

等 別：三等考試
類 科：司法官
科 目：中華民國憲法與英文
考試時間：2 小時

座號：_____

※注意：禁止使用電子計算器。

甲、中華民國憲法部分：(70 分)

- (一)不必抄題，作答時請將試題題號及答案依照順序寫在申論試卷上，於本試題上作答者，不予計分。
(二)請以藍、黑色鋼筆或原子筆在申論試卷上作答。

- 一、何謂憲政主義 (constitutionalism)，主要精神為何？中華民國憲法的運作如何體現憲政主義的精神？為何有些國家，雖有成文憲法卻沒有被列入憲政民主 (constitutional democracy) 的國家？請討論之。(20 分)
- 二、(一)憲法第 8 條第 1 項規定：「人民身體之自由應予保障。除現行犯之逮捕由法律另定外，非經司法或警察機關依法定程序，不得逮捕拘禁。非由法院依法定程序，不得審問處罰。非依法定程序之逮捕、拘禁、審問、處罰，得拒絕之。」上述規定的保障對象通常是指刑事被告，試問行政法上人身自由之剝奪是否也應遵循此項規定？(10 分)
- (二)再者，入出國及移民法第 38 條有「行政收容」之規定，是否符合憲法第 8 條所稱「法定程序」，試抒己見。(15 分)

《參考法條》

入出國及移民法第 38 條規定：「外國人有下列情形之一者，入出國及移民署得暫予收容，並得令其從事勞務：

- 一、受驅逐出國處分尚未辦妥出國手續。
- 二、非法入國或逾期停留、居留。
- 三、受外國政府通緝。
- 四、其他在事實上認有暫予收容之必要。

前項收容以六十日為限；必要時，入出國及移民署得延長至遣送出國為止。

受收容人或其配偶、直系親屬、法定代理人、兄弟姐妹，得於七日內向入出國及移民署提出收容異議。

受收容之外國人無法遣送時，入出國及移民署得限定其住居所或附加其他條件後，廢止收容處分。

外國人涉嫌犯罪，經法院判決有罪確定者，其收容於第三十九條收容處所之日數，以一日折抵有期徒刑或拘役一日或刑法第四十二條第三項、第六項裁判所定之罰金額數。

前項規定，於本法修正施行前尚未執行完畢之外國人，亦適用之。」

- 一、行政權、立法權的分立與制衡，原屬憲政的重要原理，特別在總統體制的國家，強調政府權力之間的相互牽制與平衡，以防止權力的過於集中，避免行政獨裁的危險，而保障人民的自由權利。惟立法與行政，本為政府職能一事之兩端，如車之兩輪、鳥之雙翼，唯互相合作才能表現政府職能。請問在我國憲法本文與增修條文中，最有可能造成行政與立法之間的僵局而妨礙政府職能者為何？最有可能用來解除行政與立法之間僵局而發揮政府職能者為何？請分別指明具體依據條文，並論述其理由。(25 分)

乙、英文部分：(30分)

代號：3301

- (一)本測驗試題為單一選擇題，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)共15題，每題2分，須用2B鉛筆在試卡上依題號清楚劃記，於本試題或申論試卷上作答者，不予計分。

- 1 The _____ guerrilla groups agreed to stop fighting and settle their differences peacefully.
(A) distilled (B) extradited (C) privy (D) rival
- 2 Nowadays some people feel sad and suffer from _____ because of high expectation and low achievement.
(A) depression (B) impression (C) oppression (D) suppression
- 3 Two of the hostages held inside the auditorium were released yesterday on _____ grounds.
(A) homogeneous (B) heterogeneous
(C) humanitarian (D) hypersensitive
- 4 Repeating the instruction rules again and again to different groups of new learners is such a _____ job that has bored him to death.
(A) tired (B) tireless (C) tiresome (D) tiredly
- 5 In a consumer society efforts are made to _____ the needs of all age groups.
(A) cater for (B) satisfy with (C) suit for (D) correspond
- 6 If I had eaten breakfast this morning, I _____ hungry now.
(A) am not (B) will not be
(C) would not be (D) were not to be
- 7 New findings show that routine recommendations that people with a high risk of cardiac problems should take a low dose of aspirin each day to help ward off a possible heart attack may be unsound advice for the aged because it may cause gastrointestinal bleeding.
(A) New findings show that taking a low dose of aspirin each day may reduce the risk of cardiac problems but on the other hand it may increase the risk of gastrointestinal bleeding for the aged.
(B) New findings support the routine recommendations that people of all ages should take a low dose of aspirin to reduce the risk of possible heart attack and gastrointestinal bleeding.
(C) Taking a low dose of aspirin on a daily basis may help ward off both a heart attack and gastrointestinal bleeding for people of all ages.
(D) Doctors usually recommend a low dose of aspirin for people of all ages who have experienced heart attacks and have gastrointestinal problems.

People who are looking for outdoor adventure often go to Maine. This state in the northeastern United States contains large areas of wilderness. There you can enjoy a new and exciting sport: white water rafting. 8 But now, several outdoor travel companies offer weekend rafting trips. They provide guide service, equipment, and even food and they invite people who have had no experience at all. Thus, city residents, too, can get a taste of wilderness. All they need to bring with them is a desire for adventure.

9 As the water fills with air bubbles, it looks white. The areas of white water are also the most exciting areas for rafters—and also the most dangerous. In fact, rafting guides must always be on the look for white water. And rafters must be ready to swim because the raft can tip over in white water. For that reason, rafters should always wear special life vests that will keep them afloat.

Rafting is a sport that almost anyone can do. 10 Sometimes, at very rocky parts of the river, rafters will need to walk for a while. They may also need to carry the rubber rafts at times, but these are very light. Paddling the boats is easy because they are going down the river. The main activity is simply to enjoy the wonderful wild scenery.

Most rafting companies offer overnight trips that combine with camping. 11 Several rafts of people will start out from a base camp. Their food supplies, sleeping bags, tents, and other necessities are sometimes packed onto the rafts. Or all the supplies might be brought by car to the next camp site. The guide often is also the cook for the group of rafters and may be quite a good chef. After a day of rafting, in any case, the food tastes good and sleep comes early.

- 8 (A) It is a new way to visit the wilderness.
(B) In the past, this sport was practiced only in the western states.
(C) Most visitors to Maine are from foreign countries.
(D) The weather in Maine is especially suitable for this activity.
- 9 (A) Unfortunately, the rivers are partly polluted.
(B) The rivers in Maine provide 30% of the water supply of New England.
(C) This is seen only in movies.
(D) “White water” is the water of a river when it moves very fast over rocky areas.
- 10 (A) It does not require great physical strength.
(B) Fishing in the river, however, is forbidden.
(C) The companies always provide excellent service.
(D) It is practiced in many countries now.
- 11 (A) You never know what you will see on a rafting trip.
(B) The hotels have modern 5-star facilities.
(C) This kind of trip is ideal for a family with children over twelve.
(D) It is a popular activity in Hualien, too.

Management, for a brief period, was well on its way to becoming a profession. But managers have been retreating from that goal for the past 60 years, and we have an unparalleled wave of corporate scandals in recent times to show for it. What is a “profession”? In ordinary parlance, the term refers to an occupation that requires a high degree of technical skill and competence. A more traditional definition, however, also encompasses mastery of an abstract, systematic body of knowledge, and a primary orientation toward ethical service to society. It was that comprehensive notion of professionalism that inspired the founders of several of America’s business schools in the early years of the twentieth century. They intended not only to standardize the production of managers for the nation’s corporations but also to professionalize the occupation of management itself. If they had succeeded, managers might have come to play a role in the business-dominated society of today analogous to the role of the clergy in pre-industrial America. For the past several decades, as the number of business programs has risen and their curricula have changed, business education has created unintended consequences. An ethic of pure self-interest, backed by the power of the systematic “science” of knowledge, has replaced the professional ethics that business schools once tried to teach.

- 12 According to the passage, what quality is NOT included in the comprehensive notion of professionalism?
- (A) A high degree of technical skill and competence
 - (B) Mastery of an abstract systematic body of knowledge
 - (C) An orientation toward ethical service to society
 - (D) An ethic of pure self-interest
- 13 According to the passage, what is used as evidence of withdrawal from the goal of professionalism in management?
- (A) Standardizing the production of managers
 - (B) The increasing number of business programs
 - (C) The role of the clergy in pre-industrial times
 - (D) Frequent occurrences of corporate scandals in recent times
- 14 According to the passage, what are the unexpected results that business education has led to, as a result of the increasing number of business programs and the change of curricula?
- (A) The power of the systematic “science” of knowledge has replaced the professional ethics that business schools once tried to teach.
 - (B) Standardization of manager education for the nation’s corporations has succeeded.
 - (C) An ethic of pure self-interest has replaced the professional ethics that business schools once tried to teach.
 - (D) Managers with an orientation toward ethical service to society have played a role in today’s business-dominated society.
- 15 What does the phrase “analogous to” mean in the passage?
- (A) Comparable to
 - (B) Different from
 - (C) Regardless of
 - (D) Aside from

測驗題標準答案

考試名稱： 98年 公務人員特種考試司法人員考試

類科名稱： 司法官

科目名稱： 中華民國憲法與英文（試題代號：3301）

題 數： 15題

標準答案：

題序	01	02	03	04	05	06	07	08	09	10	11	12	13	14	15
答案	D	A	C	C	A	C	A	B	D	A	C	D	D	C	A

備 註： 無更正紀錄。