

WHO IS GOING TO PAY THE BILL FOR THE “PROMISE IN OVERDRAFT?”:- A REJOINDER

**By
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Mr. Jochen Katz, one of the critics of Islam published an article titled: **Who is going to pay the bill for the “promise in overdraft?”** in <http://www.answering-islam.org/Quran/Contr/i001.html> web-site. He started at his pages 1-2 with the quotation of the three most important verses on Islamic law of inheritance. In his preliminary remarks he confessed that the provisions look rather difficult and complex to him hence his choice of an easy hypothesis.

Looking at the article as a whole it is manifestly clear that the intention of the writer is to portray that there are some internal contradictions in the provision of the verses on inheritance in such a way that the shares provided therein when added together in some instances are more than 100% while in some are less than 100% and above all he tries to question whether they are genuinely divine revelation. In his effort to send across his message he tries to raise some issues which at best we consider either mischievous or ill motivated or purely misconceived. Going through the piece we are able to distilled twenty-eight issues that need response.

The essence of this rejoinder is to go over the issues raised by Mr. Katz and respond to them in accordance with the correct legal position of Islamic law on inheritance and also to attempt to address the “misconception” of Mr. Katz on the subject.

For the benefit of those that might not have had the opportunity of going through Mr. Katz paper we find it important and necessary to virtually reproduce the whole paper and comment through it by break it into issues in tune with the necessity of our comments. Our approach therefore is to present the issues as raised by Mr. Katz and then follow each of them with our response seriatim in the twenty-eight orders they are raised.

Issue No. 1

Mr. Katz submitted that there are numerous simple cases which are not clear how to deal with them at all, since they are not covered under the instructions given. For example, if I have one daughter, verse 4:11 says that she gets half [seemingly no matter who else might inherit].

RESPONSE: This is a very simple situation; the problem of Mr. Katz may be due to his understanding of a family structure that recognizes only the nuclear type of family. Under Islamic law the family structure may be either nuclear, polygamous or extended hence there are many other categories of relations outside the inner family that may also inherit along with the daughter. Therefore what happens to the remaining half depends on what category of relations survived along with the daughter. At that particular instance the Holy Qur'an was addressing the inheritance of children; it later talks about other relations and what they get. The provision of the verse may thus be divided into two parts, the first part makes provision for the inheritance of children (which is the part we are concern with at this point); it laid down three principles – the principle of agnatization, the principle that gives two-thirds to two or more daughters and the principle that gives a half to one daughter. The Holy Qur'an provides:

*"God (thus) directs you as regards your children's (inheritance): to the male, a portion equal to that of two female; if only daughters, two or more, their share is two-thirds of the inheritance; if only one, her share is a half....."*¹

Illustration:

a.)	$\frac{P}{S \quad 2 : 1 \quad D}$	b.)	$\frac{P}{2D}$	c.)	$\frac{P}{D}$
	R		2/3		1/2

Issue No. 2

The verse also states the general rule that a son inherits double of what a daughter inherits. Does that mean an only son should get all? Even if there are still parents who should also get a share?

RESPONSE: The provision of the Qur'an does not mean an only son gets all when there are parents. This question is in fact completely uncalled for but not surprising. Law of inheritance is a discipline that require years of studies for one to fully comprehends/master how it is resolve, we strongly believed that Mr. Katz raised these issues without the benefit of even an

¹ Abdallah Y. A. 1968 The Holy Qur'an Text, Translation and Commentary Dar-al Arabia Beirut Lebanon, chapter 4 verse 11 PP. 181

elementary training on inheritance but rely solely on his ability to read and write, which we submit is not enough knowledge to read and comment on the provisions of the Holy Qur'an thus the source of his confusion. Any way a simple response is to submit that issues of inheritance are considered and addressed as a whole depending on the number of eligible heirs that survived the deceased not in isolation. If a son happens to be the only surviving heir, he inherits all the estate as a residuary heir. Where he survived along with the parents however, the parents are also eligible heirs that cannot be excluded by any heir. Referring to the issue at hand the father inherits 1/6, and the mother inherits 1/6 while the son inherits the remainder – 2/3 as a residuary heir. As pointed out earlier verse 11 may be divided into two parts (first part has already been addressed), the second part makes provision for the inheritance of parents and it laid down 4 principles – first, the principle that gives 1/6 to each of the parent where the deceased is survived with child, second, the principle that gives the mother 1/3 where the parents are the only heirs, the third is an inference that the remaining 2/3 goes to the father as the nearest male agnate, this is line with the Hadith of the prophet that says – ‘give the shares of inheritance to those entitle and whatever remains be given to the male agnate’² and fourth, the principle that reduces the mother's share from 1/3 to 1/6 where the deceased is survived by brothers/sisters. In this respect the Holy Qur'an provides:

“.....For parents a sixth share of the inheritance to each, if the deceased left children; if no children and the parents are the (only) heirs, the mother has a third; if the deceased left brothers (or sisters) the mother has a sixth.....”³

² Shamsuddeen A. M. 1993 Lilamul muqinah, Darul qutb al-miyyati, Beirut, Lebanon, P. 276

³ Ibid Holy Qur'an 4 verse 11 P. 181

Illustration:

a.)	$\frac{P}{S\ 2:1\ D\ F\ M}$	b.)	$\frac{P}{M\ F}$	c.)	$\frac{P}{F\ M}$
	$\frac{2GB}{1/3}$		$R\ 1/6\ X$		$R\ 1/6\ 1/6$
	R				

Issue No. 3

Also, it is regulated that one daughter would get half, and more than two daughters will [equally] share in $2/3$. How much would two daughters get among them? The average between $1/2$ and $2/3$?

[There is actually controversy, and in Sunni law, the vast consensus is to understand “more than two” to mean “two or more” even though that is not what the Arabic says. Therefore two daughters would get $2/3$ of the estate. Only “Ibn Abbas, the companion of the Prophet Muhammad (pbuh), is of the view that two daughters have to get one half share, equal to one daughter’s share. “(Kavakci, “Islamic Inheritance Law”, P.22)} But since these cases are just not directly dealt with in the Qur’an, let us not speculate about it and only look at the cases for which we are explicitly given instructions and see whether these are consistent.

RESPONSE: Two or more daughters (irrespective of their number) are to share $2/3$ equally among themselves and once there are two or more daughters the issue of $1/2$ share does not arise, same goes to the average between $1/2$ and $2/3$ (see illustration b. under response to issue no. 1). The opinion of Ibn Abbas quoted by Mr. Katz is a minority opinion, according to majority opinion two or more is the accepted interpretation and is supported with the tradition of the Holy Prophet where he directed the brother of Sa’ad Bin Rabia to give the two daughters of Sa’ad two-thirds, it is also supported on the basis of analogy with the provision of Qur’an chapter 4 verse 176 on sisters where it provides that if there are two sisters they get two-thirds.⁴ Allah’s directive in this respect is explicitly clear. Mr. Katz confusion starts with his failure to appreciate and understand that the laws in the Qur’an in most cases laid down broad principles without going into detail. It has been submitted by Yusuf Ali in his commentary that the

⁴ Al-Fawzani S. A. (1982) Al-Tahakikatul al-Ruksiyyati, Maktabatul-Ma’arif, Riyad, Saudi Arabia, 3rd edition, PP. 78 – 80 as quoted from Al-Mughni Sharh Kabir vol. 7 P. 8 and Tafsirul Qurabi, vol. 5 P.23

principles of inheritance are laid down in broad outline; the precise details have been worked out on the basis of the Prophet's practice and that of his companions, and by interpretation and analogy. Muslim jurists have collected a vast amount of learning on this subject, and this body of law is enough by itself to form the subject of lifelong study.⁵ It seems Mr. Katz is not ready to recognize and accept the contributions of the Holy Prophet and his companions to the development of Islamic law, to him therefore; anything that is not explicitly stated in the Holy Qur'an is not acceptable irrespective of who interpreted or elucidated the provisions. But that is not the way either Islamic law or any other system of law is construed.

Issue No. 4

Supposed I was already a widower and have only one daughter. When I die my one daughter gets half according to verse 11. What happens to the rest?

RESPONSE: The rest of the estate will revert back to the daughter by operation of the principle of return – *radd*. Part of what we understand bothers Mr. Katz is the fact that *radd* has not been specifically provided for by the Holy Qur'an, it was arrived at as a result of exertions and interpretation of companions of the Holy Prophet that are learned in both the Holy Qur'an and Hadith.

Radd:- literally it means return, technically it means the return of the surplus to the Qur'anic heirs with the exception of the spouse relict. *Radd* occurs only in a situation where there is a residue but no residuary heir.⁶

Caliph Uthman favoured return to all including the spouse relict since the spouse relicts are also affected by the application of *awl* – over-subscription, while Caliphs Ali and Umar favoured return to all Qur'anic heirs except the spouse relict. Abdullahi Ibn Mas'ud, Hannafi and Hambali schools from the beginning accepted the doctrine of *radd* meaning they will allow the surplus to return to the Quranic heirs in proportion to their shares of inheritance with the exception of spouse relict rather than allowing the surplus to go to public treasury.⁷ They will also allow the surplus to be

⁵ Ibid p. 181

⁶ Ibid, PP. 247 – 249 as quoted from sharhul hilasatu al-faraid lil Batani P. 58 and al-kamus al-muhidu vol. 1 P. 494

⁷ Ibid, PP. 249 – 250, 252

divided to the distant kindred in the absence of Qur'anic heirs rather than allowing it to go to Public treasury. For example a deceased died leaving her husband, daughter's daughter and daughter's son or leaving a wife, mother and uterine sister.

$$\begin{array}{rcccl} \text{a.)} & & \text{P} & & \\ & \text{H} & \text{DD} & \text{DS} & \\ & \frac{1}{2} & & \text{R} & \\ & \frac{1}{2} & + & \frac{1}{2} & \\ & 2 & & = & 2/2 \end{array}$$

$$\begin{array}{rcccl} \text{b.)} & & \text{P} & & \\ & \text{W} & \text{M} & \text{US} & \\ & \frac{1}{4} & \frac{1}{3} & \frac{1}{6} & \\ & \frac{3}{12} & + & \frac{4}{12} & + & \frac{2}{12} \\ & & & = & 9/12 & \text{R } 3/12 \end{array}$$

From the above example a. shows that the daughter's daughter and daughter's son will share the remaining $\frac{1}{2}$ equally without regard to gender because they all inherit as daughter,⁸ b. shows that when the share of the wife is subtracted; the mother gets 6/12 instead of 4/12 while the uterine sister gets 3/12 instead of 2/12 by operation of *radd*.

This group supported their opinion with the Holy Qur'an that says:

".....kindred by blood have prior rights against each other in the Book of God"⁹

And also the hadith of Sa'ad Bin Abi Waqqas whom the Holy Prophet stopped from bequeathing more than one third of his property despite the fact that he has only one daughter.

According to Zaid Bin Thabit and Ibn Abbas, Maliki and Shafi'i schools they rejected the doctrine of *radd* and opined that if you give to any Qur'anic heir more than what he/she is entitled to you are transgressing the limits of Allah. They hold that the surplus should go to public treasury, they do not recognize the distant kindred, they prefer public treasury as legal heir in the absence of a residuary heir.¹⁰ For example a deceased died leaving daughter's daughter and mother's father or leaving only daughter and mother.

⁸ Ibid PP. 249 & 267

⁹ Holy Qur'an Chapter 8 verse 75

¹⁰ Al-Fawzani S. A op. cit. PP. 249 – 251, 261

$$\begin{array}{lcl}
 \text{a.)} & \begin{array}{c} \text{P} \\ \hline \text{DD} \quad \text{MF} \quad \text{PT} \\ \text{X} \quad \quad \text{X} \quad \quad \text{R} \\ \hline 1 \\ \hline 1 \end{array} & = 1 \\
 \text{b.)} & \begin{array}{c} \text{P} \\ \hline \text{D} \quad \text{M} \quad \text{PT} \\ 1/2 \quad 1/6 \quad \text{R} \\ \hline 3 \quad + \quad 1 \quad + \quad 2 \\ \hline 6 \end{array} & = 6/6
 \end{array}$$

From the above example a. shows that the daughter's daughter and mother's father are excluded and public treasury gets the whole estate; b. shows that when the shares of the daughter and the mother are subtracted the public treasury gets remainder which is 2/6.

This group based their opinion on the statement of Imam Malik where he said: "I reject distant kindred if the public treasury is well administered". According to Ibn Juzay the public treasury must be administered as it was during the period of Umar Ibn El-Kattab and Umar Ibn Abdul'Aziz.

It should be noted however that the later Maliki and Shafi'i jurists changed their position to reflect that of the classical views of Hannafi and Hambali

Issue No. 5

Similar is the situation in which I have one daughter and one or more wives: My daughter gets $\frac{1}{2}$ (S.4:11), my wives share $\frac{1}{8}$ (S.4:12), i.e $\frac{5}{8}$ are distributed. What happens to the other $\frac{3}{8}$ of the estate? This example does not raise a new question, but is very important because that is the situation at Muhammad's own death, leaving one daughter (Fatimah) and several wives. Amazingly, Muhammad's wealth is not distributed according to the Qur'an;

RESPONSE: The remaining $\frac{3}{8}$ will revert back to the daughter by operation of the principle of return. The wife/wives are according to majority opinion are not beneficiaries to *radd* simply because the justification for the sharing of *radd* was based on blood relationship which the spouse does not possess. It has been submitted that they are not among the blood relation mention in the Qur'an – 'relations are nearer one to another in the book of Allah'.¹¹

As for the non distribution of the estate of the Holy Prophet there are clear reasons mostly to do with his position. It is reported that after the death of the Holy Prophet, his daughter Fatimah asked AbuBakr to return to her the land the Prophet kept for himself at Fadak and Khaybar. Abubakr, however, answered her by quoting her father's words: "we, the Prophets, do not leave

¹¹ Ibid P. 252 as quoted from al-mughni vol. 7 p. 46

any inheritance for anyone, whatever we do leave shall be given out in charity”¹²

Issue No. 6

The problem becomes clearer when we add a brother. In the Qur'an, siblings are only mentioned as heirs when no children exist. In this case Sunni and Shia have gone different ways what to do with surplus. Shias will give all to the daughter (see #2740), Sunnis will give the rest to the nearest male relative, in this case the brother. Both are true to the Qur'an. The Qur'an does not say what to do in this and many other cases. The instructions are incomplete.

RESPONSE: where a deceased is survived by wife/wives, daughter and a brother (germane or consanguine); the wife/wives gets 1/8, the daughter 1/2 and the brother (germane or consanguine) get the remainder 3/8. The explanation to this is that the daughter as a Qur'anic heir is entitled to a specific portion of 1/2, the wife 1/8 and the remainder goes to the nearest male agnate if any. It is only when there is no other heirs that *radd* operates. It does not apply when a son survived because he is a residuary heir and once he survived there will be no residue which is not the case with the daughter. Therefore the child that can prevent the siblings from inheritance is only the son not daughter, this is based on the interpretation of the meaning of *kalalah* as used in the Qur'an 4 verse 12 and 176.

Kalalah – has been interpreted to mean a person that leaves neither ascendant nor descendant. Ascendant and descendant in this context has been construed to mean where a deceased leaves neither son nor father but leaves collaterals with or without a widow or widower. According to Caliph Abubakar (R. A.) *kalalah* is a case of inheritance in which a deceased person leaves no son and father. This view was shared by Ali, Umar, Zaid Bin Thabit, Abdullahi Ibn Abbas, Jibril Bn Zaid, Alhassan, Nakh'l ahalul-Madina, Ahalul Basra and Kufa.¹³

¹² Haykal M. H. (2007) The Life of Muhammad, Translated by Faruqi I. R. New Crescent Publishing co. Delhi, India, P. 515

¹³ Abi Ja'afar Muhammad Ibn Jarir Al-Dabari, Jami'ul al-bayan tafsirul Qur'an Darul al-adyan litturathal PP. 133-135

It is reported by Sha'abi from Abubakar that he was asked on kalalah, he said al-kalalah is the one who has no father and son.¹⁴ This definition has been submitted to be accepted by majority jurists.¹⁵

Issue No. 7

Other examples of the Shia / Sunni difference:

If a man leaves a wife and the two parents. The Shia will give the wife $\frac{1}{4}$ and then distribute the remainder as $\frac{1}{3}$ for the mother and $\frac{2}{3}$ for the father, i.e. they will receive $\frac{1}{4}$ and $\frac{1}{2}$ of the original estate (see #2741). Sunnis will give the wife $\frac{1}{4}$, the mother $\frac{1}{3}$ and the father as the nearest male relative the rest, i.e. $\frac{5}{12}$. This is not a contradiction to the Qur'an, since no verse is directly contradicted in either method, but it shows that the Qur'an is far from clear on its instructions.

RESPONSE: It is worthy to start by pointing out that the position presented by the author is not the unanimous position of the sunni schools. The correct and majority position of the sunni schools is that of Caliph Umar in *Umariyyatan* and is the one that gives the mother $\frac{1}{3}$ of the remainder after taking out the share of the spouse relict, same with the position presented for the Shia.

Umariyyatan: As the name suggest, Umariyyatan derives its name from Caliph Umar bin El-kattab, the second Caliph of Islam. He was the first to decide this issue of inheritance two years after becoming Caliph, sometimes in 14 A.H.¹⁶

Umariyyatan in other words referred to as *Gharawiyyah* meaning the two deceivers, signify that the Mother has been deceived by telling her that she is entitle to one-third which turned out to be one-third of the remainder after the spouse relict have taken his/her share.

¹⁴ Lisanul Arab – Ibn Manzur Al-Afrik Al Masri Vol. II P. 592 – 595, Al-maktabah Attijariyyah Ashamiyyah Makkatal Mukarramah

¹⁵ Al-Fawzani S. A. (1982) Al-Tahakikatul al-Ruksiyyati, Maktabatul-Ma'arif, Riyad, Saudi Arabia, 3rd edition, P. 91, see also Al-Sabuni M. A. (1979) Al-mawarith fi al-shariyyati al-Islamiyyati ala dhai al-kitabi wal sunnah, 2nd ed. P. 25

¹⁶ Ibid, P. 88

Umariyyatan arose when caliph Umar was faced with the practical and intricate problem of competing interest between the mother on the one hand who is purely a Qur'anic heir and the father who is both a Qur'anic heir and a residuary heir surviving along with a spouse relict. Caliph Umar in this situation applied the law in what could be termed in jurisprudence language as "ought" rather than "is". The position as resolved by Caliph Umar has been accepted by most of the companions and adopted by the Sunnih Schools of jurisprudence but opposed to by Ibn Abbas, Dawud al-Zahiri, Ibn Hazm and Shuraih bin Harith.

If the deceased leaves a spouse in addition to the parents, the husband takes one-half in case the deceased was a woman, and the wife takes one-fourth in case the deceased was a man. The mother takes one-third. There are however differences of opinion among the scholars as to whether the mother's share is one-third of the whole estate or one-third of what is left after the deceased wife or husband have taken their shares. The father takes what is left after the mother has taken her share, provided that the father's share is not less than the mother's.¹⁷

It was the above situation i.e. where the parents survived along with a spouse relict that culminated into the decision of *Umariyyatan*.

There are three different opinions on the issue but according to the position taken by caliph Umar (which is the prevailing opinion), at first instance, he gave the mother one-third of the net estate for example:-

Illustration I:- Where both parents survived the deceased along with the Husband, the distribution should be as follows:-

P					
H	M	F			
$\frac{1}{2}$	$\frac{1}{3}$	R			
3	2	1	+	+	= $\frac{6}{6}$
6					

¹⁷ Qutb S. (2001) In the shade of the Qur'an *Fi Zilal al -Qur'an* Vol. III, translated and edited by Adil Salahi & Ashur Shamis, Islamic foundation, U. K. P. 53 - 54

Illustration II:- Where both parents survived the deceased along with the Wife, the distribution should be as follows:-

	P			
W		M		F
$\frac{1}{4}$		$\frac{1}{3}$		R
3 +		4 +		5
		12	$\frac{12}{12}$	

The above position which gave the mother one-third of the net estate was first decision of Caliph Umar in Umaratani.¹⁸

Looking at the shares illustrated in No. 1 above, we discover that the mother gets twice the share of the father. In the case of No. 2 the father gets slightly more than the mother. This has been submitted to go contrary to the general rule that the share of a Male is twice as much that of a female of the same grade.¹⁹

The second caliph, faced with the above situation and in the light of the golden principles in the law of inheritance as highlighted above in other words known as ta'asib (agnatization) which make a male to inherit a portion equal to that of two female as elaborated in the Holy Qur'an.⁹ By analogy, similar procedure and arguments were extended to cover cases of Parents competing with a spouse relict. Thus if a spouse relict competes with both parents, the spouse relict takes his/her Qur'anic portion, the Mother one-third of the remainder and the father the remainder. It has been submitted that these two problems are known as Umarataini.²⁰

Thus on the basis of the above, the distribution of the estate of a deceased who is survived by a spouse relict and both parents was finally decided by Caliph Umar as illustrated below:-

Illustration I – Where the deceased is survived by a Husband and both parents, the distribution is as follows:-

¹⁸ Al-Fawzani S. A, op. cit. P. 88

¹⁹ Gurin A. M. An Introduction to Islamic law of Succession (testate/intestate)

²⁰ Ibn Qudama (N. D.) Al-Mughni, Sharhal-Kabayu Vol. 7 Darul al-maktabatul al-miyyati, Beirut, Lebanon, PP. 20 - 21

Year	Percentage of Population Aged 65 and Over
1950	7
1960	8
1970	9
1980	10
1990	11
2000	12
2010	13
2020	14
2030	15
2040	15
2050	15

Issue No. 8

RESPONSE: The above stated position of the Sunnī schools enjoys the support of the tradition of the Prophet that says distribute the inheritance to those entitled and whatever remains be given to the male agnate, the father therefore as such male agnate receives $\frac{1}{6}$ plus the residue in the presence of daughter. The father inherits in two capacities: - i. As a Qur'anic heir he inherits $\frac{1}{6}$ in the presence of a child and ii. As a residuary heir in the absence of a son to the deceased; therefore where he survived along with a daughter he inherits $\frac{1}{6}$ plus the remainder.

Illustration:

$$\begin{array}{rcccl}
 & & P & & \\
 \hline
 D & & & & F \\
 \frac{1}{2} & & & & \frac{1}{6} + R \\
 3 & + & & (1 + 2) & \\
 \hline
 & 6 & & & \\
 3 & + & & 3 & \\
 \hline
 & 6 & & & = 6/6
 \end{array}$$

Issue No. 9

The Shia will give a wife 1/8, the only daughter 7/8, and the sister nothing while in Sunni law the wife will 1/8, the daughter 1/2 , and the sister as universal heir will receive 3/8 (the baqi) (see Dr. Kavakci, page 52).

RESPONSE: The above stated position of the sunnih schools also enjoys the support of the tradition of the Prophet which reported that a person came to Abu Musa and Sulaiman Bin Rabia and asked about the right of inheritance of a daughter, son's daughter and a germane sister. They replied that the daughter is to be given one-half and the sister remaining half and requested him to consult Abdullah Ibn Mas'ud. When the person went to Abdullah Ibn Mas'ud, he said I shall be a sinner and not on the right path if I confirm to their opinion. But I shall say what the Prophet of Allah had observed. That is one-half is the share of the daughter and one-sixth is for the son's daughter thereby completing two-thirds and the remaining for sister.²¹ Issues Nos. 8 and 9 above have been correctly resolved, what Mr. Katz may be asking is why the difference in the position between Shia and Sunnih? We submit that the answer is simple it has to do with human nature of understanding and interpretation of legal provision which is not only a common feature of Islamic law but also that of all religious and manmade laws. That explains why in a lot of courts' decision you find majority/minority decision or majority/dissenting decisions. We are sure Mr. Katz is aware that differences of opinion are part of human nature which exists in everything including the understanding and interpretation of divine revelations.

²¹ Gurin A. M. 1987 An Introduction to Islamic law of succession (Testate/Intestate) P.104 as quoted from Hashiyatul Adawi; 11,349 and Miskatul Masabih, 11,335 and reported by Ibn Majah, Abu Dawud and Al Tirmidhi AL-Bukhar, and Muslim.

Illustration:

		P		
W		D		GS/CS
1/8		1/2		R
1	+	4	+	3
		8		= 8/8

Issue No. 10

Suppose my wife has no relatives at all [e.g. being a war orphan] and she dies before we are blessed with any children. According to verse 12, I get half of her property. Who gets the other half of her property? Only half of the inheritance is regulated according to the Qur'an. The same situation with switched roles, my wife would get a quarter, but who get the other 3/4 of my property?

Note: /see the link to the actual Islamic law (Shia version) at the end of the document. If there is only one heir, then this heir gets everything. But this is NOT consistent with what the Qur'an actually says. What is the point of the Qur'an giving specific rules if they are not obeyed (because they are just not workable)? Some Sunni schools would put the surplus into the state treasury, if there is no male relative to take the rest.

RESPONSE: The above stated position of the sunnih schools also seems to be the dominant view in the Maliki and Shafi'I schools, if a husband or wife is not survived by any other relation; the residue of the estate goes to public treasury. The inheritance of the public treasury in such situation is further justified on the basis that it is a source of support to the Muslims just like the support enjoyed by blood relations to one another.²² See our response to issue No. 4 above.

Issue No. 11

One step more difficult. Suppose we do have children.

I die and leave my wife and one daughter but I have no other relatives, which means that my daughter gets 1/2 = 4/8 [verse 11] and my wife gets 1/8 [verse 12] leaving again 3/8 unaccounted for

In all these [and several more such] cases the question is: Who gets the rest? I agree this can be taken care of by donating it to charities or the local Masjid. But the problem is the Qur'an does not tell us what to do with it.

²² Al-Fawzani S. A, op. cit. P. 39, see also Sharhil Kabir lil Dardir Vol. 4 P. 416

Can the rest also be distributed among the wife and children? But that procedure would make their shares different from what has been specified in the Qur'an; What is the point of specifying clear shares and then abandoning the instruction? Anyway, as long as the shares add up to less than one, things can be settled still "relatively easily." People get at least the share they are supposed to get [according to the Qur'an].

RESPONSE: Regarding who get the rest refer to our response to issue No. 4 on the operation of *radd*. With regard to whether it was the Qur'an that told us what to do with the remainder or not, it is worthy to point out that it is not only the Qur'an that embodies Islamic law 100%, other sources such as the Hadith of the Holy Prophet are equally compelling and a Muslim must believe and work with them. For example to add to Mr. Katz "confusion" the Qur'an commanded the Muslims to fast and to perform ablution and to pray but details regarding how to observe these religious obligation are provided by the Hadith of the Prophet. It is therefore highly illogical for anyone to be completely adamant and to insist that he must find every conceivable detail on every subject matter in Holy Qur'an before he is convinced that the Qur'an is complete in its instructions. Further it is unfortunate for Mr. Katz to assert that the Qur'an "specified clear shares and then abandon the instruction" although he did not cite any example, there is no law that is abandoned, it may be the interpretation offered for those verses that the author is not willing to accept.

Issue No. 12

More problematic is the following certainly not uncommon situation: If I (as the male head of the family) die and leave behind (in the order given in the verses above):

3 daughters	both parents,	my wife
$2/3(2/9 \text{ each})$	$1/3(1/6 \text{ each})$	$1/8$
Verse 11	verse 11	verse 12
$2/3$	$+$	$1/3$
	$+$	$1/8$
		$= 1 + 1/8$

Where is the extra 1/8 going to come from? Is the local Muslim community (the "fund for balancing out the inheritance shares that don't add up") going to pay it? After all, if they would be getting the left-overs from the cases when the sum is less than one in the examples above, that would only be fair.

Shia solve this problem by paying the spouses first, i.e. the wife receives $1/8$ and then the other shares are taken from the remainder (which adds up

correctly), see #2778 in this Shia legal code. The Sunni schools decrease all shares proportionally (*Awliyyah*). Both have found ways to work around the problem, but in both “solutions”, some or all heirs do not receive the shares specified by the Qur’an.

RESPONSE: This problem is known in Islamic law of inheritance as *awl* – a case of oversubscription, the problem did not present itself during the time of the prophet nor during the time of Caliph Abubakar. There are two conflicting reports regarding its origin. According to one report such type of problem was first presented to Caliph Umar in a case involving a husband and two germane sisters. The above hypothesis however, was almost the exact problem that was reported to have been presented to Caliph Ali when he delivering a sermon during a Friday prayer; a questioner from the congregation interrupted the sermon by asking “what will be the share of a wife whose husband died and is survived by both parents and two daughters”. According to the report Caliph Ali responded to the question swiftly by saying her $1/8$ becomes $1/9$ and proceeded with the sermon. It was for this reason that the case is also referred to as *al-mimbariyyah* case – the pulpit case.²³

Illustration:-

W		M		F		2D	
		$1/8$		$1/6$		$1/6$	$2/3$
$3/24$	+	$4/24$		$4/24$	+	$16/24 = 27/24$	
$3/27$	+	$4/27$		$4/27$	+	$16/27 = 27/27$	

Therefore Wife’s share = $3/27 = 1/9$ by operation of *awl*.

Such problem was solved by one of the rightly guided Caliph and accepted by majority of the Holy Prophet companions; it is thus a mandatory source of Islamic law which Muslims are bound by it.

Issue No. 13

Other examples where shares add up to more than one (“solved” by proportional redistribution), as found in “Islamic Inheritance Law” by Dr. Yusuf Ziya Kavakci, Page 54-56 and “The Reliance of the Traveller” by Nuh Ha Mim Keller, section L8.2:

²³ Gurin A. M. 1987 op, cit. P. 144 – 145 as quoted from Muhammad A., *Ahkamul Tarikat wal mawarith*, Darul fikr, P. 179.



Husband, $\frac{1}{2}$		two sisters $\frac{2}{3}$ ($\frac{1}{3}$ each)		will receive according to which adds up to
Verse 12 $\frac{1}{2}$	+	verse 176 $\frac{2}{3}$	=	$\frac{7}{6} = 1 + \frac{1}{6}$

Husband, $\frac{1}{2}$	+	sister, $\frac{1}{2}$	+	mother $\frac{1}{3}$	=	$\frac{8}{6} = \frac{4}{3} = 1 + \frac{1}{3}$
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RESPONSE: In line with the response to issue No. 12 above; these hypothesis are also cases of oversubscription and like the example under issue no. 12, the first hypothesis here was the exact type of problem presented before Caliph Umar. The realized that if the husband is settled first, the two germane sisters will not get their complete share, likewise if the two germane sisters are settled first, the husband will not get his complete share and being the first problem of its kind to come before him he gathered the companions and sought for their opinion; according to some narration it was zaid bin Thabit while some claimed that it was Abbas bin Abdulmuttalib that suggested the application of the bankruptcy rule by saying "supposing oh Ameer al-Mumineen, a man died leaving 6 dirhams and there are two people claiming their debts from the estate. One of them is claiming three dirhams and the other four dirhams. Are not going to apply the rule of bankruptcy to divide the estate proportionately among them?" Caliph Umar replied yes and on that basis he distributed the estate given the husband $\frac{3}{7}$ and the two germane sisters $\frac{4}{7}$ ²⁴

Illustration:-

H		2GS/CS
$\frac{1}{2}$		$\frac{2}{3}$
$\frac{3}{6}$	+	$\frac{4}{6} = \frac{7}{6}$
$\frac{3}{7}$	+	$\frac{4}{7} = \frac{7}{7}$

The shares of both heirs abated proportionately by operation of *awl*.

²⁴ Al-Sabuni M. A. (1979) Al-mawarith fi al-shariyyati al-Islamiyyati ala dhai al-kitabi wal sunnah, 2nd ed. PP. 109 - 110, see also Al-Fawzani S. A op. cit. P. 162., Ali Lakhvi S. H. 2003 Al-Mirath, justice of islam in the rule of inheritance, Al- maktabah Al-Muhammedia, Pakistan, P.118 as quoted from Al-mabsut vol. 29 P. 161 & Al Dasuki Vol. 4 P. 419, Gurin A. M. 1987 op, cit. P. 144 – 145 as quoted from Abdul'Hamid A., Ahkamul Mawarith fil sharia fil Islamiyyah, Darul Arabi P. 165 & Muhammad A., Ahkamul Tarikat wal mawarith, Darul fikr, P. 179.

The same method applies in solving the second hypothesis thus:-

H		GS/CS		M
1/2		1/2		1/3
3/6	+	3/6	+	2/6 = 8/6
3/8	+	3/8	+	2/8 = 8/8

The shares of both heirs abated proportionately by operation of *awl*.

Issue No. 14

Problems of this sort can be found many. Another one would be: Mother 1/6, brother & sister (2/3 distributed 2:1 to brother/sister) and 1/4 for the wife is more than one.

RESPONSE: The above hypothesis cannot be more than one, hence poses no problem of *awl* or *radd*. Once there is a residuary heir problem of *awl* or *radd* will not arise. The brother and sister in the above hypothesis get the residue to share the brother having twice the share of the sister²⁵ after subtracting the mother's one sixth and the wife's one fourth. Thus the answer to the above problem will be as follows:

Mother		Wife		Germane Brother		Germane Sister
1/6		1/4				Remainder
2/12	+	3/12	+	7/12		
6/36	+	9/36	+	21/36		
6/36	+	9/36	+	14/36	+	7/36 = 36/36

Issue No. 15

*One son and one daughter. 4.11 says that one daughter will get half and a son will get double a daughter's share, which would be everything. 150% of the available property is distributed and we haven't even looked at the parents and spouse yet.

RESPONSE: The provision that gives one daughter 1/2 contemplates where the daughter survived alone without a son. Where she survived along with a son the principle of agnatization applies i.e. the son convert the daughter to a residuary heir and together they inherit either the whole estate where there is no other eligible Qur'anic heir or inherit the residue after other eligible Qur'anic heirs have taken their portion in such a way that the son gets a portion double to that of the daughter. For instance per the above stated

²⁵ Holy Qur'an chapter 4 verse 176 provides: '.....if there are brothers and sisters, (they share), the male having twice the share of the female.....'

hypothesis if there are also parents and spouses along with the son and daughter; the parents and spouse are eligible heirs and their shares have to be settled first and then whatever remains is shared between the son and the daughter²⁶, hence the distribution will be equal to unity – 100%. Example:

Father		Mother		Wife		Son		Daughter		Remainder
1/6		1/6		1/8						
4/24	+	4/24	+	3/24	+			13/24		
12/72	+	12/72	+	9/72	+			39/72		
12/72	+	12/72	+	9/72	+			26/72	+	13/72 = 72/72

Whereas if it is only one son and one daughter that survived the deceased, the distribution will be as follows:

$$\begin{array}{ccc} \text{Son} & & \text{Daughter} \\ 2 & : & 1 \\ \hline 3 & & \end{array} = 3/3 = 100\%$$

The choice of the interpretation stated in the above hypothesis by Mr. Katz as the meaning and intendment of the provision of the Holy Qur'an 4 : 11 is amazing and does not in any way convey the meaning of the said provision.

Issue No. 16

Well, even though it doesn't say so, let us assume that 4:11 doesn't only speak about 2/3 for more than two daughters but the 2/3 share holds every time when there are two or more children as many Muslims interpret it. But then the last mentioned case above would still be the same problem for any number of children since the children get 2/3, the parents get 1/3 and then there is nothing left for the wife which is supposed to get 1/8.

RESPONSE: The above hypothesis is another case of oversubscription which has already been addressed under issue No. 12 that is if we understand Mr. Katz to be referring to children getting 2/3 as 2 or more daughters surviving along with both parents and wife. In case the hypothesis for children includes sons and daughters or sons alone then the situation will be different, the result will be as pointed out under issue No. 15 above

²⁶ Ibid 4 verse 11

Issue No. 17

*When a man dies and leaves behind a mother, wife and one sister only, then according to 4:11 the mother gets $\frac{1}{3}$ (because he has neither children nor a brother), the wife gets $\frac{1}{4}$ according to 4:12 (because he has no children). Not only do we have again distributed more than there exists ($\frac{1}{12}$ in overdraft), we also have the very strange result that the direct heirs (people of direct relationship = spouse, children, parents) get each less than the indirect heir which is his sister. It becomes even worse if he has more than one sister since they then get $\frac{2}{3}$ instead of $\frac{1}{2}$ and we get even more into overdraft.

Anybody who has ever dealt with dividing out an inheritance will know how easily that can get nasty and how this can poison family relationships if people think they have been cheated. Promising certain people a definite share but not being able to pay them this share because more was promised than is available is the surest recipe for disaster.

RESPONSE: The above hypothesis is virtually a repetition of the issue raised under No. 13 saves for the change of spouse relict - husband to wife, it is also a case of oversubscription dealt with earlier and there is no point over flogging the issue all over again. It is however worthy to address the statement of Mr. Katz where he asserts that 'we also have the very strange result that the direct heirs (people of direct relationship = spouse, children, parents) get each less than the indirect heir which is his sister'. Here again Mr. Katz overzealously added children when actually in his example no child features but in his zeal to exaggerate the problem he added children and in place of the mother he chooses to generalize by replacing the phrase 'mother' with 'parents'. For the generalization if the children include a son and the parents include the father, the situation will be completely different. About the spouse, the basis for his/her inheritance is different from that of a blood relation; therefore there is no basis for comparison.

Issue No. 18

And there seems to be an awareness of this in the Qur'an since it does repeatedly in further verses stress the necessity of being just. And in these verses we have been looking at, we have the explicit statement at the end of 4:176 that "Allah makes clear to you, lest you go astray" as well as in 4:11-12 it says that "So Allah apportions" and "so Allah charges you" and (because?) He is the "All-wise". I am not sure there are many commands on the Qur'an which are explicitly given to make things clear and which

are so completely unclear and contradictory and impossible to fulfill. Do we really want to charge God that he didn't know what he was saying and that He is the author of confusion and contradiction? Or would it be more consistent with the confidence in God's wisdom to assume that this is NOT from God?

RESPONSE: as far as the Muslims are concerned the verses on inheritance though technical are commands from God and contains no contradiction, their fulfillment has been demonstrated in their application throughout the history of Islam. They seem 'completely unclear and contradictory and impossible to fulfill' to Mr. Katz only by reason of his prejudices to Islam, we tried in the previous responses to explain that there is no contradiction in the provision and presented how they have been interpreted and applied to address all circumstances of inheritance; we however don't anticipate Mr. Katz to succumb to reasons and logics since his attacks and perception are based on a tainted mind, but such is not surprising and it goes to confirm the declaration of the Holy Qur'an thus: – Qul ya ayuhal kafirun

“Say: (o Muhammad to these *mushrikin* and *kafirun*); “o Al-kafirun (disbelievers in Allah, in His Oneness, in His Angels, in His Books, in His Messengers, in the Day of Resurrection, and in Al-Qadar).

I worship not that which you worship.

Nor will you worship that which I worship.

And I shall not worship that which you are worshipping.

Nor will you worship that which I worship.

To you be your religion, and to me my religion (Islamic monotheism)”²⁷

Issue No. 19

*According to 4:12 and 4:176 the siblings of the person who died only then share in the inheritance if there are no direct heirs (i.e. parents or children according to Muslim understanding – see Yusuf Ali's translation and footnote), but in 4:11, the portion of the mother depends on the existence of brothers, which makes only sense if these brothers get the part that is taken from the mother. If they do not get it, and we suppose the shares added up to one without the existence of brothers, then who gets this sixth that was

²⁷ Muhammad T. A. et al Interpretation of the meaning of the Noble Qur'an Chapter 109 verse 1 – 6, Darussalam, Riyadh, Saudi Arabia, P. 989

taken away from the mother by the pure existence of these brothers? It either does not add up with or without the existence of this brother if he does not get this sixth of the mother.

RESPONSE: the purpose for the brothers and/or sisters reducing the mother's share is probably to accommodate what they may inherit, but under the rule of inheritance the brothers/sisters cannot inherit in the presence of father. Thus where there are father, mother and two or more brothers/sisters, the brothers/sisters reduce the mother's share while the father excludes the brothers/sisters to his own benefit as a residuary heir in such circumstance. Moreover, it should be noted that the responsibility for the subsistence of these brothers and sisters may still be with the father therefore whatever the father gets may end up going back to the maintenance of the family as a whole.

Whereas if the brothers/sisters survived along with the mother but without father they inherit along with the mother, in such situation they inherit either Qur'anic portion (in the case of sisters) or residue (in the case of brothers or the combination of brothers and sisters). The purpose for the inheritance of the siblings along with the mother depends on the interpretation of the meaning of *kalalah*. See our response to issue No. 6 wherein the interpretation of *Kalalah* was addressed.

Issue No. 20

*Last problem for now: 4:12 says that in case there are no direct heirs (parents or children) then "brother or a sister, to each of the two a sixth" while 4:176 says in the same situation that "they shall receive two-thirds of what he leaves" (double of what 4:12 says).

Now this has not been overlooked by the commentators and they try to get around this with some acrobatics, here Razi's comments on this issue:

"that brother or a sister, to each of the two a sixth; in 4:12 'here the brother or a sister means a brother or a sister from the mother, for Sa'ad ibn Abi Waqqas used to read, '...brother or a sister from the mother'. They have judged this way because at the end of the Sura Allah ta'ala said, 'They will ask thee for a pronouncement. Say: 'Allah pronounces to you concerning the indirect heirs. 4:176' thus He established that the two sisters receive two-thirds, for the brothers all the money, but here (4:12) established that the brothers and sisters will have the third, which means that the brothers and sisters here (4:12) is not the same as in 4:176. The brothers and

sisters here (4:12) those from the mother only, but there 4:176 the brothers and sisters from the father and mother or from the father.” This is a very handy way of getting around the problem. But also notice they appeal to another reading of the Qur’an to explain the contradiction. Indeed if this reading exist there will be no problem (for this specific contradiction – we had many more above though), but this will raise another problem: The present Qur’an is not all of the Qur’an, or more clearly, the Qur’an is corrupted because parts have been lost.

RESPONSE: The instances for the inheritance stated under 4 : 12 is referred to as *kalalah* No. 1 that is the inheritance of a person that is survived by neither ascendant nor descendant; by the manner of the provision of the shares i.e. giving equal shares to male and female sibling – one sixth each or one third to share equally among themselves where they are more than two; the provision is interpreted to be referring to the uterine brother and uterine sister, this has been agreed by all jurist.²⁸ This is because their link to the deceased was through the mother; they by rule inherit per their link i.e. as female. That explains why the rule of agnatization does not apply to them. Whereas in the case of verse 176, it is referred to as *kalalah* No. 2 and it is interpreted to be referring to brothers and sisters from the father’s side either germane or consanguine hence the rule of agnatization applies.

Illustration: a deceased that is survived by wife, uterine brother, one uterine sister, one germane sister and one germane brother. The distribution of his estate will be as follows:

W		UB		US		<u>GB</u>	<u>GS</u>	
1/8		1/6		1/6			R	
3/24	+	4/24	+	4/24	+	13/24		
9/72	+	12/72	+	12/72	+	39/72		
9/72	+	12/72	+	12/72	+	26/72	+	13/72 = 72/72

Issue No. 21

But if indeed verse 12 speaks about half-siblings through the mother only, and verse 176 about full siblings or half-siblings through the father only, then this creates another overdraft problem similar to the one found in “Islamic Inheritance Law” by Dr. Kavakci, page 55:

²⁸ Al-Fawzani S. A op. cit. P. 91

Wife, 1/4	Mother, 1/3	2 full sisters, 2/3	3 half-sisters from Mother 1/3 together
v. 12	v.11	v.176	v.12
adding up to $(3 + 4 + 8 + 4) / 12 = 17/12$			

Thus, making a difference between the siblings in verse 12 and 176 does not really solve the problems.

“Try to learn the knowledge of faraid! Teach this knowledge to the youth! The knowledge of faraid is half of (all) religious knowledge. It will be this knowledge that my Umma will forget first.” A hadith, by Ibn Maja and Dara Qutni.

“Faraid” is the calculation of inheritance. Given the prime importance of this topic, it is an even worse problem to find contradictions on this issue in the Qur’an.

RESPONSE: The essence of the difference between the provision in chapter 4 verse 12 and that in chapter 4 verse 176 is not to ensure that the arithmetical calculation add up to 100% exactly but by the fact that the two categories of relations are related to the deceased in different degrees and different strength of blood ties, therefore God provided for them different shares. Where the two groups survived the deceased, none can exclude the other, hence the rule of oversubscription applies.

Issue No. 22

I know Muslims have found ways to solve their actual inheritance problems in real life. But if we take the information from the Qur’an only, then it does just not work out. To the very least, the instructions on inheritance do contradict the sura 41:2-3 where we read: “A revelation from the Most Gracious, Most Merciful; a Book, whereof the verses are explained in detail; a Qur’an in Arabic, for people who understand.” Even though it goes on in the next verses to talk about ‘people who do not understand and who turn away’, and I agree that deeper insights into the Word of God are only given to those willing to listen with an open heart, the rules of simple arithmetic are not depending on spiritual disposition.

Even if one would not put standards of perfection on these rules as it is fitting for revelation from God, but only think it to be from Muhammad, it is strange that this successful business man, in charge of whole caravans for a number of years, was not able to correctly add up a few fractions.

RESPONSE: The rules on inheritance did not assert anywhere that it is making provisions that would in any circumstances add up to 100% only. The rules provided directives in respect of the categories of persons that should inherit a deceased and provided the fractional shares they are to inherit. With regard to how the actual distribution is done, the issue of who exclude who and what happens when the estate is oversubscribed or undersubscribed by eligible heirs are matters of interpretation and as conceded by Mr. Katz Muslims have found ways to solve their problems without the help of any self acclaimed arithmetician as Mr. Katz.

Issue No. 23

Furthermore it seems that I can bequeath whatever I have to whomever I will, since bequests (and debts) are to be taken care off before the rest is distributed to the nearer or wider family. That this can lead to rather gross injustices (e.g. not leaving any support to your elderly parents) does not need to be explained in great detail. This only may lead to injustice (not contradiction – which is the issue we are concerned with here) but doesn't change any of the mathematical problems above since these bequests might only change the amount of what is left to divide, but has no effect on the (relative) shares. The Muslim law is that one can only bequeath up to 1/3 to heirs not part of the legal heirs (but this is not mentioned in the Qur'an and another quite important issue which is not part of "what was made clear").

RESPONSE: The submission of Mr. Katz on bequest is actually the exact opposite of the purpose of bequest and its limitations under Islamic law. First of all, contrary to what Mr. Katz tries to portray, a Muslim cannot bequeath whatever he has to whomever he wished; a Muslim's power of disposition of his property by will is recognized but limited in two respects: i. to the maximum of one third of his net estate and ii. he cannot do so to a legal heir. The purpose of limiting a Muslim's power of disposition in this respect is to ensure that he did not give out everything leaving his heirs with nothing, therefore at least two thirds of his property is preserved for the heirs.

Issue No. 24

There are some other passages talking about justice in dividing up inheritance or the amount you bequeath to somebody in relationship to other people / kin you are obligated to, but since they do not mention numbers for the shares, they do not throw any more light on the situation. If you want to check them out: 2:180-182, 2:233, 2:240, 4:33. Only 2:240 actually says

something specific about amounts. But there it is an absolute amount and not a relative amount of shares as in 4:11-12, 176. But comparing 4:12 where a widow usually (since usually there will be children) gets 1/8 this commanded of "one year's maintenance for her" will nearly always be higher or lower than the 1/8 share depending on the size of the property left behind by the deceased. It would be an incredible accident if that would hit 1/8 exactly. So, in the reality of practical life this is yet another contradiction in the Qur'an. (According to Yusuf Ali's footnote on 2:240, many commentators for this reason consider 2:240 abrogated by 4:12. But that is a cheap way to resolve contradiction. These are both in the Qur'an and 4:82 does not say that there are no discrepancies in the unabrogated part, but ga'alsha'al Al-Kadhi and Khalid, extends this claim over the complete Qur'an.)

Muslim responses by Randy Desmond, Misha'al Al-Kadhi and Khalid, The Learner nothing for the wife by an anonymous Muslim, and yet another "solution" by Shabir-Ally.

RESPONSE: the Holy Qur'an 2: 180-182 talks about making bequest to parents and next of kin is to be understood in the context and background of the system of inheritance before the coming of Islam, where parents by reason of their age have no ability to go to war and defend the family hence are not eligible to inherit, Islam reformed such rules gradually by first making provision for bequest in their favour and later give them definite shares of inheritance in chapter 4 verse 11. The same explanation goes for the wife provision under 2;240 whose specific provision was made in 4 verse 12. The provisions are therefore not contradictory because some are deemed to have been abrogated by others.

Issue No. 25

All those above Muslim reactions either follow some school of Muslim jurisprudence and explain what should done in the problem cases, or they propose own methods which have nothing to do with Islamic reality. But they only explain what is to be done when the Qur'an does not distribute all the estate or more than is available. However, in doing so they import data from the outside (hadith, personal opinions, ...) and the issue of our discussion is whether the Qur'an is sufficient and consistent in itself. The conclusion is that the Qur'an is not logically consistent. In particular, the rule that one party (usually the spouse) is not found in the Qur'an but distributed according to the given shares, is not found in the Qur'an but

imported from the outside. And it is NOT the way the four schools of fiqh are doing it. Furthermore, it does not solve all the problems either. It is not possible to obey the laws as given. None of the responders solves the problem that shares adding up to more than the available estate is a logical internal contradiction in the Qur'an. None of the proposed solution methods of real life can be derived from the text of the Qur'an. The Qur'an contradiction remains. Human rules are necessary to overrule the word that is claimed and believed to be divine.

Added comment: "The Learner" was seemingly very much bothered with my continuing non-response to his writings on this issue and wrote yet another note on the inheritance issue. I have to say, that in my opinion everything necessary is presented. If he wants to know what are those hadith mentioned in my private email reply to him (never intended for publication) then I am sure he has access to more Islamic literature on inheritance laws than I do, and I have already listed the titles which I used. This topic is not promising many new insights and I have no desire to spend more of my time on it unless substantial new data is brought to my attention. He considers the issues solved and stated why, I consider it still a contradiction and leave it at that. The reader is invited to make up his own mind about the arguments presented by both sides.

RESPONSE: if the Muslims writers do not follow the views of the schools of jurisprudence what views does Mr. Katz expect them to follow? We though ordinary rule of scholarship dictates that every learner should have a teacher before he can graduate to a learned person in his area of interest, we believe either Mr. Katz or the Muslim's scholars that responded to his writing are no exception, they drew their inspiration from the positions of the schools of jurisprudence and it will be interesting to know from where Mr. Katz drew his own inspiration.

Issue No. 26

A further contradiction in the inheritance laws is the above not mentioned verse of Sura 4:7

To the men a share of what parents and kinsmen leave and to the women a share of what parents and kinsmen leave, whether it (the property) be little or much, a share apportioned.

Determining that men and women should each get an equal share (the parallel construction makes that obvious) clearly contradicting the instruction in 4:11, saying

Allah charges you, concerning your children: to the male the like of the portion of two females, ..

That this contradiction was recognized by all commentators and the general "solution" is that verse 7 is abrogated (*mansukh*) and verse 11 is the one abrogating (*nasikh*) it. Would it not be contradictory there would not have been the necessity to create the category of abrogated verses.

Jalalu'd-Din in his *Itqan* gives a list of 20 verses which are acknowledged by all commentators to be abrogated and also gives the respective abrogating verses. The above pair of 4:7 & 4:11 is pair No. 20 in this list.

Islamic Inheritance Law (Shia source): rules Regarding Will (Wasiyyaat) and the same. Check out how this fits or doesn't fit the Qur'an as the verses describe it above. And why the injustice in #2783 & #2784? It seems again that the women draw the short straw, #2789: How on earth do you divide a sword in equally in two halves? Isn't half a sword pretty worthless and two half swords just as worthless? And the same division procedure for a Qur'an? Isn't that a rather irreverent thing to do? Infor: #2715 and #2719 give the rule that at most 1/3 can be given as a bequest to a person which is usually not an heir.

Note: Most of my problem cases from above is still not solved in these elaborate rules under preservation of the shares given in the Qur'an.

Al-Fara'id On-line (A web site dedicated to the calculation of inheritance) Go there and put in the examples I gave and observe how the people in the end do not get the share that is indicated in the Qur'an, how the shares add up to more than one and how they account for it by adjustments. Since this web site is ever so often not reachable, I saved the above and more examples in an [extra file at this site](#).

Further Islamic web sites dealing with inheritance:

A few points regarding inheritance

Introduction to Fara'idh (inheritance)

RESPONSE: There is nothing in the provision of the Holy Qur'an 4 verse 7 that suggest equality of shares between men and women, what the verse simply says is 'a share for men and a share for women', what those shares translates to is provided under chapter 4 verses 11, 12 and 176. The issue of equality is only an imputation and choice of interpretation by Mr. Katz, whom we submit with all due respect is the least qualified to decide on the

interpretation of the provision of the Holy Qur'an. At best the provisions of verses 11, 12 and 176 are complimentary to verse 7 not contradictory.

Issue No. 27

There is another aspect in the Qur'anic instructions on inheritance which is not a logical contradiction but which seems to contradict justice.

Usually Muslims argue that the shares of a male are double than that of a female not because the male is worth more, but because the male has the duty to support his family while the female can spend it all on herself without the need to share. This sounds good initially but let us look at some examples again.

Imagine the situation that a man dies and leaves no direct heirs but only a brother and a sister. His sister might be a widow with children, without support from others, but she has to feed her children. The brother might be a rich business man and bachelor who has nobody to take care of but himself. Nevertheless, the brother will get 2/3 and the sister will get 1/3 of the estate.

If "the duty to support the family" is the true reason, then shares would be distributed according to actual need and duty. But this is not talked about in these verses at all nor is this embodied in the actual practice of Islamic Law. The male does get double the female no matter what their respective financial situation is and how many people depend on them. He might voluntarily give money to the needy relative. But the inheritance law does not say so, and he does not have to.

If the reason really is "the man has to support the family" then a widow should get as much as a married man since she now has to support her family. A male bachelor should get as much as a single female who is without children since he has nobody to support but himself just like her.

RESPONSE: Mr. Katz seems to be mixing up the Islam's theory of family responsibility with that obtainable under the non-Muslims system, understandably under his system where women are expected to struggle to earn a living just like their male counterpart his argument may stand. Under Islamic law however, women are generally not expected to work and struggle for their livelihood, it is the men that should struggle and provide for themselves and the entire members of the family. In this respect the Holy Qur'an provides:

“The mothers shall give suck to their offspring for two whole years if the father desires to complete the terms, but he shall bear the cost of their food and clothing on equitable terms.....”²⁹

In yet another verse the Holy Qur’an provides:

“Men are the protectors and maintainers of women.....”³⁰

Likewise the Holy Prophet is reported to have said:

“Allah will ask every caretaker about the people under his care and the man will be asked concerning the people of his household.”³¹

Hence contrary to the assertion of Mr. Katz, it is not the responsibility for a widow to support her children; children of a deceased person are to be supported by the parents of that deceased person if they are still alive otherwise they are to be supported by their uncles – the brothers to the deceased person. Therefore the fact that a male Muslim has the duty to support his family is a legal duty and per Mr. Katz example a sister who might be a widow with children, is not saddled with the legal responsibility of feed her children, such is the responsibility of her deceased husband’s surviving male relations. Even the widow herself if she is in need she is to revert back to her own male relations for support and if her male children are of age, they are to provide for her. Thus it is quite possible that the sister may expend her 1/3 and still fall back to her brother for support, who is under obligation not only to support her but to also support his own wives and children. In this respect it has been submitted that the rationale for the share of a male being twice the share of a female was based on sound and logical reasons among which are: 1. For the fact that a woman needs a lot of care and assistance, God imposed a duty on her father or her son or her brother to support and take care of her. 2. Contrary to her male counterpart who has the duty of feeding himself, his wife, children, parents, relations etc. a woman was not saddle with the responsibility of feeding herself. 3. Man have a lot of dependants to support hence his needs of resources will be more than that of a woman. 4. Man pays dowry and arrange for accommodation, feed and clothe both his wife and children, on this basis he

²⁹ Abdallah Y. A. op. cit. Holy Qur’an chapter 2 verse 233, P93

³⁰ Ibid, chapter 4 verse 34

³¹ Al-Qardawi Y. (1989) *The Lawful and The Prohibited in Islam*, Al-Tawheed, Lagos, Nigeria P. 230 as quoted from Ahmad, Nisa’I and Abu Dawud.

requires more resources than woman and 5. It is the man's duty to educate his children and train them to be able to stand on their own and also to provide general care in terms of medicine to both the wife and the children.³²

Issue No. 28

But the whole theory of "responsibility of support" breaks down in the case of death of your spouse. Imagine a man and a woman where both are about 45 years old, who have married relatively late; e.g. at about the age of 30 and who have a number of children, some of them still young. Suppose also that both have worked or for some other reason have similar estates they leave behind when dying.

If the woman dies, the man gets $\frac{1}{4}$ of the inheritance. If the man dies the woman gets $\frac{1}{8}$ of the inheritance. But in both cases the surviving partner will have to feed and educate the children and even though the husband has good chances to marry again, a 45 year old widow has far fewer chances to find another husband.

Why would the woman receive only half the amount of inheritance the man would get but actually in the average situation the woman would be in greater need to have the money to be able to feed her children?

I don't think this is splitting heirs. I am sure this is not an artificial and uncommon situation. And it seems very unjust. And it does look like the men are worth more than the women. It is their "maleness" that defines the size of their shares to be double than the women's' shares, not the actual situation of need to support a family.

RESPONSE: As already pointed out under the response to issue No. 27, it is not the legal responsibility of the widow to feed and educate her children, the cost of their maintenance and education is to be borne by their uncles or grandfather or from the property they inherited from their deceased father. Whereas, if it is the wife that died, the responsibility of the husband to his children still remains, he is to still continue to bear the cost of their education, feeding and general care. Therefore the hypothesis raised by Mr. Katz cannot stand in the face of family responsibility under Islamic law.

³² Al-Sabuni M. A. op. cit. P.15

CONCLUSION

We have attempted as much as possible to address issues raised by Mr. Katz in his writing – ‘Who is going to pay the bill for the “promise in overdraft”’, we tried to shed some light that cases of oversubscription or under subscription in Islamic law of inheritance are not strange and have been resolved since the early period of Islam, their occurrence does not in any way amount to contradiction in the Holy Qur’an. However, as hinted by Mr. Katz in passing – ‘deeper insights into the word of God are given to those willing to listen with an open heart’, it is therefore left to interested readers to go through our responses with an open heart.