

# ***BUSINESS ORGANISATIONS LAW GUIDEBOOK***

## ***SECOND EDITION***

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### **CHAPTER 3**

#### **PROBLEM QUESTION**

Architect Pty Ltd was registered in 2009. Mario, Lucas and Samantha are its only shareholders. Mario is the company's director. Lucas is the company secretary. Samantha was married to Mario and when the company was created the three shareholders included a clause in the company's constitution noting that Samantha was the company's financial adviser.

In 2014, after marriage difficulties, Mario and Samantha divorce. Samantha has just received a letter from Architect Pty Ltd stating that her services are no longer required.

**Advise Samantha** on whether she can prevent the company from terminating her services as a financial adviser. She particularly wants to know if the company's constitution will protect her. Answer this question by referring to company law rules and principles.

#### **ANSWER**

The company's constitution is a contract between the company and its members (s 140(1)). Samantha as a member may enforce the company's constitution. However, in this case she wants to enforce a clause relating to her employment. A provision in a company's constitution is a contract between company and its members when the constitution affects the members in their capacity as members (*Eley v Positive Government Security Life Assurance Co* (1875) 1 Ex D 20).

The employment right provided by the constitution (being a financial adviser) does not come with the shares (a person who buys shares in a company will not, by doing so, become an employee of the company). Accordingly, the provision in the constitution affects Samantha in her capacity as an outsider. The provision is not a contract between Samantha and Architect Pty Ltd. Samantha cannot enforce the employment clause in the company's constitution.