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102 年公務人員高等考試三級考試試題

類 科: 各類科

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。

(C) III

(三)禁止使用電子計算器。

直轄市市長停職者,由副市長代理,副市長出缺或不能代理者,由何人代理?

(A)由行政院派員代理 (B)由市議會議長代理 (C)由市政府秘書長代理 (D)由內政部派員代理

依地方制度法之規定,下列何者爲公法人?

(B)縣政府

3 依我國現行憲法及憲法增修條文之規定,以下何者不是司法院大法官之職權? (A)解釋憲法 (B)審理政黨違憲之解散案 (C)審理總統、副總統彈劾案 (D)審理公務員懲戒案件

下列何者曾被司法院大法官解釋宣告違憲?

(A) 行政執行法上之拘提管收要件

(B)公務員懲戒未設通常上訴救濟制度

(C)公務員離職後職業選擇之限制 (D)涌姦罪

關於立法院議案審議程序中「第二讀會」的進行,下列敘述何者錯誤?

(A)第二讀會時,應朗讀議案,依次或逐條提付討論

(B)第二讀會時,可就審查意見或原案要旨,先作廣泛討論

(C)第二讀會是於討論各委員會審查之議案時進行

(D)議案於完成二讀之後,原提案者可以經院會同意後撤回原提案

6 依據憲法第58條及行政院組織法之規定,下列何者非行政院會議之組織成員,僅依規定應列席行政院會議?

(A)行政院秘書長

(B)內政部部長

(C)僑務委員會委員長

(D)不管部會之政務委員

我國總統不享有下列那一權限?

(A)締結條約

(B)主動解散立法院

(C) 宣布戒嚴

(D)發布緊急命令

(D)區公所

依現行法之規定,下列那一種公職人員之選舉,候選人當選與否,並不取決於該候選人得票數之多寡,而是 原則上取決於該候選人所屬政黨得票數之多寡?

(A)總統、副總統

(B) 僑居國外國民立法委員

(C)原住民立法委員

(D)原住民直轄市議員

依公民投票法之規定,全國性公民投票案成立後,係由下列何機關負責投票之進行?

(A)行政院

(B)全國性公民投票審議委員會

(C)監察院

(D)中央選舉委員會

10 如某社區之社區公約,約定區分所有權人不得於其住宅內設置各種中途之家,違者將由社區管理委員會訴請 遷離。甲爲該社區之住戶,於其所有之獨棟住宅內設置「未婚媽媽中途之家」,爲社區管理委員會知悉, 社區管理委員會即向法院起訴請求甲應遷離社區。請問法院於審理本案時,審酌雙方當事人之基本權保障 時,應運用下列那一種理論?

(A)國民主權及參政權之理論

(B)基本權對國庫行爲之效力

(C)私法自治及契約自由原則

(D)基本權之第三人效力理論

房屋所有權人應提供私有騎樓供公眾通行,得不另發給補償金。關於其法理,下列敘述何者正確?

(A)未喪失所有權而無須補償

(B)人民之財產權負有未逾比例原則之計會義務

(C)缺乏相關補償之法令依據

(D)基於財政考量而無須補償

下列何者不屬於訴訟權保障之核心領域? 12

(A) 受公平審判之權利

(B)受及時審判之權利

(C)受三級三審之審級制度保障權利

(D)聽審請求權

依司法院大法官解釋,下列何者與憲法第7條所保障之平等權有違?

(A) 民國 89 年修正公布之臺灣地區與大陸地區人民關係條例中,規定大陸地區人民經許可進入臺灣地區者, 非在臺灣地區設有戶籍滿 10 年,不得擔任公務人員

(B)中央警察大學 91 學年度研究所碩士班入學考試招生簡章規定,以有無色盲作爲能否取得入學資格之條件

(C)民國 93 年修正公布之遺產及贈與稅法中,僅規定配偶間之贈與,免徵贈與稅;但對於尙無法律上婚姻關 係之異性伴侶間之贈與,無免徵贈與稅之規定

(D)民國 80 年制定公布之社會秩序維護法中,在性交易過程中,對支付對價之相對人未有處罰規定,而僅處 罰意圖得利之一方

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頁次:4-2 14 下列何項基本權不在司法院大法官解釋具有制度性保障性質之列? (A)財產權 (B)婚姻與家庭 (C)宗教自由 (D)學術自由 15 A 於僱用 B 時,要求 B 切結,如有懷孕即離職。B 以其違反性別工作平等法,向主管機關檢舉,要求主管 機關對 A 處罰鍰。本例最可能涉及何種基本權功能? (A)防禦權功能 (B)基本權之保護義務功能 (C)基本權之信賴保護功能 (D)程序保障功能 A和B爲夫妻,育有一子C四歲。B因吸食安非他命上癮,精神狀態不穩定,動輒對於C施暴。某日, B 將 C 打得皮開肉綻,住進加護病房, A 經朋友提醒才知道可以依據家庭暴力防治法請求法院對於 B 核發 民事保護令。請問 A 得依照家庭暴力防治法爲 C 聲請什麼內容的保護令?①禁止 B 對於 C 實施家庭暴力 ②命 B 遷出三人之住居所 ③命 B 遠離 C 之幼兒園 ④定暫時對未成年子女權利義務之行使或負擔,僅由 A 來行使 (A)僅① (B)僅(1)②) (C)僅①②③ (D)(1)(2)(3)(4)17 勞工遭遇職業傷害或罹患職業病而死亡時,其遺屬受領死亡補償之正確順位爲何? (A)①子女②配偶③父母④祖父母及孫子女⑤兄弟姐妹 (B)①配偶②子女③父母④祖父母及孫子女⑤兄弟姐妹 (C)①配偶及子女②父母③祖父母④孫子女⑤兄弟姐妹 (D)①配偶及子女②父母③孫子女④祖父母⑤兄弟姐妹 A有限公司之股東有甲、乙、丙共 3 人,各分別出資 30 萬元、10 萬元、10 萬元,甲爲公司董事。若章程規 定,甲有3表決權、乙有1表決權、丙有1表決權,則當公司擬再增資50萬元時,應經下列何種方式決定 之? (A)由甲決定之 (B)須經全體股東同意之 (C)須經表決權過半數同意之 (D)須經2人以上股東之同意 19 A 股份有限公司股東甲,出具委託書委託他人代理出席股東會後,又以書面及電子方式行使其表決權,在未 撤銷其前述委託書、書面以及電子投票之情況下,本人於股東會當天又親自出席股東會議。請問甲之表決 權行使究應以何種方式爲準? (B)書面方式 (C)電子方式 (D)親自出席 20 甲與乙籌劃犯擄人勒贖案。甲持改造手槍,乙持小刀,共同將 A 擄走並關在甲家中。後來警方循線查到甲 之住處,救出A,並當場在甲之住宅內搜到犯案用之手槍與小刀,以及安非他命兩小包。試問本案例中,法 官在判處甲、乙有罪時,下列那一種物品不得宣告沒收? (B)甲之住宅 (A)改浩手槍 (C)犯案用小刀 (D)安非他命 甲想殺 A, 見 A 自對面走來, 便舉槍將 A 擊斃, 事後才發現 A 右手亦持槍藏在口袋中, 當時正打算扣下板 21 機殺甲。甲的行爲在刑法上稱爲: (B)偶然防衛 (C)違法性錯誤 (A)誤想防衛 (D)反面之違法性錯誤 下列關於法定代理人的敘述,何者正確? 22 (A)胎兒爲繼承人時,生母爲胎兒的法定代理人,處理遺產分割事官 (B)父母爲未成年子女之法定代理人,可任意處分未成年子女之特有財產 CS監護人爲未成年之受監護人的法定代理人,可替代父母行使一切親權 (D)夫妻在婚姻關係存續中,就夫妻財產所生之法律事項,互爲法定代理人 甲受死亡宣告後,生存歸來,經法院撤銷死亡宣告,發現其妻乙已經與丙結婚,請問後婚之效力爲何? 23 (A)只要乙善意,後婚即有效 (B)只要丙善意,後婚即有效 (C) 必須乙與丙均善意,後婚才有效 (D)縱使乙與丙均惡意,後婚仍然有效 甲上班途中,向書報攤老闆乙購買報紙1份,價金10元。甲給乙10元硬幣1枚,乙給甲報紙1份,請問總 24 共至少有幾個法律行爲? (C) 3 (B) 2 (D) 4 甲夫乙妻依法收養丙夫丁妻 5 歲之子 A,3 年後甲、乙因空難雙亡,A 欲終止其與甲、乙之收養關係者,應 25 如何進行? (B)應由丙、丁代理 A 向法院聲請 (A)應由 A 向法院聲請,但應得丙、丁同意 (D)因甲、乙已死亡,故任何人均不得聲請 (C)應由丙、丁與甲或乙之家屬協議爲之 26 機關辦理下列何項事務應適用行政程序法?

(A)內政部警政署與車商簽訂警用巡邏車購買契約

(D)教育部與公費生簽訂公費留學行政契約

(B)臺北市政府國民住宅處與人民簽訂國民住宅租售契約 (C)臺北地方法院檢察署函請市警局協助調查刑事犯罪事件

代號:3301 頁次:4-3 關於中央法規標準法之內容,以下何者錯誤? (A)法律應經立法院通過,總統公布 (B)法規對某一事項規定適用或準用其他法規之規定者,其他法規修正後,適用或準用修正後之法規 (C)各機關依其法定職權或基於法律授權訂定之命令,應視其性質分別下達或發布,並即送監察院 (D)法律得定名爲法、律、條例或通則 28 關於「法規不溯及既往」原則,下列敘述何者正確? ①學說上又將之分爲「真正溯及」與「不真正溯及」兩種情形。前者係指將法規適用於該法規生效前業已終 結的事實,後者則係指將法規適用於過去發生,但現在仍存續尚未終結之事實 ②「真正溯及既往」原則應允許;反之,「不真正溯及既往」原則應禁止 ③司法院釋字第577號認爲,菸害防制法規定之菸品標示義務及責任,僅適用於該法公布施行後之菸品標示 事件,並未規定菸品業者於該法施行前亦有標示義務,故無法律溯及適用情形 ④新法規範之法律關係如跨越新、舊法施行時期,當特定法條之所有構成要件事實於新法生效施行後始完全 實現時,則無待法律另爲明文規定,原則上應適用法條構成要件與生活事實合致時有效之新法 (A)僅(1)(3)(4) (B)僅②③ (C)僅(1)(2)(4) (D) 僅(1)(3) 民國 100 年 11 月 30 日總統令公布的「兒童及少年福利與權益保障法」,其附則規定該法部分條文「自公布 29 三年後施行」,請問這些條文從那一天開始生效? (A) 民國 103 年 11 月 29 日 (B)民國 103年11月30日 (C)民國 103 年 12 月 1 日 (D)民國 103 年 12 月 2 日 下列關於「法律與道德的關係」之敘述,何者錯誤? (A)法律乃是道德的最小限度 (B)道德所不允許的,亦是法律之懲罰對象 (C)法律所不禁止的行為, 並非都是合乎道德的行為 (D)法律與道德密切相關 The land is a storehouse of _____ for all kinds of plants, and its reserve of nutrients is essential to any successful 31 agriculture. (C) nuance (A) facilities (B) fertility (D) pesticides The United States is _____ with an energy, a can-do ambition and an entrepreneurial spirit that can only be 32 described as distinctly American. (A) invested (B) compatible (C) consistent The movie was recommended for mature audiences only because there were many scenes of intense violence which 33 would be too _____ for children. (A) authentic (B) contagious (C) disturbing (D) embarrassing The restaurant's advertisement was a bit _____. It said all of the drinks were free, but actually wines were not 34 included. (A) cautious (B) pretending (C) suspicious (D) misleading Smartphones seem to have a _____ market since they are getting more and more popular around the world. 35 (B) languishing (C) perplexing (D) squandering (A) burgeoning 36 The Colosseum in Rome and sites in the historic walled town of Urbino have suffered damage due to snow-fall. (A) indispensable (B) minuscule (C) picturesque (D) unprecedented Basic like greeting people and saying *please* to show politeness are becoming less common among the 37 youth. (A) customs (B) courtesies (C) gestures (D) situations The first comprehensive system for nationwide _____ was instituted by France for the Napoleonic wars that 38 followed the French Revolution. (B) description (A) conscription (C) inscription (D) prescription 請依下文回答第39題至43題:

A study at the University of New South Wales in Sydney found that around a quarter of people have a 39 sense of taste, making foods like broccoli taste bitter and rich foods 40. These "supertasters" tend to be slim and have a lower risk of heart disease. To determine if you are a supertaster, 41 a dot of blue food coloring on your tongue and look in the mirror. If you see a densely spotted area, there is a good chance you are a supertaster. If the spots are 42 distributed, you are not. The study also found 15 percent of people, 43 men, were "non-tasters"—they will devour anything put in front of them. They get the benefits of a broad diet, but risk overdoing it.

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39 (A) heightened (B) enlightened (C) fastened (D) lengthened 40 (A) unperceptive (B) unpredictable (C) unpalatable (D) unparalleled 41 (A) notice (B) delete (C) put (D) remove 42 (A) succinctly (B) sparsely (C) diminutively (D) trivially 43 (A) innocently (B) mostly (C) arrogantly (D) currently

- A study has shown that a messy environment could make people long for order and inspire them to hastily simplify and classify things in their minds, which could often lead to discrimination.
 - (A) Eliminating discrimination can be done by living with a simple and neat mind.
 - (B) Inspiring simplicity and order is the key to preventing discrimination from happening.
 - (C) Discriminating against the people living in a messy environment could inspire them to improve.
 - (D) Rushing to create order in a messy environment could sometimes lead to discrimination.
- 45 Investors and the public are demanding increasingly detailed information on nonfinancial metrics that define sustainability.
 - (A) In terms of financial metrics, investors and the public are never satisfied with the sustainable business.
 - (B) Detailed information on monetary metrics plays a more important role for sustainable investors and the public.
 - (C) Other than financial reports, investors and the public are asking for more details about factors indicating sustainability.
 - (D) Investors and the public keep inquiring detailed information on nonfinancial metrics to sustain the validity of the contract.
- What great horror movies do is that they show us our fears and make them so beautiful that we can't take our eyes off the screen.
 - (A) Great horror movies catch our eyes by showing us our fears in an irresistibly beautiful way on the screen.
 - (B) Great horror movies force us to examine our fears through frightening but beautiful scenes on the screen.
 - (C) Great horror movies amaze us by showing us frightening scenes about our beauty on the screen.
 - (D) Great horror movies allow us to transform our fears in an irresistible way into beautiful scenes on the screen.

請依下文回答第 47 題至第 50 題:

In 1349 it resumed in Paris, spread to Picardy, Flanders, and the Low Countries, and from England to Scotland and Ireland as well as to Norway, where a ghost ship with a cargo of wool and a dead crew drifted offshore until it ran aground near Bergen. From there the plague passed into Sweden, Denmark, Prussia, Iceland, and as far as Greenland. Leaving a strange pocket of immunity in Bohemia and Russia unattacked until 1351, it had passed from most of Europe by the mid-1350s. Although the mortality rate was erratic, ranging from one-fifth in some places to nine-tenths or almost total elimination in others, the overall estimate of modern demographers has settled—for the area extending from India to Iceland—around the same figure expressed in Froissart's casual words: "A third of the world dies." His estimate, the common one at the time, was not an inspired guess but a borrowing of St. John's figure for mortality from the plague in Revelation, the favorite guide to human affairs of the Middle Ages.

- 47 What does the underlined "it" in the first line refer to?
 - (A) The ghost ship
- (B) The mortality
- (C) The immunity
- (D) The plague
- 48 Which of the following countries was NOT affected by the disease at first?
- (A) Denmark
- (B) France
- (C) Russia
- (D) United Kingdom
- 49 According to the passage, which of the following statements is true?
 - (A) The number of deaths given by Froissart is not reliable.
 - (B) The disease described in the passage broke out first in 1349.
 - (C) The mortality rates of the affected countries differ greatly.
 - (D) An infected ship landing on Bergen started the spread of the disease in Norway.
- 50 What is the sequence in which the plague reached the countries or cities?
 - (A) Paris—Bergen—Iceland—Russia
 - (B) Picardy—Iceland—Greenland—Flanders
 - (C) The Low Countries—Prussia—England—India
 - (D) Russia—Picardy—the Low Countries—Norway