻辑推理（logical reasoning）的有关知识，这也是涉外法务工作人员需熟练掌握的不可或缺的知识。

法律英语证书（Legal English Certificate，简称 LEC）全国统一考试旨在为国家机关、涉外企事业单位、律师事务所等提供招募国际性人才的客观标准，同时督促国内法律从业人员提高专业英语水平。LEC 考试的题型、考查内容与美国律师资格考试相近，同时又突出了法律英语语言运用特色，并结合中国实际增加了法律英语翻译测试。公检法机关和企事业单位涉外法务工作人员；从事涉外法务的律师、公司法律部门的从业人员；高等院校法律、英语、经贸等专业学生；愿意从事法律英语教学的教师以及社会上一切法律英语爱好者均可参加 LEC 考试。LEC 考试每年举行两次，分别在 5 月和 12 月的最后一个星期六举行。有关考试信息请考生关注 LEC 考试官方网站：www.lectest.com。

本书由法律英语证书（LEC）全国统一考试指导委员会组织专家编写，它不仅为欲参加 LEC 的考生提供了系统权威的复习指南，也是一本为全国高等院校学生学习法律英语所精心编写的精品系列教材之一。

参加本书修订工作的专家学者还有中国政法大学齐筠、刘华、魏蘅、张鲁平、姜妮妮，天津外国语大学严飞行等，全书由美国专家 Ben Armour 律师统稿。在此对诸位的辛勤劳动表示诚挚谢意。

书中不当之处，敬请同仁指正。

编者

2011 年 9 月

Contents

Part One	Basics of Legal English	(1)
Chapter 1	Introduction	(3)
Chapter 2	Historical Development of Legal English	(4)
Chapter 3	Characteristics of Legal English	(5)
Chapter 4	Terms and Rules in Legal English	(7)
Chapter 5	General Legal Terms	(13)
Part Two	American Legal Regime	(25)
Chapter 1	Overview of the U. S. Court System	(28)
Chapter 2	Jury Trial	(30)
Chapter 3	The Adversarial System	(33)
Chapter 4	Appellate Courts	(35)
Chapter 5	Appellate Judges	(36)
Chapter 6	Court Opinions and Case Digests	(37)
Part Three	Constitutional Law	(45)
Chapter 1	Introduction	(48)
Chapter 2	The Judicial Power	(48)
Chapter 3	Legislative Power	(52)
Chapter 4	Individual Guarantees Against Governmental or Private Action	(55)
Chapter 5	Retroactive Legislation	(56)
Chapter 6	Procedural Due Process	(57)
Chapter 7	Substantive Due Process	(58)
Chapter 8	Equal Protection	(59)
Chapter 9	Fundamental Rights	(62)
Part Four	Contracts	(71)
Chapter 1	Introduction	(74)
Chapter 2	Basics of Contracts	(75)
Chapter 3	Contract Formation	(77)

Chapter 4	Capacity to Contract	(95)
Chapter 5	Vitiating Factors	(97)
Chapter 6	Problems Involving Persons Other than the Parties to the Original Contract	(107)
Chapter 7	Discharge	(108)
Chapter 8	Breach of Contract	(112)
Chapter 9	Remedies for Breach of Contract	(113)
Chapter 10	Dispute Settlement	(118)
Part Five	Torts	(125)
Chapter 1	Introduction	(127)
Chapter 2	Intentional Torts	(129)
Chapter 3	Defenses to Intentional Torts	(133)
Chapter 4	Negligence	(135)
Chapter 5	Cause in Fact	(140)
Chapter 6	Proximate Cause	(142)
Chapter 7	Multiple Tortfeasors	(143)
Chapter 8	Damages for Personal Injuries	(145)
Chapter 9	Limited Duties: Special Limitations on the Scope of Duty	(148)
Chapter 10	Premises Liability; Duties of Owners and Occupiers of Land	(151)
Chapter 11	Defenses	(156)
Chapter 12	Vicarious Liability	(163)
Chapter 13	Products Liability	(165)
Chapter 14	Defamation	(168)
Chapter 15	The Privacy Torts	(171)
Chapter 16	Competitive Torts	(172)
Part Six	Property Law	(184)
Chapter 1	Introduction	(187)
Chapter 2	Acquisition of Property	(187)
Chapter 3	Possessory Estates	(189)
Chapter 4	Future Interests	(191)
Chapter 5	Concurrent Estates	(193)
Chapter 6	Landlord and Tenant	(195)
Chapter 7	Fixtures	(198)
Chapter 8	Rights in the Land of Another – Easements, Profits, Covenants and Servitudes	(199)

Chapter 9	Conveyancing	(203)
Chapter 10	Cooperatives, Condominiums and Zoning	(211)
Chapter 11	Nuisance	(212)
Part Seven	Evidence Law	(220)
Chapter 1	Introduction	(223)
Chapter 2	General Considerations	(223)
Chapter 3	Relevance and Judicial Notice	(225)
Chapter 4	Real Evidence	(228)
Chapter 5	Documentary Evidence	(230)
Chapter 6	Testimonial Evidence	(233)
Chapter 7	The Hearsay Rule	(242)
Chapter 8	Procedural Considerations	(247)
Part Eight	Civil Procedure	(263)
Chapter 1	Introduction	(266)
Chapter 2	Personal Jurisdiction	(267)
Chapter 3	Diversity of Citizenship Jurisdiction	(269)
Chapter 4	Federal Question Jurisdiction	(271)
Chapter 5	Venue	(273)
Chapter 6	Removal Jurisdiction	(275)
Chapter 7	Conflict of Jurisdiction between States and Federal Courts	(278)
Chapter 8	The Federal Rules of Civil Procedure	(279)
Part Nine	Criminal Law	(288)
Chapter 1	Introduction	(291)
Chapter 2	What Makes a Case a Criminal Case?	(293)
Chapter 3	How to Interpret Criminal Statutes	(294)
Chapter 4	How Defendants' Mental States Affect Their Responsibility for a Crime	(295)
Chapter 5	Criminal Offenses	(298)
Chapter 6	Implications of a Crime's Classification	(300)
Part Ten	Criminal Procedure	(308)
Chapter 1	Constitutional Restraints	(311)
Chapter 2	Exclusionary Rule	(311)
Chapter 3	Fourth Amendment	(313)
Chapter 4	Confessions	(317)
Chapter 5	Pretrial Procedures	(320)

Chapter 6	Trial	(322)
Chapter 7	Guilty Pleas and Plea Bargaining	(327)
Chapter 8	Constitutional Rights in Relation to Sentence and Punishment	(328)
Chapter 9	Constitutional Problems on Appeal	(331)
Chapter 10	Rights during Punishment—Probation, Imprisonment, Parole ...	(332)
Chapter 11	Double Jeopardy	(333)
Chapter 12	Forfeiture Actions	(335)
Part Eleven	Intellectual Property Law	(343)
Chapter 1	Introduction	(346)
Chapter 2	Trade Secrets	(347)
Chapter 3	Patent	(350)
Chapter 4	Copyright	(361)
Chapter 5	Trademark Law	(375)
Part Twelve	Business Law	(387)
Chapter 1	Introduction to Business Forms	(391)
Chapter 2	Partnership	(393)
Chapter 3	Limited Liability Company	(396)
Chapter 4	Corporation	(399)
Chapter 5	Securities	(434)
Chapter 6	Commercial Paper	(449)
Part Thirteen	Logical Reasoning	(468)
Chapter 1	Introduction	(472)
Chapter 2	Assumptions	(473)
Chapter 3	Method of Argument	(475)
Chapter 4	Faulty Logic	(478)
Chapter 5	Strengthening or Weakening	(479)
Chapter 6	Parallel Reasoning	(481)
Chapter 7	Inference	(483)
Chapter 8	Other Question Types	(484)
Appendix: Key to the Exercises	(494)
References	(498)

Part One Basics of Legal English



法律英语(Legal English)在英语国家中被称为 Legal Language 或 Language of the Law,即法律语言。学好法律英语首先是以英语为基础,同时还要通晓中国法律与英美法律知识。现代社会强调多元化,对于诸多领域来说,仅仅具有专业的法律知识已经很难应对复杂的社会关系了,因此,也就更加提高了法律从业者对英语与法律相互融合能力的要求。

法律英语作为英语语言与法律的交叉学科,在翻译、词汇写作等方面都有很多别具一格的特点。因为法律英语在表达上必须具有专业性、准确性、正式性和客观性等特点,所以法律英语中包含了众多的关于法律法规、权利义务的专业词汇,还有不少的古英语词汇和拉丁语、法语等外来词汇。法律英语在句式上的特点突出表现为句子通常是以长难句居多,而且还有很多对于普通人理解起来十分困难的固定用法。

本书的第一部分共有五章,概括介绍了法律英语的背景知识和基础知识。法律英语融合了“法律”与“英语”两类课程的特点,但又区别于这两类课程,自成体系,其主要着眼点在于“英语”而不是“法律”。学习者尤其要将重点放在如何用英语来表述有关法律关系,如何用英语处理好涉外法律事务上,要对英美法有一个基本了解。基于这样的原因,本部分主要介绍法律英语各个方面的主要特征,使读者能够对法律英语有一个全面概括的了解;并且本部分也介绍了法律英语的历史发展过程,能让读者对法律英语发展脉络有个宏观、清晰的认识。

第一章是对法律英语的简单介绍。法律英语是法律工作者(尤其是涉外法务人员)日常工作中的必备工具。要想学习好法律英语,首先要学好法律英语中的行业术语,而这些术语、固定搭配等都是我们在日常的生活与学习中不曾或很少接触过的。这就要求我们在法律英语学习的过程中养成勤于查阅词典的习惯,而且要求查阅专门的法律英语词典。

第二章主要介绍了法律英语的历史演变过程。现代法律英语是以普通英语为基础的,但法律英语又独具特色。这些特征的形成与法律英语的历史演变过程有着密不可分的关系。本章较为详细地介绍了法律英语中为什么有那么多的法语法律词汇;法语和法

律英语的特殊关系以及人们在法律英语中使用拉丁语的理由。

第三章概括介绍了法律英语不同于普通英语的十二个特点。正是由于法律英语的这些特点,才在一定程度上增加了我们学习、理解和应用法律英语的难度。既然知道了问题症结所在,那么在以后的学习中就要做到目的明确、“对症下药”,这样才能达到事半功倍之效。

第四章介绍了法律英语中的表述方式。各种不同的词性、时态在法律英语中用法各异,表达不同含义。有很多普通英语词汇在法律英语中所表达的意思与其普通含义大相径庭,所以一定要将特定的词汇放在法律语境下理解才能准确把握其含义。

第五章概括介绍了美国司法程序不同阶段所用到的基本法律术语。法律英语对于母语为英语的人来说也是有一定难度的,因为法律英语的专业性很高。它要求学习者即有良好的英语知识,也要有一定的法律基础,难度之大不言而喻。法律英语只能在专业的领域里使用,在其他的场合是不宜使用的。还有些普通词汇含有法律意义,这些词若用于法律文件中就不再具有普通英语的含义了。

通过本部分的学习,读者可以发现法律英语作为专业英语的确和普通英语有很大的不同。对于中国人来说,学习法律英语比学习英语本身更有难度。首先,中国的法律制度接近大陆法系,与英美法系的差异很大;其次,英语并不是我们的母语,法律英语对于英语语言水平要求很高。基于此,就要求学习者在学习法律英语的过程中,要尽可能创造法律英语的使用环境,对外国法律知识尤其是美国的法律知识有所了解,也要提高与其他国家的法律专业人员的交流与互动,通过参与各种涉外法律事务的处理来学习法律英语,了解国外的法律文化。在学习法律英语的过程中,要有很强的意识将法学知识与英语语言知识相结合,决不要让两者分离。说法律英语难,不如说法律英语的“入门难”。只要了解了法律英语的这些特点,学习方法得当,勇敢地面对“入门难”,闯过这一关,你就会发现别有一番洞天。

Chapter 1 Introduction

Legal English is the style of English used by lawyers and other legal professionals in the course of their work. It has traditionally been the preserve of lawyers from English-speaking countries (especially the U. S. , the UK, Canada, Australia, and New Zealand) which have shared common law traditions. However, due to the spread of English as the predominant language of international business, as well as its role as a legal language within the European Union, legal English is now a global phenomenon.

Law is everywhere in the United States. The daily newspaper and the evening news report about the latest sensational criminal trial, massive lawsuit, or constitutional claim. Because law is everywhere, the language of the law is everywhere, too. New stories, television shows, and legal transactions are filled with special words and phrases. To learn legal English well, one must study the features of legal terms or jargon first.

Law must contain technical terms, but “technical” does not have to equate to “incomprehensible”. In a democratic society, law belongs not to the lawyers but to the people, and ordinary people need to be able to understand the law. That is the purpose of this chapter: to make the language of the law accessible to the layperson and the beginning student of the law.

When you encounter an unfamiliar legal term or phrase, you should make it a habit to look up that word not only in a bilingual dictionary but also in a good, English language law dictionary. You must do this because many words that appear to be familiar will have very different meanings in American law. For example, the functions of a “notario” in Spain or Latin America are much more extensive and significant than the functions fulfilled by a “notary” in the United States.

When you look up a word in an English language law dictionary, you will usually learn not only that word but other words as well. By doing so, you will learn more about the legal concepts you are studying. You know already that many words are capable of multiple meanings. Even a simple word such as “issue”, for example, can refer to:

- (1) A legal question to be decided by a court; or
- (2) The process by which a judge will approve a police officer’s request for a search warrant; or
- (3) The children of a testator (someone who has written a will).

Some people say that finding alternative meaning for words is at the heart of the lawyer’s craft. Consider this quotation from John Marshall, the “Great Chief Justice” of the U. S Supreme Court:

Such is the character of human language, that no word conveys to the mind, in all situations, one single definite idea; and nothing is more common than to use words in a figurative

sense. Almost all compositions contain words, which, taken in their rigorous sense, would convey a meaning different from that which is obviously intended.

You may also have the experience that the terms here are too difficult. Remember that this course is only an introduction—you will encounter these words and phrases in the future. You will have other opportunities to learn more about these terms. Do not be discouraged if you are having difficulties—you are being challenged and you can rise to meet that challenge. American law students often encounter similar difficulties as they begin their studies; many words that were once familiar are no longer so in the context of specific legal documents.

Chapter 2 Historical Development of Legal English

Modern legal English is based on standard English. However, it contains a number of unusual features. These largely relate to terminology, linguistic structure, linguistic conventions, and punctuation, and have their roots in the history of the development of English as a legal language.

Following the Norman invasion of England in 1066, Anglo-Norman French became the official language of legal proceedings in England for a period of nearly 300 years. Consequently, many words in common use in modern legal English are derived from what evolved into Law French. These include property, estate, chattel, lease, executor, and tenant. The use of Law French during this period has an enduring influence on the general linguistic register of modern legal English. It also accounts for some of the complex linguistic structures employed in legal writing. During this period, Latin remained the language of formal records and statutes. However, since only the learned were fluent in Latin, it never became the language of legal pleading or debate. The influence of Latin can be seen in a number of words and phrases such as *ad hoc*, *de facto*, *bona fides*, *inter alia*, and *ultra vires*, which remain in current use in legal writing. ①

In 1356, the Statute of Pleading was enacted (in French). It stated that all legal proceedings should be in English, but recorded in Latin. Nonetheless, the use of French in legal pleadings continued into the seventeenth century in some areas of the law. In this later period, new branches of—in particular—commercial law began to develop entirely in English and remain relatively free of French-based terminology.

As the printed word became more commonplace, some writers made a deliberate effort to adopt words derived from Latin, with the aim of making their text appear more sophisticated. Some legal words taken from Latin in this way are *adjacent*, *frustrate*, *inferior*, *legal*, *quiet* and *subscribe*. Some writers also started to use a Latin word order. This led to an ornate style, delib-

① www.wikipedia.org

erately used to impress rather than inform. Even today, Latin grammar is responsible for some of the ornateness and unusual word order of legal documents. It also lies behind the frequent use of *shall* constructions in legal documents.

English was adopted for different kinds of legal documents at different times. Wills began to be written in English approximately during the 1400's. Statutes were written in Latin until about the 1300's, in French until 1485, in English and French for a few years, and in English alone from 1489.

Chapter 3 Characteristics of Legal English

Legal English differs from standard English in a number of ways. The most important of these differences are as follows:

1. Extensive use of words and phrase derived from French and Latin

Legal English contains many words and phrases from Latin and French. Sometimes foreign phrases are used instead of English phrases (e. g. *inter alia* instead of *among others*), unusual pronouns are employed (*the same, the aforesaid, etc*), and unusual set phrases are to be found (*null and void, all and sundry*).

2. Legal terms of art

Legal terms of art are technical words and phrases that have precise and fixed legal meanings and which cannot usually be replaced by other words. Some of these will be familiar to the layperson (e. g. *patent, share, royalty*). Others are generally only known to lawyers (e. g. *bailment, abatement*).

3. Legal jargon

Terms of art should be differentiated from legal jargon. Legal jargon comprises words used by lawyers, which are difficult for non-lawyers to understand. Jargon words range from near-slang to almost technically precise words. Well-known examples of jargon include *boilerplate clause* and *corporate veil*. Jargon includes a number of archaic words no longer used in ordinary English. These include *annul* (to declare that something, such as a contract or marriage is no longer legally valid) and *bequeath* (to hand down as an inheritance property other than land). It also includes certain obscure words which have highly specialised meanings and are therefore not often encountered except in legal documents. Examples include *emoluments* (a person's earnings, including salaries, fees, wages, profits and benefits in kind) and *provenance* (the origin or early history of something). Jargon words should be replaced by plain language equivalents wherever possible.

4. Legal meaning may differ from the general meaning

There is also a small group of words that have one meaning as a legal term of art and another meaning in ordinary English. One example is the word *distress*, which as a legal term of art

refers to the seizure of goods as security for the performance of an obligation. In ordinary English it means anxiety, pain or exhaustion.

5. Words may be used in apparently peculiar contexts

A number of words and phrases, which are used in ordinary English, are also used in legal English but in unusual contexts. Examples include *furnish*, *prefer*, *hold*.

6. Lack of punctuation

One of the most unusual aspects of old-fashioned legal drafting-particularly in conveyances and deeds-is the almost complete lack of punctuation. This arose from a widespread belief among lawyers and judges that punctuation was unimportant and potentially confusing, and that the meaning of legal documents should be gathered solely from the words used and the context in which they were used. In modern legal drafting, punctuation is (or should be) used for the same reason as it is used in ordinary writing-to give clarification about meaning.

7. Use of doublets and triplets

There is a curious historical tendency in legal English to string together two or three words to convey what is usually a single legal concept. Examples of this include *null and void*, *fit and proper*, *perform and discharge*, *dispute*, *controversy or claim*, and *promise*, *agree and covenant*. Such constructions must be treated with caution, since sometimes the words used suggest, for practical purposes, exactly the same thing (*null and void*); and sometimes they don't (*dispute*, *controversy or claim*).

8. Unusual word order

At times, the word order used in legal documents appears distinctly strange; for example, "*the provisions for termination hereinafter appearing*." There is no single clear reason explaining this phenomenon, although the influence of French grammatical structures is certainly a contributing factor.

9. Use of unfamiliar pro-forms

For example, *the same*, *the said*, *the aforementioned* etc. The use of such terms in legal texts is interesting since very frequently they do not replace the noun-which is the whole purpose of pro-forms-but are used as adjectives to modify the noun. For example: "*the said John Smith*."

10. Here-, there-and where-words

Words like *hereof*, *thereof*, and *whereof* (and further derivatives, including *-at*, *-in*, *-after*, *-before*, *-with*, *-by*, *-above*, *-on*, *-upon* etc) are not often used in ordinary English. They are used in legal English primarily as a way of avoiding the repetition of names of things in the document-very often, the document itself. For example, *the parties hereto* instead of *the parties to this contract*.

11. -er, -or, and -ee name endings

Legal English contains a large number of names and titles, such as employer and employee, or lessor and lessee, in which the reciprocal and opposite nature of the relationship is indi-

cated by the use of alternative endings. This practice derives from Latin.

12. Use of phrasal verbs

Phrasal verbs play a large role in legal English, and are often used in a quas-technical sense. For example, *parties enter into contracts, put down deposits, serve [documents] upon other parties, write off debts*, and so on. ^①

Chapter 4 Terms and Rules in Legal English

1. Articles

Articles in English include *the, a* and *an*. *A* is used when mentioning something for the first time (“a client walked into the office”). *An* is used in the same circumstances but only where the following word begins with a vowel (“an attorney walked into the office”). *The* is used when referring to something already mentioned before (“the client then sat down”), or when referring to something that is the only one of its kind (“the sun”) or when referring to something in a general rather than a specific way (“the internet has changed our way of life”).

In some circumstances, articles should be omitted. For example, when a sentence links two parallel adjectival phrases, the article should be omitted from the second phrase. For example: *The judge ruled that Cloakus Ltd was a validly registered and (an) existing company*. In addition, when using certain abstract nouns in a general, conceptual sense, it is not necessary to use an article to precede the noun. For example: *In the event of conflict between the definitions given in appendix 1 and the definitions given in the contract, the contract shall prevail*. There is no need here to precede *conflict* with *a*, since *conflict* is used in a general conceptual sense. However, when referring to a specific conflict, articles should be used, as in *the opposing factions took part in the conflict*.

2. Prepositions

Prepositions are words used with a noun or pronoun which show place, position, time or method. Prepositions such as *to, in, from, between, after, before*, etc, normally come before a noun or pronoun and give information about how, when or where something has happened (“she arrived before lunch”, “I travelled to London”). The preposition *between* should be followed by an object pronoun like *me, him* or *us* instead of a subject pronoun such as *I, she* and *we*. It is therefore correct to say “this matter is between you and me” and wrong to say “this matter is between you and I”. The main problem for the non-native speaker is remembering which preposition to use. There are no clear rules to follow in this respect, but some examples of common usages are set out below:

The parties to this agreement ...

① www.wikipedia.org