

# ADV BEN PIETERS SC

*BA (Law); LLB (University of Stellenbosch)*  
*BA (Regte); LLB (Universiteit van Stellenbosch)*

80 Spekboom Avenue  
Amandasig  
Akasie  
0168

E-mail: [pietersb@telkomsa.net](mailto:pietersb@telkomsa.net)

Telephone Tellefoon	Fax Faks	Cellular Selfoon	Postal Address Posadres
(012) 549-5891	(012) 549-1557	082 398 9808	PO Box 6918 Pretoria 0001

Focus Areas of Practice Praktyksfokus
General practice. Special focus on constitutional law. Algemene praktyk. Besondere fokus op konstitusionele reg.

Qualifications Kwalifikasies	BA (Regte) Baccalaureus Artium	1956	Universiteit van Stellenbosch University of Stellenbosch
	LLB Baccalaureus Legum	1960	Universiteit van Stellenbosch University of Stellenbosch
	DEA (Philosophie du Droit)	1976	Université de Paris 2
Membership of Professional Bodies  Lidmaatskap van Professionele Verenigings	Admission as Attorney  Toelating as Prokureur	1963	Supreme Court of South Africa  Hooggeregshof van Suid Afrika
-	Admission as Advocate  Toelating as Advokaat	1977	Supreme Court of South Africa  Hooggeregshof van Suid Afrika
Multilingual capacity Veeltaligheid	English Afrikaans Dutch French German Spanish (Reads) Portuguese (Lees)	-	-

# ***CURRICULUM VITAE***

1. **Full names:** BERNARDUS HERMANUS PIETERS

2. **Born:** 7 October 1935 at Prieska, Northern Cape. Nickname: Ben.

3. **Academic qualifications:**

Adv Pieters completed his LL.B studies at the University of Stellenbosch. The following additional information may be relevant:

3.1 He initially completed a Baccalaureus Artium degree majoring in German and French.

3.2 For the Magister degree in Jurisprudence DEA, adv Pieters has, in addition to the dissertation, ("La Philosophie du Droit d'A C Leemann") completed the following courses:

3.2.1 **Theoretical subjects**

3.2.1.1 History of Jurisprudence

3.2.1.2 Philosophy and general theory of Law.

3.2.2 **Seminars**

3.2.2.1 History of Jurisprudence

3.2.2.2 Philosophy of the Law and the State

3.2.2.3 Sociology of Law.

3.3 In addition, adv Pieters passed the following subjects at the University of South Africa: Philosophy III; Logic II in 1975.

#### 4. Professional curriculum:

- 1961 - 1962 Articled as candidate attorney to J H Heyns, attorneys at Goodwood, Cape.
- 1963 Jan 30 Admitted as attorney of the High Court in the Cape Provincial Division.
- 1963 - 1975 In practise as attorney-at-law at Vredenburg, Cape.
- 1975 - 1976 Continues studies at the Law University of Paris 2 in France, as bursar of the French Government. Obtains the Master's Degree in Philosophy of Law.
- 1977 August 2 Removed from the roll as attorney at own request .
- 1977 October 25 Admitted as advocate in the Transvaal Provincial Division of the High Court. Employed as Public Prosecutor with the Department of Justice in Johannesburg.
- 1978 March 21 to date: In practice for own account as advocate in Pretoria.

#### 5. Personal interests:

Chess and gholf. Past president of the Alliance Française in Pretoria.

Fully conversant in German, French and Spanish.

#### 6. Professional achievements:

Professionally adv Pieters is an experienced all-rounder, conversant in every facet of litigation, whether in the civil, criminal, trial or motion court.

#### ***LIST OF REPORTED CASES IN WHICH ADV PIETERS WAS INVOLVED OR APPEARED.***

6.1 During the period that adv Pieters practised as an attorney:

6.1.1 S v De Vos 1970 (2) SA 590 (K)

This matter deals with the question, when a Court of Appeal would intervene with a sentence given in a criminal matter.

**6.1.2 CWL Baard (Edms) Beperk v Masterpiece Reproductions (Pty) Ltd 1973 (3) SA 730 (K).**

The case concerns the question of when a magistrate can be regarded as *functus officio* to re-hear a matter and when the rule *ne bis in idem* is not applicable. (Applicant's initials are incorrectly given as "DH").

6.2 Since practising as an advocate, the following matters in which adv Pieters appeared, have been reported in the South African Law Reports:

**6.2.1 S v Mkanzi en 'n ander 1979 (2) SA 757 (T).**

At issue was the question of onus in the case of confessions in terms of the presumption created in sec 217(1)(b) of the Criminal Procedure Act.

**6.2.2 S v Thela 1979 (3) SA 1918 (T).**

Review before the Full Bench of the TPD on the question whether a plea explanation in terms of sec 115 of the Criminal Procedure Act and answers to subsequent questions by the Court to clarify the explanation have any evidential value.

**6.2.3 Smit v Oosthuizen 1979 (3) SA 1079 (A)**

This appeal concerned the question whether an exchange transaction of immovable property was subject to the qualification in sec 1 of Act 71 of 1969, whether the contract had to be in writing and signed by the parties thereto. Adv Pieters for the respondent was successful in his submission that it was not. [Applicant's opponent was adv M C de Klerk (as he then was)]. As a result of the judgment the Act was thereafter amended, to make barter transactions of immovable property subject to the Act.

**6.2.4 Herstigte Nasionale Party van SA v Sekretaris van Binnelandse Sake en Immigrasie 1979 (4) SA 274 (T).**

As junior to Van Dijkhorst SC (as he then was)] Registration of a political party - successful application for a mandamus.

**6.2.5 Wahl v Prinswil Beleggings (Edms) Bpk 1984 (1) SA 457 (T).**

As junior to IWB de Villiers SC (as he then was)] The question at issue was the correct calculation of the dies induciae for the service of court documents in terms of sec 4 of the Interpretation Statute and the relief to be granted in the case of a bona fide mistaken interpretation of rule 27.

**6.2.6 Slabbert v Volksskas 1985 (1) SA 141 (T).**

Appeal to the Full Bench on the question whether the opposing affidavit of a party who is not represented or present at a summary judgment hearing, should be taken into account. Judgment in the court a quo was granted by default, and overturned on appeal.

**6.2.7 S v Nkwenja en 'n ander 1985 (2) SA 560 (T).**

Concerns the requisites as a matter of law for the reservation of a legal question in terms of sec 319 of the Criminal Procedure Act and under what circumstances the Court of Appeal should rather allow full right of appeal against a conviction. Also the question of what precisely constitutes "culpable homicide".

**6.2.8 Du Preez v Beyers en andere 1989 (1) SA 320 (T).**

As junior of TT Spoelstra SC (as he then was)] Decided that confusio of mineral registration and full ownership can only take place where both rights are vested in one owner.

**6.2.9 Beyers en andere v Du Preez en andere 1989 (1) SA 328 (T).**

As junior of JP Roux SC (as he then was)] Appeal to the Full Bench.

The judgment deals with the legal consequences of the separation of mineral rights and the dominium plenum with reference to immovable property.

6.2.10 **Atteridgeville Town Council and other v Livanos t/a Livanos Brothers Electrical 1992 (1) SA 296 (A).**

As junior of the late RKR Zeiss SC] On the question whether an arbitration clause can survive the repudiation of the agreement in terms whereof it was made.

6.2.11 **Brummer v Gorfil Brothers Investments (Pty) Ltd en andere 1997 (2) SA 411 (T).**

This matter concerns the vexed question whether an opponent's rights, title and interest in a pending court action can be bought in execution proceedings for an outstanding costs account, not for the purposes of recovering the costs, but for the purpose of bringing court proceedings to an end. Spoelstra J ruled that the court action could lawfully be so terminated.

6.2.12 **Brummer v Gorfil Brothers Investments (Pty) Ltd en andere 1999 (3) SA 389 (SCA).**

The same as above, on appeal before the SCA. Spoelstra J's judgment was confirmed by a 3 to 2 majority judgment.

6.2.13 This matter then came before the Constitutional Court on application for leave to appeal, on the issue whether the Common Law should have been developed and amended by the Supreme Court of Appeal in the light of the values enshrined by the Constitution. The question whether an opponent's rights, title and interest in a res can be bought in execution proceedings for an outstanding costs account, not for the purpose of recovering the costs, but for the purpose of bringing the pending litigation to an end, was expressly left open by the Constitutional Court. The application for leave to appeal, however, was dismissed on the preliminary point of the late filing of the application for leave

to appeal. The prerequisites for condonation of the late filing of an application for leave are set out in the judgment and it is the leading case in this respect. The matter is reported as **Brummer v Gorfil Brothers Investments (Pty) Ltd and Others 2000 (5) BCLR 456 (CC)**. Counsels' names are not cited in the report, due to the practice in the Constitutional Court that leave to appeal applications are considered in chambers, without the hearing of oral argument, and then set down for judgment.

#### 6.2.14 **Brisley v Drotzky 2002. 4. SA 1 (SCA)**

This important case decides the present status of so-called "non variation" clauses in the law of contract.

### 7. Judgment in the following cases in which Adv Pieters appeared were reported in the South African Criminal Law Reports:

#### 7.1 **S v D en 'n ander 1998 (1) SACR 33 (T)**

This matter concerns intent in a charge of indecent assault and the procedural question of the application of sec 113 of the Criminal Procedure Act where a plea of guilty has been entered, but the evidence on another charge in the same case actually proves the innocence of the accused.

#### 7.2 **S v Tshabalala 1999 (1) SACR 163 (T).**

This is the leading authority on the way in which the defence at the trial can utilise witness statements in the police docket obtained from the State in terms of Article 35(3) of the Constitution by way of a request for further particulars, and the application of sec 87 of the Criminal Procedure Act in this regard.

### 8. Constitutional Cases reported

#### 8.1 **Van Rooyen and Others v The State and Others, 2001 (9) BCLR 915 (T), and see 2001. 4. SA 396 (T).** This important case concerns the question of legitimacy of the inferior courts for purposes of sec 165 of the Constitution.

8.2 The Minister of Justice then appealed to the Constitutional Court.

The CC judgment is reported, amongst others, as **Van Rooyen and Others v The State and Others (General Council of the Bar of South Africa intervening) 2002. 5. SA 246 (CC)**.

8.3 **Van Rooyen v De Kock N O and Others 2003. 2. SA 317 (T)**.

This case concerns the related question of the legitimacy of the courts of acting magistrates appointed under contract with the Department of Justice subject to the provisions of the Public Service Act. The full court ruled that the contract of appointment in this particular case was invalid. The Minister of Justice and the Director of Public Prosecutions Transvaal, in view of the multitude of other similar appointments, present and past, since the new constitutional order came into force, have been given leave to appeal to the SCA. The matter is still pending.

#### 9. Summary:

In total 21 cases are reported.

As will appear the above cited list covers a wide range of topics, of which for present purposes constitutional law could perhaps be singled out as a "special" field of interest.