

Briginshaw v Briginshaw (1938) 60 CLR 336

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Facts

- In the course of divorce proceedings, Mr Briginshaw accused Mrs Briginshaw of adultery after they separated and she began "going to dances" and "living like a single woman".
- Mrs Briginshaw and the co-respondent (the alleged partner in the affair) denied that adultery had occurred.
- At trial, the Tribunal had great difficulty determining who to believe but eventually stated that they could not prove that it had occurred beyond reasonable doubt.
- Mr Briginshaw appealed, stating that as it was a civil matter, the Tribunal had applied the wrong standard of proof and it should have been on the balance of probabilities.

Issue

- What was the correct standard of proof?

Held

- The High Court cautioned against taking too mathematical an approach to determining what the correct standard of proof is. It will depend on factors such as the seriousness of the matter at hand. In this case, adultery is very serious.
- However, examining both the wording of the statute and the case law, it was determined that "beyond reasonable doubt" was not the correct standard.
- However, McTiernan J explained that given the seriousness of the charge, it was reasonable that the Tribunal had given such serious thought and was unwilling to say that adultery had occurred when he had reasonable doubts.
- Therefore the appeal was dismissed.

Significance

- The significance of this case is that it is the foundation for the *Birginshaw Principle*.
- This principle demonstrates that the standard of proof required will depend on the seriousness of the matter at hand. So, even if the case is civil, if the consequences are very serious then the decision maker may require a higher standard of proof than for a insignificant matter.

Full decision

The full decision is available here: <http://www.austlii.edu.au/cgi->

[bin/viewdoc/au/cases/cth/HCA/1938/34.html](https://www.lawcasesummaries.com/bin/viewdoc/au/cases/cth/HCA/1938/34.html)

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