

Eisav selling the first born

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How could Eisav sell the rights of the first born to Yakov?

1. Regarding the double portion of inheritance, it is considered a *davar shelo ba l'olam*.
2. Regarding the leadership and other aspects, these are intangibles and considered a *davar she'ayn bo mamesh*.

Ketzos- this is determined based on an individual's ability to renounce his rights of inheritance.

A husband may renounce his rights to inherit his wife because his ownership is only midrabannan.

Therefore, a bechor, which is de'raysa, can not renounce his rights of inheritance.

Ran- Ordinarily, one cannot renounce his rights to inheritance after he is in a position to inherit. [A husband may renounce his rights only prior to marriage.] Nevertheless, the first born is unique, in that it is not considered to be a standard inheritance, but rather, a Torah mandated 'gift'. If so, Eisav was in a position to at least renounce his right to the first born.

Ohr HaChaim - *davar shelo ba l'olam* is lacking *gemiras daas*. When one is in a desperate situation, there is *gemiras daas* even on a *davar*

*shelo ba l'olam*. Eisav was

acting out of desperation, which accords full *gemiras daas* to the *kinyan*.

Additionally, concerning selling an intangible item- *davar she'ayn bo mamesh*- when one accompanies the transaction with an oath- a *shevuah*- the transaction is binding.

Rosh- prior to *Matan Torah*, there was no issue transacting in a *davar shelo ba l'olam*. The Rivosh disagrees with this.