

## 測驗題標準答案

考試名稱： 99年第二次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	B	A	A	B	C	B	B	C	B	A	B	C	D	B	B

備 註： 無更正紀錄。

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、司法院大法官在釋字第 649 號解釋中，認為 2001 年 11 月 21 日修正公布之身心障礙者保護法第 37 條第 1 項前段：「非本法所稱視覺障礙者，不得從事按摩業。」之規定違憲。請依據這號解釋意旨（注意：不要依據學說），分析公益彩券發行條例第 8 條規定：「公益彩券經銷商之遴選，應以具工作能力之身心障礙者、原住民及低收入單親家庭為優先；經銷商僱用五人以上者，應至少進用具有工作能力之身心障礙者、原住民及低收入單親家庭一人。」是否違憲？理由為何？（25 分）
- 二、某甲涉嫌竊盜，於檢察官偵訊後在筆錄上簽名。嗣經提起公訴，辯護人主張偵查筆錄記載某甲之答問有誤，所記載者為被告未為之陳述，被告否認偵訊筆錄之記載，乃請求勘驗錄音帶藉之更正筆錄錯誤。一審法院則以某甲業已署名其上而認無勘驗筆錄正確性之必要，不予勘驗錄音帶。嗣並不問辯護人爭執筆錄記載是否錯誤，逕依筆錄之記載而為某甲有罪的判決。某甲乃提起上訴，其上訴主張包括以下之理由：
1. 刑事訴訟法第 41 條第 4 項規定：「筆錄應命受訊問人緊接其記載之末行簽名、蓋章或按指印。」加課受訊問之被告驗證筆錄正確性之義務，業已違反憲法保障刑事訴訟被告享有緘默權之意旨。依司法院大法官釋字第 9 號解釋：「裁判如有違憲情形，在訴訟程序進行中，當事人自得於理由內指摘之。」按刑事訴訟法第 41 條第 4 項既為違憲，據之而為之裁判亦屬違憲。故以之為上訴理由，請求上訴法院依據司法院大法官釋字第 371 號解釋（附一）意旨，停止訴訟程序，聲請解釋刑事訴訟法第 41 條第 4 項之規定為違憲。
  2. 依最高法院 93 年台非字 70 號判決（附二），刑事訴訟法第 41 條第 4 項規定並非課受訊人簽署筆錄之義務。法院乃應就該條為合憲性解釋：檢方並未於被告簽署筆錄之前告知被告簽署筆錄是其權利，被告並無簽名之義務；亦因已違反正當程序，法院乃不得以被告已於筆錄上簽名為由而以勘驗偵訊錄音帶為不必要，而應命勘驗錄音帶。
- 檢方則基於以下理由置辯：
1. 憲法第 80 條規定：「法官須超出黨派之外，依據法律獨立審判，不受任何干涉」，並未規定法官應適用憲法審判。由於憲法之規定過於抽象，故法官不得拒絕適用法律，直接適用憲法裁判。釋字第 9 號解釋只謂當事人得以裁判違憲為由提起上訴，非指上訴法院即得逕行適用憲法裁判。刑事訴訟法第 41 條第 4 項之規定意思明確，並無聲請釋憲之價值。
  2. 法院既不得逕行適用憲法裁判，自亦無依憲法為合憲性解釋之理由。又本案中被告既已於偵訊筆錄上簽名，上訴人所引之最高法院判決即與本案無關，依法檢方並無告知受訊人是項裁判之義務。本案無另行勘驗錄音帶之必要。
- 如果您是本案高等法院合議庭法官，請說明針對下列爭點將持何種見解據之而為裁判：
- (一)依據憲法及憲法解釋，法院於審判中應否適用憲法裁判？（10 分）  
(二)何謂合憲性解釋？本案中刑事訴訟法第 41 條第 4 項之規定，法院有無為合憲性解釋之餘地？（10 分）

附一、釋字第 371 號解釋：

【解釋文】憲法為國家最高規範，法律抵觸憲法者無效，法律與憲法有無抵觸發生疑義而須予以解釋時，由司法院大法官掌理，此觀憲法第一百七十一條、第一百七十三條、第七十八條及第七十九條第二項規定甚明。又法官依據法律獨立審判，憲法第八十條定有明文，故依法公布施行之法律，法官應以其為審判之依據，不得認定法律為違憲而逕行拒絕適用。惟憲法之效力既高於法律，法官有優先遵守之義務，法官於審理案件時，對於應適用之法律，依其合理之確信，認為有抵觸憲法之疑義者，自應許其先行聲請解釋憲法，以求解決。是遇有前述情形，各級法院得以前述為先決問題裁定停止訴訟程序，並提出客觀上形成確信法律為違憲之具體理由，聲請本院大法官解釋。司法院大法官審理案件法第五條第二項、第三項之規定，與上開意旨不符部分，應停止適用。

【解釋理由書】採用成文憲法之現代法治國家，基於權力分立之憲政原理，莫不建立法令違憲審查制度。其未專設違憲審查之司法機關者，此一權限或依裁判先例或經憲法明定由普通法院行使，前者如美國，後者如日本（一九四六年憲法第八十一條）。其設置違憲審查之司法機關者，法律有無抵觸憲法則由此一司法機關予以判斷，如德國（一九四九年基本法第九十三條及第一百條）、奧國（一九二九年憲法第一百四十四條及第一百四十四條之一）、義大利（一九四七年憲法第一百三十四條及第一百三十六條）及西班牙（一九七八年憲法第一百六十一條至第一百六十三條）等國之憲法法院。各國情況不同，其制度之設計及運作，雖難期一致，惟目的皆在保障憲法在規範層級中之最高性，並維護法官獨立行使職權，俾其於審判之際僅服從憲法及法律，不受任何干涉。我國法制以承襲歐陸國家為主，行憲以來，違憲審查制度之發展，亦與上述歐陸國家相近。

憲法第一百七十一條規定：「法律與憲法抵觸者無效。法律與憲法有無抵觸發生疑義時，由司法院解釋之」，第一百七十三條規定：「憲法之解釋，由司法院為之」，第七十八條又規定：「司法院解釋憲法，並有統一解釋法律及命令之權」，第七十九條第二項及憲法增修條文第四條第二項則明定司法院大法官掌理第七十八條規定事項。是解釋法律抵觸憲法而宣告其為無效，乃專屬司法院大法官之職掌。各級法院法官依憲法第八十條之規定，應依據法律獨立審判，故依法公布施行之法律，法官應以其為審判之依據，不得認定法律為違憲而逕行拒絕適用。惟憲法乃國家最高規範，法官均有優先遵守之義務，各級法院法官於審理案件時，對於應適用之法律，依其合理之確信，認為有抵觸憲法之疑義者，自應許其先行聲請解釋憲法以求解決，無須受訴訟審級之限制。既可消除法官對遵守憲法與依據法律之間可能發生之取捨困難，亦可避免司法資源之浪費。是遇有前述情形，各級法院得以之為先決問題裁定停止訴訟程序，並提出客觀上形成確信法律為違憲之具體理由，聲請本院大法官解釋。司法院大法官審理案件法第五條第二項、第三項之規定，與上開意旨不符部分，應停止適用。關於各級法院法官聲請本院解釋法律違憲事項以本解釋為準，其聲請程式準用同法第八條第一項之規定。

附二、最高法院 93 年台非字第 70 號判決要旨：「訊問被告、自訴人、證人、鑑定人及通譯所當場製作之筆錄，應命受訊問人緊接其記載之末行簽名、蓋章或按指印，刑事訴訟法第四十一條第四項定有明文，該規定之目的，在於保證其記載之正確性，至於訊問筆錄向受訊問人朗讀或令其閱覽，詢以記載有無錯誤後，受訊問人因種種因素而拒絕簽名，不得強迫其簽名。」

三、根據報導顯示，國民中小學學生中，新近移民子女占全體學生將近 1 成的比例，但不少新近移民家長卻因擔心社會上對其仍有偏見、甚至擔心小孩在同儕間被歧視，因而不讓小孩承認其來自新移民家庭，甚至有些新近移民家長完全不到學校，以免小孩身分曝光。但是，依憲法增修條文第 10 條第 11 項規定：「國家肯定多元文化……」台灣應屬一多元文化國家。請問：憲法增修條文有關多元文化國規定的憲法規範性質為何？在我國的規範效力範圍為何？（25 分）

乙、英文部分：（30 分）

代號：3301

(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)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 They all believe it will work, but I am quite \_\_\_\_\_ about it.

- (A) irresistible (B) skeptical (C) susceptible (D) vulnerable

One of the first things most people want to hear discussed in relation to composing is the question of inspiration. They find it difficult to believe that composers are not as 2 that question as they had supposed. The layman always finds it hard to realize how natural it is for the composer to compose. He has a tendency to put himself into the position of the composer and to 3 the problems involved, including that of inspiration, from the perspective of the layman. He forgets that composing to a composer is like 4 a natural function. It is like eating or sleeping. It is something that the composer happens to have been born to do; and, because of that, it 5 the character of a special virtue in the composer's eyes. The composer, therefore, confronted with the question of inspiration, does not say to himself, "Do I feel inspired?" He says to himself, "Do I feel like composing today?" And if he feels like composing, he does. It is 6 like saying to yourself, "Do I feel sleepy?" If you feel sleepy, you go to sleep. If you do not feel sleepy, you stay up. If the composer does not feel like composing, he does not compose. It is as simple as that.

2 (A) preoccupied with (B) dominated by (C) fascinated by (D) confronted with

3 (A) visualize (B) complicate (C) unravel (D) overcome

4 (A) simulating (B) fulfilling (C) reforming (D) discharging

5 (A) reveals (B) depicts (C) loses (D) develops

6 (A) little by little (B) more or less (C) now and then (D) by no means

7 Their research findings are preliminary and limited; however, some \_\_\_\_\_ conclusions can be drawn.

- (A) tempting (B) tentative (C) tenacious (D) tantamount

8 Never does one feel oneself so utterly helpless as in trying to speak comfort for great bereavement.

(A) When one is bereaved, one will feel completely helpless to say something comfortable.

(B) When one is helpless, one will feel bereaved of the power in trying to speak comfort.

(C) One feels most helpless when trying to comfort people who have just lost someone they love.

(D) It is most helpless for people to be bereaved; therefore, we should try to speak comfort for them.

Most people do not think that language classes are necessary. They would say that the best way to learn another language is to go to the country where that language is spoken by its native inhabitants. This is not a helpful suggestion. If a novice speaker goes to a new country where that language is spoken, he or she will only listen to many incomprehensible new words. Beginners are much better off attending a thoughtfully planned and taught language class. Good language classes will provide the beginner with easy lessons to start with during which the learner can practice important sentences many times. These practices are concentrated on the repetition of speaking skills for which the opportunities to use these words in the daily life of people in another country may be quite rare.

The goal of teachers in language classes is to bring the learners to the point where they can go to a foreign country and manage to use their language in a way which allows the local people to understand them, without too much difficulty. For the learners, however, the key objective of studying in language classes is to reach what is called a "working-level" of language knowledge. This means the learners can cope with the bare essentials of communication, read some authentic texts, and get some comprehensible input from the environment. They will not, however, be perfect.

- 9 According to this passage, which of the following methods is the best for a beginning learner to learn a foreign language?
- (A) Going to the country where the target language is spoken
  - (B) Attending a well-designed language class for beginning learners
  - (C) Speaking with foreigners whenever possible
  - (D) Watching movies and singing songs in that language
- 10 According to the passage, what is the key purpose of most beginning language classes?
- (A) To provide learners with easy lessons to start with
  - (B) To guide learners to know more about foreign countries
  - (C) To offer learners more opportunities to use the language in discussion
  - (D) To provide learners with a short-cut method
- 11 According to the passage, what is a good reason for a beginner to start from beginning classes?
- (A) It is important for learners to find partners with whom to practice speaking.
  - (B) Beginning classes provide learners with constant practice of basic language skills.
  - (C) It is essential to have good pronunciation.
  - (D) Studying with others boosts one's confidence.

The idea that dogs can act as eyes for those who are blind first developed at the beginning of the twentieth century in a unique school. 12 These dogs were trained to lead people who could not see. It was quickly discovered, however, that not every breed of dog was fit for the school. Being a guide dog requires the dog to be alert at all times, so dogs that are easily distracted are not suitable. 13 Breeds such as Labrador retrievers, German shepherds, and boxers make excellent guides because they are friendly and easy to train.

During its training, the dog is taken to many kinds of busy places such as large stores, noisy airports, and crowded restaurants. 14 The dog must learn to ignore anything that might cause its attention to wander because it is responsible for steering its owner carefully past any obstacle. For example, the guide dog is trained to come to a stop just before it reaches a curb so as to tell the owner to take a step up or down. When training is finally finished, a guide dog is assigned to an owner. The two of them must be compatible because they will be partners for a long time. 15 For example, a big and strongly built person will be more comfortable with a large dog while an indoor person will probably not want to be matched with a dog that needs plenty of exercise.

- 12 (A) After a few years of trial-and-error, it was decided that certain breeds are better guides than others.  
(B) Efforts are made to build mutual understanding and to avoid any misbehavior that might be devastating.  
(C) Located in Germany, the school was unusual because it was a school for dogs instead of humans.  
(D) This is to get it exposed and accustomed to all kinds of situations it may encounter in the future.
- 13 (A) Located in Germany, the school was unusual because it was a school for dogs instead of humans.  
(B) Though trained to be obedient, they are also taught that sometimes they must disobey the owner's command.  
(C) The size, weight, preference, and nature of both are taken into account for a good match.  
(D) After a few years of trial-and-error, it was decided that certain breeds are better guides than others.
- 14 (A) Though trained to be obedient, they are also taught that sometimes they must disobey the owner's command.  
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- 15 (A) Efforts are made to build mutual understanding and to avoid any misbehavior that might be devastating.  
(B) The size, weight, preference, and nature of both are taken into account for a good match.  
(C) After a few years of trial-and-error, it was decided that certain breeds are better guides than others.  
(D) Though trained to be obedient, they are also taught that sometimes they must disobey the owner's command.