

110年公務人員特種考試司法人員、法務部調查局
調查人員、海岸巡防人員、移民行政人員考試及110年
未具擬任職務任用資格者取得法官遴選資格考試試題

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考試別：司法人員、海岸巡防人員、移民行政人員

等別：三等考試

類科組：各類科組

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 依憲法之規定，下列何者為判斷人民是否為中華民國國民之標準？
(A)種族 (B)戶籍 (C)國籍 (D)國家認同
- 2 下列有關基本國策中社會安全的敘述，何者正確？
(A)國家對於具工作能力者，應予適當工作機會，故人民有向國家請求提供工作機會的權利
(B)社會補償制度，指的是對於經濟能力較差者，對於其所受的社會經濟待遇給予補償
(C)基本國策規定國家應該制定保護勞工法律，但保護勞工之內容與方法，立法者有形成自由而不受拘束
(D)國家為謀社會福利，應實施社會保險制度
- 3 SARS 期間有醫師未依規定回到院區集中強制隔離而遭裁罰，依據為當時傳染病防治法第 37 條第 1 項：「曾與傳染病病人接觸或疑似被傳染者，得由該管主管機關予以留驗；必要時，得令遷入指定之處所檢查，或施行預防接種等必要之處置。」大法官就此作成釋字第 690 號解釋，關於此解釋之內容，下列敘述何者正確？
(A)「必要之處置」違反法律明確性原則
(B)強制隔離係為保護人民生命安全與身體健康，性質上與刑事逮捕拘禁不同，不適用憲法第 8 條
(C)強制隔離雖剝奪人身自由，但係為保護重大公益目的所採取的合理必要手段
(D)強制隔離對人身自由影響重大，須經中立、公正之法院加以審查，方得實施
- 4 依司法院大法官解釋之意旨，下列敘述何者錯誤？
(A)祭祀公業條例維護傳統規約依循傳統宗族觀念以男系子孫（含養子）為派下員之約定，使女子不得為派下員，尚不違反性別平等
(B)民法未容許相同性別二人結婚，違反平等保護
(C)民法規定父母對於未成年子女權利之行使意思不一致時，由父行使，並不違反性別平等
(D)道路交通管理處罰條例禁止曾犯特定罪名者擔任計程車駕駛，其目的在保障乘客之人身安全，尚屬合憲
- 5 依司法院釋字第 749 號解釋意旨，對於乘客之安全有何風險時，國家始可廢止計程車執業登記？
(A)實質風險 (B)特別風險 (C)一般風險 (D)剩餘風險
- 6 依憲法增修條文之規定，下列關於覆議之敘述，何者正確？
(A)立法院必須在一定期間內議決，逾期未議決時，原決議有效
(B)覆議時，經全體立法委員二分之一以上維持原案，行政院院長應即接受該決議或辭職
(C)行政院得不經總統之核可，移請立法院覆議
(D)行政院得對於立法院決議之法律案、預算案、條約案提出覆議

- 7 關於立法權之敘述，下列何者錯誤？
(A)立法院制定公民投票法，使立法院自身得就重大政策之爭議，交由中央選舉委員會辦理公民投票，
牴觸權力分立原則
(B)立法院基於民主正當性之立法責任，得制定或修正法律，乃立法形成之範圍及其固有權限
(C)民意代表行使選民賦予之職權須遵守與選民約定，任期屆滿，除有不能改選之正當理由外應即改選
(D)立法委員在開會時，有向行政院院長及行政院各部會首長質詢之權
- 8 依憲法增修條文規定，立法委員 35 人，未達下列何者之提案門檻？
(A)提議總統彈劾案 (B)提議憲法修正案 (C)提議總統罷免案 (D)提議領土變更案
- 9 下列何者非屬憲法規定的選舉方法？
(A)普通選舉 (B)間接選舉 (C)平等選舉 (D)無記名投票
- 10 依司法院大法官解釋，下列何種基本權利受憲法第 22 條之保障？
(A)學術自由 (B)營業自由 (C)財產權 (D)性行為自由
- 11 依憲法及增修條文規定，總統之權限不包括下列何者？
(A)主持行政院會議 (B)依法任免文武官員
(C)國家安全大政方針決定權 (D)發布緊急命令
- 12 有關地方自治團體居民之權利，下列敘述何者正確？
(A)對於地方公職人員有依法創制之權 (B)對於地方公職人員有依法複決之權
(C)對於地方自治事項有依法選舉之權 (D)對於地方自治事項有依法創制之權
- 13 關於各級法院所設之庭長，下列敘述何者錯誤？
(A)庭長係為統一訴訟指揮程序所設之機制
(B)身分獨立性之保障對象不及於庭長
(C)令免兼庭長之人事行政行為對法官之俸給無不利影響
(D)關於庭長之遴選與任免，宜以法律定之
- 14 依憲法及增修條文規定，下列何者並非司法院大法官之職權？
(A)解釋憲法 (B)政黨違憲審查權
(C)審理總統、副總統彈劾案 (D)統一解釋最高法院各庭之歧異見解
- 15 依憲法增修條文規定及司法院大法官解釋意旨，有關總統緊急命令權之敘述，下列何者正確？
(A)緊急命令因具有暫時替代或變更法律之效力，原則上可具體、明確授權執行機關訂定補充規定
(B)總統僅得於立法院休會時發布緊急命令
(C)緊急命令之發布，不受憲法第 23 條法律保留原則之限制，惟仍應遵守比例原則
(D)立法院就緊急命令行使追認權時，如認部分內容不當，得為部分追認，或逕予變更其內容
- 16 下列有關「法律的制裁」之敘述，何者錯誤？
(A)法律的效果不限於制裁，但是制裁卻是相當重要的法律效果
(B)現代國家透過法律所要達成的政策目標種類日益增加，法律所規定的制裁種類亦越發紛雜多樣
(C)當國家課以制裁時，通常是以實施強制力的方式為之
(D)監護宣告，屬於民法上的制裁
- 17 下列何部法律之條文未曾遭司法院大法官宣告違憲？
(A)集會遊行法 (B)出版法 (C)違警罰法 (D)檢肅流氓條例

- 18 99 年 8 月 4 日修正之公務人員退休法，增訂公務人員之婚姻關係於公務人員退休生效時已存續 2 年以上，退休公務人員死亡後，其配偶始得起領月撫慰金，並自 100 年 1 月 1 日起施行。公務人員甲於民國 87 年與乙結婚，婚後 1 年多，甲即退休。後甲於 100 年 3 月死亡。關於本案之法律適用，下列敘述何者正確？
- (A)依中央法規標準法所規定之從新從優原則，應適用結婚時之舊法
 - (B)依後法優先於前法之原則，應適用修正後之新法
 - (C)依法律不溯及既往原則，應適用結婚時之舊法
 - (D)依不真正溯及既往原則，應適用修正後之新法
- 19 依司法院大法官解釋，大法官於審查法律合憲性遇有立法程序之瑕疵時，應如何審查，下列敘述何者正確？
- (A)法律既已公布生效，大法官不得介入審查
 - (B)大法官調查事實不受限制，一經發現有立法程序瑕疵時，即得宣告其為無效
 - (C)立法程序之瑕疵基於議事自律，立法院應自行認定並解決，但若有明顯重大瑕疵者，釋憲機關仍得宣告其為無效
 - (D)大法官僅得形式審查總統之公布與行政院院長之副署是否正確無誤
- 20 下列法律條文，何者非法律的擬制？
- (A)二人以上同時遇難，不能證明其死亡之先後時，推定其為同時死亡
 - (B)電能、熱能及其他能量，關於本章之罪，以動產論
 - (C)胎兒以將來非死產者為限，關於其個人利益之保護，視為既已出生
 - (D)因條件成就而受利益之當事人，如以不正當行為促其條件之成就者，視為條件不成就
- 21 關於法律保留原則，下列敘述何者錯誤？
- (A)並非所有政府行為均須法律保留
 - (B)並非一切自由權利均受憲法同等保障
 - (C)並非所有對人民權利之限制均須由法律規定
 - (D)法律授權主管機關訂定命令時，授權明確之程度必須完全一致
- 22 主管機關於裁量外國人申請歸化案件時，以國籍法所無之要件，認該外國人之本國與中華民國非友好國家而拒絕其歸化。此舉最可能構成下列何者？
- (A)裁量濫用
 - (B)裁量萎縮至零
 - (C)計畫裁量
 - (D)行政保留
- 23 稅捐稽徵法與行政程序法均有關於「送達」之規定，則就稅捐文書之送達，此二部法律之適用關係如何？
- (A)稅捐稽徵法屬特別法，依特別法優於普通法原則，應僅適用稅捐稽徵法
 - (B)行政程序法雖屬普通法，但其中關於送達之規定較為完整，應僅適用行政程序法
 - (C)稅捐稽徵法作為特別法而優先適用，於規範不足時補充適用行政程序法
 - (D)由行政機關視具體個案而決定應適用何法律
- 24 關於我國股份有限公司之規定，下列敘述何者正確？
- (A)公司得依章程規定不設董事會，置董事 1 人或 2 人
 - (B)非公開發行公司，不得採用董事候選人提名制度
 - (C)公開發行公司就董事選舉，可選擇不採用累積投票制
 - (D)公司股東會不得在董事任期中，無正當理由而決議解任董事
- 25 關於勞工保險月投保薪資之敘述，下列何者正確？
- (A)直接以被保險人之實際薪資數額作為投保薪資數額，向保險人申報
 - (B)按被保險人之月薪資總額，依投保薪資分級表之規定，向保險人申報投保薪資
 - (C)每月收入不固定者之投保薪資月薪資總額，以最近 6 個月收入之平均為準
 - (D)申報新進員工加保，其月薪資總額尚未確定者，可暫不申報

- 26 債務人甲恐債權人乙查封其財產，甲乃與丙偽作買賣，將財產讓與丙。下列敘述何者正確？
(A)甲丙間之債權行為有效，物權行為無效 (B)甲丙間之債權行為與物權行為效力未定
(C)甲丙間之債權行為無效，物權行為有效 (D)甲丙間之債權行為和物權行為均無效
- 27 甲、乙夫妻的 18 歲獨生子丙，就讀高中三年級，於放學途中毆打路人丁，致丁右手指骨折。依民法規定，下列敘述何者錯誤？
(A)丁得對丙請求全部賠償 (B)丁得請求財產上損害賠償
(C)丁得請求非財產上損害賠償 (D)丁對甲僅得請求三分之一的損害賠償
- 28 依民法之規定，下列有關共有關係之敘述，何者正確？
(A)首期合會金，為會首與全體合會會員共同共有
(B)繼承人有數人時，在分割遺產前，各繼承人對於遺產全部為共同共有
(C)夫妻之財產及所得，合併為共同財產時，為夫妻分別共有之
(D)合夥人之出資與合夥之財產，各合夥人就出資之比例分別共有之
- 29 甲在某大學研究所考試中，事先竊取試題應考，使原本可能名落孫山的自己金榜題名。下列敘述何者正確？
(A)甲的行為不構成刑法第 137 條的妨害考試罪，因為研究所入學考試非屬依考試法所舉行之考試
(B)甲的行為構成刑法第 137 條的妨害考試罪，因為竊取試題屬詐術或非法之方法
(C)甲的行為不構成刑法第 137 條的妨害考試罪，因為其行為不必然使考試發生不正確之結果
(D)甲的行為構成刑法第 137 條的妨害考試罪，因為其行為已經使考試發生不正確之結果
- 30 依家庭暴力防治法之規定，有關民事保護令，下列敘述何者錯誤？
(A)保護令之聲請，原則上應以書面為之
(B)被害人得向法院聲請通常保護令、暫時保護令與緊急保護令
(C)法院於受理民事保護令之聲請後，得於審理終結前聽取社會福利機構之意見
(D)當被害人有受急迫危險時，檢察官或警察機關得以電信傳真之方式聲請緊急保護令
- 31 To make the contract more complete, the hockey star _____ a clause that would guarantee him 50% of his salary if an injury ended his career.
(A) renounced (B) inserted (C) represented (D) structured
- 32 The police _____ themselves as tourists, secretly videotaping visitors as they moved round the exhibition site.
(A) consigned (B) harmonized (C) moderated (D) disguised
- 33 New satellite images of Antarctica just revealed a number of Emperor penguin colonies that scientists were not _____ of in their early research.
(A) anxious (B) aware (C) afraid (D) acquired
- 34 In a democratic country, everyone is _____ to the freedom of speech and expression. This right is protected by the law.
(A) empowered (B) enabled (C) endowed (D) entitled
- 35 After his heart attack, the doctor put him on a strict _____, and regular appointments are scheduled for further checkups.
(A) decency (B) regimen (C) casualty (D) shipwreck
- 36 When celebrating a new year, we often wish others happiness, _____, and good health.
(A) resistance (B) prosperity (C) temptation (D) succession
- 37 One benefit of working past the normal retirement age is the ability to _____ current standard of living by increasing lifetime income.
(A) maintain (B) mandate (C) manifest (D) manufacture

- 38 Sadly, their recent, truncated live shows bore no evidence of new material with which to _____ their success.
(A) sustain (B) suppress (C) suspect (D) suspend
- 39 Patrick is such a good-natured person; he practices _____ faithfully and is always more than ready to help needy people.
(A) altruism (B) cynicism (C) euphemism (D) metabolism
- 40 At the roots of my hair a _____ sensation began and ran down the surface of my flesh, leaving me goose-fleshed and cold.
(A) tingling (B) tempering (C) twittering (D) twinkling

請依下文回答第 41 題至第 45 題

With the advent of freezers, we're able to preserve our food longer than before. But is there a difference between fresh and frozen produce _____ 41 _____ nutrition? Well, it highly depends on the circumstances. Most food you take off the shelf in a grocery store _____ 42 _____ under-ripe to avoid damage during travel time. This means it hasn't yet reached its peak nutrition. Furthermore, the minute it is picked, its nutritional content begins to _____ 43 _____. When it finally appears on your dinner table days later, the food may lose up to 50 percent of its nutritional value. Frozen foods, _____ 44 _____, are picked when they're ripe and frozen immediately. _____ 45 _____ the quick freeze process may affect some of the vitamin content, it essentially locks most of the nutrients in place. Compared with the fresh produce that has been sitting around for days, there's no doubt that frozen foods contain more nutrition.

- 41 (A) instead of (B) in terms of (C) in place of (D) in spite of
- 42 (A) was harvesting (B) has harvested (C) had harvested (D) has been harvested
- 43 (A) descend (B) deflate (C) deprive (D) deteriorate
- 44 (A) in the meantime (B) in some respects (C) on the other hand (D) for the time being
- 45 (A) Although (B) Despite (C) However (D) Nonetheless

請依下文回答第 46 題至第 50 題

At the beginning of the 20th century, less than 1,000 colleges with 160,000 students existed in the US. The number of colleges skyrocketed in waves, during the early and mid 20th century. State universities grew from small institutions of fewer than 1,000 students to campuses with 40,000 more students, with networks of regional campuses around the state. In turn, regional campuses broke away and became separate universities.

To handle the explosive growth of K-12 education, every state set up a network of teachers' colleges, beginning with Massachusetts in the 1830s. After 1950, they became state colleges and then state universities with a broad curriculum. Major new trends included the development of the junior colleges. They were usually set up by city school systems starting in the 1920s. By the 1960s they were renamed as "community colleges."

Junior colleges grew from 20 in number in 1909, to 170 in 1919. By 1922, 37 states had set up 70 junior colleges, enrolling about 150 students each. Meanwhile, another 137 were privately operated, with about 60 students each. Rapid expansion continued in the 1920s, with 440 junior colleges in 1930 enrolling about 70,000 students. The peak year for private institutions came in 1949, when there were 322 junior colleges in all; 180 were affiliated with churches, 108 were independent and non-profit, and 34 were private schools being run for-profit.

Many factors contributed to rapid growth of community colleges. Students parents and businessmen wanted nearby, low-cost schools to provide training for the growing white-collar labor force, as well as for more advanced technical jobs in the blue-collar sphere. Four-year colleges were also growing, albeit not as fast; however, many of them were located in rural or small-town areas away from the fast-growing metropolis. Community colleges continue as open-enrollment, low-cost institutions with a strong component of vocational education, as well as a low-cost preparation for transfer students into four-year schools. They appeal to a poorer, older, less prepared element.

- 46 Which of the following statements is TRUE, according to the text above?
- (A) At the beginning, there were less than 1,000 colleges with 160,000 students existing in the US.
 - (B) In the 1830s, state colleges and universities were set up to train teachers for the explosive growth of K-12 education.
 - (C) Junior colleges were usually set up by city school systems starting in the 1930s.
 - (D) Community colleges were renamed from junior colleges as low-cost institutions with a strong component of vocational education.
- 47 Which of the following statements is true to the description about junior colleges?
- (A) Junior colleges grew from 1919 students to 70,000 in 1930.
 - (B) In 1949, there were 180 private junior colleges affiliated with churches.
 - (C) The rapid growth of community colleges is due to the demand for more non-profit independent institutions.
 - (D) Teachers' colleges are the community name for junior colleges.
- 48 Which is one of the factors that contributed to the rapid growth of community colleges in the United States?
- (A) It is a major new trend to include as many rural students as possible.
 - (B) The purpose is to handle the explosive growth of K-12 education.
 - (C) Parents and businessmen wanted nearby, low-cost schools in rural or small-town areas to provide training for the growing white-collar labor force.
 - (D) Many community colleges were located in the center of the fast-growing metropolis to provide more advanced technical jobs in the blue-collar sphere.
- 49 Which of the following statistics is TRUE?
- (A) Before 1919, there were already more than 170 junior colleges.
 - (B) In the 1920s, there were about 140 privately-operated junior colleges.
 - (C) In 1949, there were totally 180 junior colleges with 108 independent non-profit.
 - (D) The peak year for private community college expansion came at the year of 1922.
- 50 Which of the following statements is TRUE, according to the text above?
- (A) Community colleges enrollment is vocationally limited.
 - (B) Four-year college growth was affected by the open-enrollment policy of junior colleges.
 - (C) Community colleges provide low-cost preparation for transfer students into four-year institutions.
 - (D) Community colleges continue to appeal to young, less prepared students.