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https://www.100test.com/kao_ti2020/502/2021_2022__E8_81_8C_E5_9C_BA_E8_8B_B1_E8_c96_502339.htm Contract 与

Agreement的有无区别 在英语中，合同一般称为Contract，协议一般称为Agreement。何谓“Contract”？1999年中国《合同法》第二条对contract定义为：A contract in this Law refers to an agreement establishing, modifying and terminating the civil rights and obligations between subjects of equal footing, that is, between natural persons, legal persons or other organizations. 根据这一定义，合同平等主体之间设立的确定的民事权利和义务的协议。

Steven H. Gifts编著的“Law Dictionary”中将contract定义为“contract is a promise, or a set of promises, for breach of which the law gives remedy, or the performance of the which the law in some way recognize as a duty.”根据这一定义，合同是一种承诺，违反承诺可以得到法律救助，某种意义上法律将履行该承诺看做是一种补偿。L.B Curzon在其编撰的字典“A Dictionary of Law”给contract的定义：“Contract is a legally binding agreement”根据这一定义，合同就是有法律约束力的协议。综合起来，有一个相同点，就是“Contract is an agreement”，即可将事同说成是“An agreement which binds the parties concerned”或者说成是“An agreement which is enforceable by law”，也可以说：Contracts are promises that the law will enforce。何谓“Agreement”？L.B “A consensus of mind, or evidence of such consensus, in spoke or written form, relating to anything done or to be done.”根据这一定义，协议是对已经做或准备做

的相关事宜，经过谈判、协商后取得一致意见，以口头或书面形式做出的约定。Black “ Law Dictionary ” 有两个定义。一个是：“ A concord of understanding and intention between two or more parties with respect to the effect upon their relative rights and duties, of certain past or future facts or performance ” 根据这一定义，协议即双方或多方就某些过去或将来某些事实的相关权利、义务或相关权利、义务的履行而达成的一致理解和愿望。另一个是：The consent of two or more persons concurring respecting the transmission of some property, right or benefits, with the view of contacting an obligation, a mutual obligation.根据这一定义，协议即两个或多个当事人，为了约定单方责任或相互责任，就财产权利、利益的转移取得的一致同意。Contract(合同)和Agreement(协议)是不是可以互换呢？合同的成立必须具备几个主要因素。它们（要约和承诺构成的）协议、约因、设立法律关系的愿望和缔约能力四大部分组成。L.B Curzon编著的“ A Diction of Law ” 提到“ Contract generally involves ” 1. offer and absolute and unqualified acceptance (要约和绝对接受) 2. consensus ad idem (意思表示一致，也叫meeting of minds) 3. intention to create legal relations (建立合同关系的意愿) 4. genuineness of consent (同意的真实性) 5. contractual capacity of the parties (合同当事人的缔约能力) 6. legality of object(标的物的合法性) 7. possibility of performance (履行的可能性) 8. certainty of terms(条款的确定性) 9. valuable consideration(等价有偿) Black “ Law Dictionary ” 中解释道：Although often used as synonyms with "contract", agreement is a broader term, e.g. an agreement might lack an essential element of a contract." 即“协议”

和“合同”经常用作同义词，但“协议”这一术语含义更广，例如协议可能缺乏合同的必备条款（essential clauses/provisions）。100Test 下载频道开通，各类考试题目直接下载。详细请访问 www.100test.com