

109年警察人員升官等考試、109年 交通事業鐵路人員升資考試試題

等 級：佐級晉員級

類 別：各類別

科 目：法學知識與英文（包括中華民國憲法、法學緒論、英文）

考試時間：1 小時

座號：_____

※注意：(一)本試題為單一選擇題，請選出一個正確或最適當的答案，複選作答者，該題不予計分。

(二)本科目共 50 題，每題 2 分，須用 2B 鉛筆在試卡上依題號清楚劃記，於本試題上作答者，不予計分。

(三)禁止使用電子計算器。

- 1 依憲法前言，下列敘述何者錯誤？
(A)憲法依據國父遺教制定 (B)憲法由國民大會制定
(C)維持國際和平是憲法制定目的之一 (D)奠定社會安寧是憲法制定目的之一
- 2 依憲法第 145 條第 2 項及第 3 項之規定，針對合作事業與國民生產事業，國家應採取下列何種作為？
(A)自由競爭 (B)局部公開 (C)控制 (D)獎勵
- 3 依據司法院釋字第 509 號解釋，下列何項基本人權，國家應給予最大限度之維護，俾其實現自我、溝通意見、追求真理及監督各種政治或社會活動之功能得以發揮？
(A)工作權 (B)言論自由 (C)宗教自由 (D)居住自由
- 4 司法院釋字第 690 號解釋認為傳染病防治法授權主管機關，得強制隔離曾與傳染病人接觸者之規定，尚未違憲。下列情形所限制之基本權利，何者與本號解釋不同？
(A)法務部依監獄行刑法之規定否准受刑人提出之假釋申請
(B)少年法院對於吸食毒品之少年作出收容於少年觀護所之裁定
(C)內政部移民署限制逃漏稅捐達一定數額之納稅義務人出境
(D)警察機關對於違反社會秩序維護法之行為人依確定之裁定執行拘留
- 5 下列何者未曾由司法院大法官解釋引為優惠性差別待遇立法之憲法依據？
(A)憲法第 155 條：「人民之老弱殘廢，無力生活，及受非常災患者，國家應予以適當之扶助與救濟。」
(B)憲法增修條文第 10 條第 7 項：「國家對於身心障礙者之……生活維護與救助，應予保障，並扶助其自立與發展。」
(C)憲法第 151 條：「國家對於僑居國外之國民，應扶助並保護其經濟事業之發展。」
(D)憲法第 5 條：「中華民國各民族一律平等。」
- 6 下列何者不是憲法第 8 條規範之內涵？
(A)人身自由 (B)正當法律程序 (C)軍事審判制度 (D)提審制度
- 7 關於憲法所保障之隱私權，下列敘述何者錯誤？
(A)雖非屬憲法所明文列舉之權利，但透過大法官解釋，認其應受憲法第 22 條保障
(B)隱私權係為保障個人生活私密領域免於他人侵擾
(C)若在公共場域，則無法主張隱私權之保護
(D)隱私權保障每個人對於其個人資料有自主、自決之權利，是謂資訊隱私權
- 8 依憲法增修條文之規定，下列何者非由行政院向立法院提出？
(A)施政方針及施政報告 (B)預算案 (C)條約案 (D)特赦案
- 9 依憲法本文及憲法增修條文之規定，關於總統職權，下列敘述何者錯誤？
(A)總統有權提出條約案並行使締結條約之權
(B)總統於國家財政經濟遇重大變故時，得經行政院會議之決議，發布緊急命令
(C)總統統率全國陸海空軍
(D)總統對於院與院間爭執得召集有關各院院長會商解決
- 10 依憲法及憲法增修條文規定，關於考試院院長、副院長、考試委員之敘述，下列何者錯誤？
(A)考試院設院長、副院長各 1 人
(B)考試院設院長、副院長，由總統提名，經立法院同意任命之
(C)考試院設考試委員 19 人由總統提名，經立法院同意任命之
(D)考試院設考試委員，需超出黨派以外，依法律獨立行使職權

- 11 下列何項法規範，並非我國違憲審查制度之法規依據？
(A)憲法本文 (B)行政程序法
(C)憲法增修條文 (D)司法院大法官審理案件法
- 12 依司法院釋字第 396 號解釋，下列何者並非行使審判權之法院？
(A)行政法院 (B)臺北地方法院 (C)臺北地方檢察署 (D)公務員懲戒委員會
- 13 關於地方自治團體之敘述，下列何者錯誤？
(A)臺灣省政府亦屬地方自治團體 (B)地方自治團體，係指具有公法人地位之團體
(C)地方自治團體執行委辦事項，費用由中央負擔 (D)地方議會可透過自治條例之規定限制人民權利
- 14 依憲法及司法院大法官解釋，下列何者不屬於立法院之職權？
(A)人事同意權 (B)調查權
(C)違憲政黨之解散 (D)中央與地方權限爭議之解決
- 15 依司法院大法官解釋，有關立法委員之選舉，下列敘述何者正確？
(A)單一選區制與比例代表制混合之兩票制，有扭曲全體選民意志並違反國民主權原則之嫌
(B)有關全國不分區立法委員選舉採取 5%之政黨門檻規定部分，可能產生選票不等值之現象
(C)並立制及政黨比例代表席次為 34 人之規定，難以兼顧選區代表性與政黨多元性
(D)有關每縣市至少選出立法委員 1 人之規定，已侵及選舉平等權之核心
- 16 我國民法第 757 條規定，物權除依法律或習慣外，不得創設。本條文所稱之習慣，下列何者正確？
(A)社會上存在的物權習慣，即可合法創設物權 (B)只要習慣內容符合法律，不需有長久之慣行
(C)法律規定的事項亦可成為本條所稱習慣內容 (D)此種習慣不可違反公共秩序
- 17 關於法規與事實之涵攝，下列敘述何者錯誤？
(A)「推定」是法規就未明之事實所為之假設，可舉證推翻
(B)「擬制」是法規就未明之規定所為之假設，可舉證推翻
(C)「視為」是法規就未明之事實所為之認定，不可舉證推翻
(D)「準用」是法規將其他法規之規定適用於本法規所稱之事實
- 18 「公民與政治權利國際公約及經濟社會文化權利國際公約施行法」之性質屬於下列何者？
(A)法規命令 (B)法律 (C)行政規則 (D)國際條約
- 19 衛生福利部預告「食品業者登錄辦法」草案，為廣納各方意見，將陳述意見期間定為 60 天，下列敘述何者錯誤？
(A)「食品業者登錄辦法」屬法規命令之性質 (B)此一修正草案須經過立法院通過，總統公布
(C)此一預告程序係為踐行正當程序 (D)衛生福利部得依職權舉行聽證
- 20 關於同志家庭權益之敘述，下列何者正確？
(A)年滿 20 歲之同性伴侶始可至戶政機關登記結婚
(B)同性配偶可依法辦理共同收養
(C)同性配偶當事人之一方可收養他方之親生子女
(D)同性配偶當事人之一方可收養他方之養子女
- 21 下列何者非屬公務員懲戒法明定之懲戒類型？
(A)撤職 (B)減少退休金 (C)停職 (D)罰款
- 22 依憲法訴訟法規定，下列何者非屬憲法法庭審理之事項？
(A)總統、副總統彈劾案件 (B)政黨違憲解散案件
(C)法規範憲法審查及裁判憲法審查案件 (D)最高法院民事庭各庭法律見解之歧異
- 23 甲為自己利益，而擅自將乙所有之市價新臺幣(以下同)100 萬元之 A 古董花瓶，以 150 萬元出售並交付予善意且無重大過失之丙。下列敘述，何者正確？
(A)乙得對丙行使所有物返還請求權
(B)乙得依侵權行為之規定向甲請求其所受之損害 150 萬元
(C)乙得依不當得利之規定請求甲返還所得之利益 150 萬元
(D)乙得依不法管理之規定向甲請求返還受得之利益 150 萬元

- 24 依民法第 1187 條規定，遺囑人於不違反關於特留分規定之範圍內，得以遺囑自由處分遺產。關於遺囑之效力，下列敘述何者錯誤？
(A)遺囑自遺囑人死亡時發生效力
(B)受遺贈人於遺囑發生效力前死亡者，其遺贈不生效力
(C)遺囑所定遺贈，附有停止條件者，視為無條件
(D)遺囑所定遺贈附有義務者，受遺贈人以其所受利益為限，負履行之責
- 25 下列關於公務員的敘述，何者正確？
(A)市政府內約聘的職務代理人不屬於刑法中之公務員，因為其非經國家考試任用
(B)警察局中的工友為刑法中之公務員，因為其係服務於國家機關當中
(C)縣政府所進用機要人員不屬於刑法中之公務員，因為其非經國家考試任用
(D)律師懲戒委員會委員為刑法中之公務員，因為其依律師法具有法定職務
- 26 下列何者非屬刑法上之保安處分？
(A)強制工作 (B)強制治療 (C)強制隔離 (D)驅逐出境
- 27 有關刑法第 55 條想像競合，依實務見解，下列敘述何者錯誤？
(A)甲放火燒燬現供人使用住宅並同時燒燬住宅內之其他物品，僅犯一個放火燒燬現供人使用之住宅罪，無適用刑法第 55 條從一重處斷之餘地
(B)甲同時偽造不同被害人之文書，僅犯一個偽造文書罪，無適用刑法第 55 條從一重處斷之餘地
(C)甲以一狀誣告三人，僅犯一個誣告罪，無適用刑法第 55 條從一重處斷之餘地
(D)甲同時辱罵三位執勤員警，僅犯一個侮辱公務員罪，無適用刑法第 55 條從一重處斷之餘地
- 28 下列有關消費者保護法規定之定型化契約條款敘述，何者為錯誤？
(A)定型化契約條款，係指企業經營者為與多數消費者訂立同類契約之用，所提出預先擬定之契約條款
(B)定型化契約條款限於書面
(C)企業經營者在定型化契約中所用之條款，若違反平等互惠之原則，則推定其顯失公平
(D)企業經營者應給與消費者定型化契約書。但依其契約之性質致給與顯有困難者，不在此限
- 29 下列何者為核發保護令之機關？
(A)警察機關 (B)社政機關 (C)司法機關 (D)直轄市或縣（市）政府
- 30 憲法第 23 條規定所揭示的原則，不包括下列何者？
(A)對於基本權之限制，原則上應有法律之依據 (B)對於基本權之限制，必須符合比例原則
(C)憲法對於基本權之保障並非絕對 (D)本條所指之「法律」，以立法院所制定者為限
- 31 The employee received a large sum of money as _____ after he was injured in an accident at work.
(A) discrimination (B) publication (C) immigration (D) compensation
- 32 Not only are people more likely to stick with it, enjoyable exercise is a great way to release endorphins and _____ stress.
(A) relieve (B) receive (C) fade (D) resist
- 33 In Southern Asia, where industrial development is in its _____, the local labors look for job opportunities overseas.
(A) infancy (B) constitution (C) initiation (D) climax
- 34 The children worked on the project _____. They solved all the problems by themselves.
(A) independently (B) impractically (C) irregularly (D) indecently
- 35 Rick and Nick are twins, but they don't look much alike. Rick is tall and slim, but Nick, _____, is short and fat.
(A) in effect (B) in reality (C) in other words (D) in contrast
- 36 That video rental store has a great _____ of movies and the owner is such a good reviewer of films; he always helps me choose.
(A) election (B) assignment (C) collection (D) medium
- 37 The government has organized special programs to help children's recovery from the _____ earthquake.
(A) clinical (B) vigorous (C) barbarian (D) traumatic
- 38 This questionnaire is used to _____ an individual's personality.
(A) analyze (B) heal (C) monitor (D) nourish
- 39 The business tycoon is _____ by the talk show hostess on his relationship with some female celebrities.
(A) soaked (B) curved (C) grilled (D) kneaded

- 40 Now that there is a High Speed Rail link, I think it is _____ to travel by plane from Taipei to Kaohsiung.
 (A) impractical (B) sensible (C) competitive (D) inevitable
- 41 There _____ a supermarket at the corner of the street, but it closed a few years ago.
 (A) used to have (B) was used to having (C) used to be (D) was used to being

請依下文回答第 42 題至第 45 題

By his own testimony, Igor Stravinsky was not a good student and usually performed at or _____ 42 _____ the average level for his class. _____ 43 _____ Picasso, however, who appears to have had genuine learning problems, Stravinsky was _____ 44 _____ uninterested in formal schooling and preferred throughout his life to educate himself. Ignoring his son's anti-scholastic, Stravinsky's father insisted that Igor _____ 45 _____ his footsteps and receive legal training. Stravinsky did not like law school at all, and this alienation only worsened his tense relation with his father and his general disaffection with his current situation.

- 42 (A) below (B) above (C) on (D) for
- 43 (A) Like (B) Unlike (C) As much as (D) In line with
- 44 (A) never (B) scarcely (C) hardly (D) simply
- 45 (A) follow (B) stride (C) walk (D) stroll

請依下文回答第 46 題至第 50 題

In America, tipping in restaurants is common. The tip is usually based on the amount of the bill. Around the country, tipping averages 15 percent of the bill. The 15 percent tip is creeping up to 20 percent. As the cost of the meal goes up, so does the size of the tips. Servers in expensive restaurants usually earn more. That is because the meals in such restaurants cost more. In most restaurants, servers earn much more than the people who prepare food. There is a problem with tipping. It is the idea "that someone would only be nice to you if they expect a generous tip."

A debate about tipping is starting in the U.S. The man who started the debate is Danny Meyer. He owns a number of eateries in New York City. Meyer said, "Tipping is a drug, and we need to break the habit." He says tipping forces diners to end every meal with a math test. He says tipping puts servers at the mercy of customers who are cranks and cheapskates. Foreign tourists might not even know the custom and might leave no tip at all.

Meyer sees restaurants as complex worlds. Employees, customers, suppliers, investors and the larger community fuse into a "virtuous circle." Meyer has started his new "Hospitality Included" program in a few of his restaurants. The jury is still out on whether or not his program works. Meyer says, "Restaurants are like a public square. They are family for the people who work there and dine there. That is true also for the people who grow products and make wines. You have got to understand that everyone has a stake in the game." On the business side, minimum wages are going up around the country. Restaurants have to raise prices. Meyer has already raised his prices. He is better able to absorb the changes. His vision is big. One good thing is that the entire staff benefits from more revenue coming into the business. In his restaurants, cooks and dishwashers got raises.

The whole business of tips is not easy to figure out. Are tips income to the business or the server? Why do servers and not cooks get the benefit? Meyer solves a lot of these problems by adding a service fee to the bill. His idea has not spread very far. Old habits are hard to break.

- 46 What is the major debate about in this passage?
 (A) gratuity (B) morality (C) minimum wages (D) table manners
- 47 Who earn more in most cases according to the passage?
 (A) Those who serve the customers. (B) Those who cook the meals.
 (C) Those who supply the food. (D) Those who clean the floor.
- 48 Who is Danny Meyer?
 (A) A manager in hospital. (B) A mathematician. (C) A restaurant owner. (D) A wine supplier.
- 49 What is Danny Meyer's attitude towards tipping?
 (A) Tips should be increased to 20%.
 (B) Foreign tourists should not pay the tips.
 (C) No tipping but a service fee should be added to the bill.
 (D) Tips are part of income and servers should pay tax.
- 50 Which of the following is closest in meaning to "at the mercy of" in this passage?
 (A) being controlled by (B) being protected by
 (C) showing compassion to (D) serving without politeness to