

103 年公務人員特種考試司法人員考試試題

考試別：司法人員

類 科：三等考試

類科組：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)

- (D) 1. 依司法院大法官解釋及現行制度，下列關於公務員懲戒權之敘述，何者錯誤？
(A)公務員懲戒權屬於司法權
(B)於合理範圍內，懲戒權得以法律規定由公務員之長官行使
(C)對於公務人員之免職處分實質上屬於懲戒處分
(D)公務人員對於懲處處分不服，得向司法院公務員懲戒委員會請求救濟
- (C) 2. 刑法第 235 條處罰人民在網際網路上散布猥褻性文字、圖畫或影像之行為，係限制憲法上何種基本權利？
(A)人身自由 (B)訴訟權 (C)言論自由 (D)財產權
- (A) 3. 依司法院釋字第 509 號解釋，憲法保障人民享有言論自由，其根本用意及功能在於：
(A)言論自由具有實現自我，追求真理，並監督政府的功能
(B)言論自由是與生俱來的權利，國家因此要保障並且不可以限制
(C)言論自由是人民最重要，但不是社會普遍承認權利
(D)在資訊發達的今日，國家不需保障言論自由
- (B) 4. 依我國憲法及增修條文之規定，下列人員之資格，何者應經考試院依法考選銓定之？
(A)教師 (B)專門職業及技術人員
(C)行政機關之僱用人員 (D)中央研究院研究員
- (D) 5. 依據憲法增修條文規定，立法院得經全體立法委員幾分之幾以上連署，對行政院院長提出不信任案？
(A)四分之三 (B)三分之二 (C)二分之一 (D)三分之一
- (C) 6. 有關公務員侵權行為所生國家賠償責任的敘述，下列何者正確？
(A)依國家賠償法規定，公務員係指依公務人員任用法任用之人員
(B)公務員侵權之成立係採無過失責任
(C)國家對於因輕過失而侵權之公務員無求償權
(D)國家賠償責任是因為國家合法的行為所致
- (A) 7. 依公職人員選舉罷免法規定，任何人及政黨不得於下列何種時間從事公職人員選舉之競選活動？
(A)投票日 (B)週休二日 (C)上班時間 (D)國定假日
- (A) 8. 總統所發布之何種命令，須經行政院長之副署？
(D) (A)任命銓敘部部長之命令 (B)任命大法官之命令
(C)任命審計長之命令 (D)任命內政部部長之命令
- (C) 9. 依司法院大法官解釋，由下列何人核發通訊監察書，方符合憲法第 12 條有關人民秘密通訊自由之保障？
(A)法務部調查局局長 (B)警察局局長
(C)法官 (D)檢察官
- (C) 10. 下列何者不是我國司法院大法官對憲法第 7 條平等原則之解釋意旨？
(A)平等原則係保障人民在法律上地位之實質平等
(B)立法者基於社會政策考量，尚非不得制定法律，將福利資源為限定性之分配
(C)法律不得授權主管機關，斟酌具體案件事實上之差異及立法之目的，而為合理之不同處置
(D)立法機關基於憲法之價值體系及立法目的，自得為合理之區別對待
- (B) 11. 依司法院釋字第 42 號解釋，我國憲法第 18 條所稱「服公職之權」的「公職」，不包含下列何者？

- (A)各級民意代表 (B)人民團體之職員
(C)依法令從事於公務者 (D)中央與地方機關之公務員
- (C) 12. 依傳染病防治法之規定，主管機關得令曾與傳染病人接觸者強制隔離，司法院釋字第 690 號解釋認為，此規定對於人民人身自由之限制，尚未違憲。下列關於人民基本權利受到公權力限制之情形，何者與本號解釋所涉及之基本權不同？
(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)財政部依稅捐稽徵法規定限制欠稅達一定數額之納稅義務之出境
(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
- (B) 13. 下列關於軍隊國家化之論述，何者正確？
(A)中華民國之國防，以維護社會秩序、謀國計民生之均足為目的
(B)全國陸海空軍，須超出個人、地域及黨派關係以外，效忠國家
(C)任何黨派及個人，必要時得以武裝力量為政爭之工具
(D)現役軍人必要時得兼任文官
- (B) 14. 有關我國國籍之繼受取得方式，下列何者錯誤？
(A)婚姻 (B)出生 (C)收養 (D)歸化
- (D) 15. 我國憲法規定，中華民國為民主共和國，下列何者非民主國家之特徵？
(A)排除任何的暴力或獨裁專制 (B)植基於自由、平等
(C)依據多數意志作成之人民自決定 (D)黨國一體制度，未落實多黨原則
- (A) 16. 民法第 6 條規定：「人之權利能力，始於出生，終於死亡。」民法第 7 條規定：「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。」此兩個條文的關係為：
(A)原則法與例外法的關係 (B)母法與子法的關係
(C)實體法與程序法的關係 (D)任意法與強行法的關係
- (B) 17. 依司法院大法官解釋，行政院公民投票審議委員會委員由各政黨依立法院各黨團席次比例推薦，違反下列何種原則？
(A)民主原則 (B)權力分立原則 (C)依法行政原則 (D)公益原則
- (B) 18. 關於法律明確性原則之內涵，下列何者不屬之？
(A)可司法審查性 (B)可變動性 (C)可理解性 (D)可預見性
- (C) 19. 下列那些機關得向立法院提出法律案？①考試院②監察院③中央銀行④司法院⑤總統府。
(A)①②③ (B)①③ (C)①②④ (D)①②④⑤
- (C) 20. 下列何者不是「不法原因之給付」？
(A)甲交付金錢賄賂公務員乙
(B)甲與有夫之婦乙通姦，因而給付乙 100 萬元
(C)甲將違章建築的事實上處分權出賣於乙，乙給付價金
(D)甲教唆乙殺人，因而給付乙 100 萬元
- (C) 21. 依民法規定，下列有關定金效力之敘述，何者錯誤？
(A)契約履行時，定金應返還或作為給付之一部
(B)契約因可歸責於付定金當事人之事由，致不能履行時，定金不得請求返還
(C)契約因可歸責於受定金當事人之事由，致不能履行時，定金應返還之
(D)契約因不可歸責於雙方當事人之事由，致不能履行時，定金應返還之
- (A) 22. 甲為乙（主債務人）的債務作保證，並代為清償完畢，事後發現保證契約及主債務契約皆無效。債權人應向誰返還所收受之給付？
(A)甲
(B)乙
(C)向甲、乙任一人為返還，因為甲、乙為連帶債權人
(D)向甲、乙共同返還，因為甲、乙為不可分債權人
- (D) 23. 乙於甲之 A 地上有地上權，並將該地上權抵押於丙，其後甲將 A 地所有權移轉登記於

乙。下列敘述何者正確？

- (A)乙之地上權因混合而消滅 (B)乙之地上權因混同而消滅
(C)乙之地上權因抵銷而消滅 (D)乙之地上權不受影響

(C) 24. 下列有關受賄罪之敘述，何者正確？

- (A)作為賄賂之對價，僅限於違背職務之行為
(B)賄賂與作為對價之職務，不得僅有概括性之對價關係
(C)因受賄所得之不正利益，不得追徵其價額
(D)作為賄賂對價之職務行為，不包含不作為在內

(C) 25. 我國現行刑法關於共犯之成立，其修法理由係採下列何種形式？

- (A)極端從屬形式 (B)嚴格從屬形式 (C)限制從屬形式 (D)最小從屬形式

(D) 26. 下列何者係刑法中著重社會防衛及對於行為人施以矯正的制裁措施？

- (A)死刑 (B)自由刑 (C)財產刑 (D)保安處分

(D) 27. 甲公司為進口商，在其輸入的 DVD 播放器外包裝上標示「本商品非本公司製造、設計，本公司僅負責本產品之銷售與客服，若造成任何財產、身體、生命之損害，概與本公司無關。」乙購買後，因線路設計瑕疵起火導致其子丙遭濃煙嗆傷。下列敘述何者正確？

- (A)因甲公司已標明免責，乙不得向甲公司求償
(B)因丙非買賣契約當事人，丙不得向甲公司求償
(C)因甲公司屬進口商，該商品非由其製造，故乙僅得向國外製造廠商求償
(D)甲公司是進口商，乙仍得向甲公司求償

(C) 28. 下列關於著作人格權之敘述，何者正確？

- (A)引用他人著作內容時，無須表示著作人姓名或名稱
(B)著作人死亡後，由繼承人繼承其著作人格權，以便行使及維護權利
(C)公開發表權僅保護尚未公開發表之著作
(D)著作人格權保護至著作人死亡後 50 年

(A) 29. 有關勞動基準法中退休之規定，下列敘述何者錯誤？

- (A)心神喪失而不堪勝任工作之勞工，只要未滿 55 歲，仍不得強迫退休
(B)工作 15 年以上而年滿 55 歲者得自請退休
(C)自請退休性質上為勞工之形成權，無須雇主之同意
(D)退休金之給與依勞動基準法第 55 條規定，最高總數以 45 個基數為限

(A) 30. 女性受僱者因生理日致工作有困難者，每月得請生理假幾日？

- (A)1 日 (B)2 日 (C)3 日 (D)4 日

(B) 31. Over the ensuing century, with our increased knowledge of the wild and its _____, the old city zoo began to wither and fade.

- (A)fangs (B)inhabitants (C)prosperities (D)reveries

(A) 32. TV advertisers may be reluctant to sponsor a program that deals with _____ social issues. If they do, they may insist that the issues be portrayed delicately.

- (A)controversial (B)eccentric
(C)obsolete (D)superficial

(B) 33. Great chefs understand how to use spices such as ginger and pepper to _____ the flavor of their food.

- (A)detect (B)enrich (C)implant (D)insist

(A) 34. There is much _____ about the use of animals in scientific studies; some believe it is necessary because it helps cure diseases, while some think it is cruel and should be stopped.

- (A)controversy (B)distraction (C)negotiation (D)superstition

(D) 35. As a sharp and straightforward businesswoman, Mandy often speaks directly and _____ to get her points crossed.

- (A) punctually (B) raucously (C) squeamishly (D) trenchantly

請依下文回答第 36 題至第 38 題：

The development of seawater agriculture has taken two directions. Some investigators have attempted to breed salt tolerance into conventional crops, such as barley and wheat. For example, Emanuel Epstein's research team at the University of California at Davis showed as early as 1979 that strains of barley propagated for generations in the presence of low levels of salt could produce small amounts of grain when irrigated by comparatively saltier seawater. Unfortunately, subsequent efforts to increase the salt tolerance were added directly to the plants — have not produced good candidates for seawater irrigation. The upper salinity limit for the long-term irrigation of even the most salt-tolerant crops, such as the date palm, is still less than five part per 1,000(ppt)—less than 15 percent of the salt content of seawater. Normal seawater is 35 ppt salt.

Our approach has been to domesticate wild, salt-tolerant plants, called halophytes, for use as food, forage, and oilseed crops. We reasoned that changing the basic physiology of a traditional crop plant from salt-sensitive to salt-tolerant would be difficult and that it might be more feasible to domesticate a wild, salt-tolerant plant. After all, our modern crops started out as wild plants. Indeed, some halophytes—such as grain from the saltgrass *Distichlis Palmeri*—were eaten for generations by native peoples, including the Cocopah, who live where the Colorado River empties into the Gulf of California.

- (A) 36. Which of the following can be inferred from the passage?
- (A) It is possible to domesticate a wild, salt-tolerant plant.
 - (B) It is feasible to add genes for salt tolerance to the plants.
 - (C) It is worthwhile to reduce the salt content of seawater from 35 ppt salt to 15 ppt salt.
 - (D) It is promising to change a traditional crop plant from salt-sensitive to salt-tolerant.
- (C) 37. According to the passage, which of the following plants will grow and produce crops when irrigated by seawater with over 5 ppt salt?
- (A) Barley (B) Wheat (C) *Distichlis Palmeri* (D) Date Palm
- (B) 38. Where do you think the Cocopah live?
- (A) At the origin of the Colorado River
 - (B) At the mouth of the Colorado River
 - (C) Along the Colorado River
 - (D) At the dried part of the Colorado River

請依下文回答第 39 題至第 42 題：

What makes people smart? It is a question that scientists and philosophers have thought about for centuries, prompting complex calibrations, from head measurements to brain-bending tests. Yet the drive to probe the powers—and the limits—of the human mind has been thwarted by the hard facts of life: the brain was virtually a black box, its inner secrets locked within. Now, scientists are using the latest technology to peer inside. Using machines such as the PET scanner and fMRI machines, which map the changes in the brain's blood flow, researchers at U.C. Irvine and elsewhere are producing the first images of how gifted, and not-so-gifted, minds go about the task of thinking. In one study, Professor Richard Haier of U.C. Irvine found that brighter people have lower metabolic rate probably because their brains are more efficient. However, when bright people are given harder tasks, their brains work harder than the average

person's. Apparently, brain activity depends, to some extent, on the difficulty level of the task and the level of effort required.

- (B) 39. Why is it so hard to examine the powers and limits of the human brain?
(A) The hard facts of life cannot be measures.
(B) The inner secrets of the brain have not been revealed yet.
(C) The drive to test the human brain has been encouraged.
(D) Complex calibrations are prompted.
- (D) 40. What is the newest way for scientists nowadays to explore the human brain?
(A) Giving brain-bending tests (B) Mapping the changes surrounding the brain
(C) Giving tasks of calibration (D) Using machines like the PET scanner
- (C) 41. Which of the following facts was found by Professor Haier?
(A) Bright people always have lower metabolic rate.
(B) The average person does not work hard when he is given hard tasks.
(C) Brighter people have higher metabolic rate when they are given harder tasks.
(D) The level of effort required is not in proportion to the difficulty level of the task.
- (D) 42. What do the underlined words "a question" refer to?
(A) How to prompt complex calibration
(B) How to set up the limits of the mind
(C) How to measure the head with brain-bending tests
(D) How to investigate the powers and limits of the human brain

請依下文回答第 43 題至第 46 題：

New Yorkers are not notably genial neighbors. Many get to know one another solely by what manages to permeate their deadbolted doors—an odoriferous stew, the wail of a child, the hushed sighs of intimate moments.

But the boom in condos loaded with amenities, along with the construction of some high-end rental buildings, has created opportunities for neighbors to make the transition from polite elevator nods to cocktail-caliber mingling. More and more properties in the city feature community amenities like gyms, lounges, and roof decks. These, and more novel spaces—cinemas, wet bars, squash courts, outdoor rain showers, are putting lounges with a lonely television set to shame, and they are fostering a clubby college-dormitory atmosphere in several developments.

"We're extremely social creatures, and I think people in New York suffer from an inability to really interact with people," said Susan Meiklejohn, associate professor of urban planning at Hunter College. This is not because New Yorkers are cold, Dr. Meiklejohn said, but because the city is so dense that people avoid one another to establish buffer zones. "What level of friendliness can you possibly sustain each day if you have to say hello to everybody you meet on 34th-Street?" she said. The design of many new buildings, however are gradually making New Yorkers venture beyond tight-lipped hellos at the mailbox.

- (B) 43. According to Dr. Meiklejohn, what accounts for New Yorkers' lack of true interaction with others?
(A) New York is too cold. (B) New York is too crowded.
(C) New York is too expensive. (D) New York is too dangerous.
- (C) 44. According to the passage, what is the change New Yorkers have undergone?
(A) They are building more condos and expensive rental buildings.

- (B)They have learned to enjoy tight-lipped hellos and polite elevator nods.
(C)They are developing closer relationships with their neighbors.
(D)They have become used to whatever permeates their deadbolted doors.
- (D) 45. According to the passage, which amenity has gradually become out of date for the new building in New York?
(A)Community gyms (B) Clubby roof decks
(C)Outdoor rain showers (D) Lounges with a TV set
- (B) 46. Which of the following can be inferred from the passage ?
(A)New Yorkers are obsessed with cocktail-caliber mingling.
(B)New Yorkers change along with their living space.
(C)New Yorkers will never make genial neighbors.
(D)New Yorkers no longer need buffer zones.

第 47 題至第 50 題為篇章結構，各題請依文意，從四個選項中選出最合適者，各題答案內容不重複

Even in this modern, high-tech age, money is still a great cultural taboo that is rarely discussed openly in the United States, experts say. People can find advice from many self-help books on how to become rich. 47 Not until recently, with large numbers of people afflicted by what psychologists call “money disorders,” psychologists and financial planners seem to have found a way to join forces in the budding field of financial therapy, where budget planning meets psychological counseling.

While it is difficult to pinpoint the number of patients or practitioners, experts in psychology and financial planning say the number of professionals offering to treat money disorders has multiplied in the last few years. 48 For example, Dr. Brad Klontz, a financial psychologist, in his study looked at various money disorders at a treatment center, Onsite, in Nashville. 49 It costs \$2,650 and involves six days of group therapy and financial counseling to treat a wide variety of unhealthy and self-destructive behaviors that are not as extreme as pathological gambling or compulsive shopping.

Nevertheless, under the American Psychological Association’s professional code of ethics, therapist should not enter into outside relationships with clients, including business arrangements like financial planning. 50

“It could violate the ethical standards of the mental health field if a financial planner who was also trained as a therapist crossed the boundary from asset management or coaching into the realm of providing therapy,” said Dr. Klontz.

- (B) 47. (A)Onsite is one of a number of programs and workshops devoted to money disorders.
(B)However, the fields of psychology and financial planning have been slow to link money and emotion.
(C)In addition, research studies have been conducted to examine the state and treatment of money disorders.
(D)With the field of financial therapy so new, Dr. Klontz and others tried to have their voices heard about the murky ethics.
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(D) And when people come for help around money, "it goes so much deeper than what is in their bank account," said Dr. Klontz.

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