Is it permissible for British Muslims to take up employment wherein the source of income is unlawful, such as interest and conventional insurance, given that they are living in a non-Muslim country? I have read that Imam Abu Hanifa permitted this for Muslims living in non-Muslim countries? If not, then does the earning have to be returned to the employer?

A Muslim is obliged to follow the dictates of sharīʿa wherever he/she may be.1 This is not a point of dispute amongst the jurists. However, in the Hanafi School, sometimes the abode in which a Muslim finds him/herself and his/her status therein can add dimensions that affect the ruling. Classical Hanafi jurists have expounded a binary division of Dār al-Islām [the abode of Islam] and Dār al-Ḥarb [the abode of war] which was probably a reflection of the concern of jurists for the application of this law. This binary division appears to take for granted a permanent state of war or, at least, the existence of hostilities. The citizenship of Muslims tends to be subsumed under Dār al-Islām as an extension of religious identity whereas the citizenship of non-Muslims who wish to adopt permanent residence requires a mutual covenant of commitment [ʿaqd al-dhimma] which grants equal rights and obligations to those of their Muslim compatriots.

Non-Muslim aliens seeking safe conduct for their persons and their properties during temporary residence may do so under a contract of safe conduct [ʿaqd al-amān] and the hostilities are temporarily suspended in their regard. The persons and properties of the citizens of Dār al-Ḥarb do not enjoy any protection and are rather fair game [as would also conversely be true]. If a Muslim alien enters Dār al-Ḥarb under a covenant, for instance as a trader, this does not earn protection for the persons and properties of the belligerents. However, the Muslim alien is not permitted to breach the covenant or commit any form of deception. Thus, if a Muslim alien contracts an otherwise unlawful contract with a belligerent in a manner that the benefit accrues to the Muslims,2 it is permitted for him/her to do so according to Imam Abū Ḥanīfa and Imam Muḥammad.3 The ratio legis to this ruling is that the Muslim alien appropriates the wealth

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1. In the name of the Allah, The Beneficent, The Merciful

2. It is not permitted if the benefit accrues to the belligerent.

3. A Muslim is obliged to follow the dictates of sharīʿa wherever he/she may be. If it is not permitted, then the earning has to be returned to the employer.

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[1] A Muslim is obliged to follow the dictates of sharīʿa wherever he/she may be. If it is not permitted, then the earning has to be returned to the employer.

[2] A Muslim is obliged to follow the dictates of sharīʿa wherever he/she may be. If it is not permitted, then the earning has to be returned to the employer.

[3] A Muslim is obliged to follow the dictates of sharīʿa wherever he/she may be. If it is not permitted, then the earning has to be returned to the employer.
of the belligerent by virtue of original permission and not through the unlawful contract. The contract is merely a device by which the belligerent is appropriated without deception. The contract itself has no legal effect. This is further illustrated by the ruling by Imām Abū Ḥanīfa that if a belligerent embraces Islam in Dār al-Ḥarb and does not migrate to Dār al-Islām, his person and property too do not earn protection merely by virtue of his Islam. Thus, according to Imām Abū Ḥanīfa, it is permissible for a Muslim alien to contract an unlawful contract with him [in a manner that the benefic accredits to the Muslim alien]. As a further extension, if two belligerent embrace Islam in Dār al-Ḥarb but do not migrate to Dār al-Islām, according to Imām Abū Ḥanīfa, it is permitted for them to contract an unlawful contract as their properties have not earned protection.

However, if the Muslims of Dār al-Ḥarb agree cessation of hostilities with the non-Muslims of Dār al-Ḥarb, the persons and properties of the citizens of Dār al-Ḥarb are guaranteed protection for the duration of the bilateral agreement. Such abode is still considered to be Dār al-Ḥarb but, in recognition of the agreement to cease hostilities, jurists coined the term Dār al-Muwāda [the abode of cessation of bilateral hostilities]. It thus follows that, in Dār al-Muwāda, a
Muslim cannot appropriate the property of the residents of that abode, whether Muslim or non-Muslim, by virtue of original permission. Rather, as the persons and properties of that abode have now earned protection and a Muslim is obliged to follow the dictates of sharīʿa wherever he/she may be, proprietary transfer requires conformity with sharīʿa even if the other party is non-Muslim. It is thus not permitted for a Muslim alien to contract an unlawful contract with a resident of Dār al-Muwādaʿa, Muslim or non-Muslim, even if it is in a manner that the benefit accrues to the Muslim alien.

In an era of international treaties and bilateral agreements, non-Muslim countries, on the whole, are examples of Dār al-Muwādaʿa for the citizens of Muslim countries and so if a citizen of a Muslim country enters a non-Muslim country under a visa, he/she is not permitted to contract an unlawful contract there. However, the designation of Dār al-Muwādaʿa for the Muslim citizens of non-Muslim countries, the west in particular, is arguably not appropriate. Whilst in the past, Muslims did not tend to migrate to non-Muslim lands in any great number, this is not the same today. On the contrary, Muslims have now settled as citizens of non-Muslim countries in quite significant numbers and citizenship too is now a politico-legal relationship between the individual and the state without any obvious grounding in religion. Rather, birth, descent, marriage and naturalisation generally constitute the main means of acquiring citizenship. Formal national constitutions also ensure the application of uniform laws to all citizens. It is due to the attending realities of the world today that more recent jurists have applied the term Dār al-Aman [the abode of security] for Muslims domiciled in non-Muslim countries although the concept itself did exist since the early Islamic community. However, this designation too is arguably not entirely in harmony with the realities of our contemporary experience for it assumes only a temporary residence. The reality is that Muslim citizens of non-Muslim countries generally enjoy permanent residence and have abandoned any previous intentions to return to their countries of origin or that of their parents and grandparents. The migration and citizenship laws of Muslim countries too are generally premised on nation state and national interests and it is often Muslim countries that restrict dual nationality. Therefore, any notion that Muslim citizens of non-Muslim countries are only temporary residents does not conform to the realities of our contemporary experience. When the persons and properties of the citizens of non-Muslim countries have earned protection from citizens of Muslim countries, the same must apply a fortiori for the Muslim citizens of non-Muslim countries. Thus, it is not permitted for a Muslim citizen of a non-Muslim country to contract an unlawful contract with a compatriot, Muslim or non-Muslim, even if it is in a manner that the benefit accrues to the Muslim citizen.

The normative position of the Hanafi School in Dār al-Islām is that if a Muslim employee receives payment from an employer, whether Muslim or non-Muslim, for employment that is fundamentally unlawful in nature, the contract between the Muslim employee and the employer is null and the Muslim employee is not entitled to the payment, even if the work agreed has been carried out. The sum received remains the property of the employer and must be returned. If the Muslim employee cannot do so, either because the employer and his heirs are no longer alive, or they cannot be identified, or their whereabouts are not known, or for any other valid reason, the employee is required to donate the fee received to charity on behalf of the employer.
By extension, the same should apply to Dār al-Muwādaʿa, Dar al-Aman and any similar abode. However, if the exact same ruling was to also obtain for permanent Muslim citizens of non-Muslim countries, some of whom are employed in modes of employment that are fundamentally unlawful in nature, the financial sector in return would require them to earn throughout the period of their employment back to several years ago. This would create a situation where, once the Muslim employee comes to understand the nature of the earnings and seeks to remedy his situation, he would simply be unable to return the earnings to the employer. Meanwhile, the employer is legally bound to honour the agreed remuneration for services rendered and also considers the same to be fair. Therefore, it would appear that, if a Muslim employee, who is a citizen of a non-Muslim country, receives payment for employment that is fundamentally unlawful in nature, there is no proprietary transfer to him, he is not required to return it to his employer once services have been rendered. On the contrary, if the payment, or some part thereof, has not yet been consumed, he should repent and donate the funds received to charity without any intention of reward.

This opinion is actually congruent with what Ibn al-Qayyim al-Jawziyya has posited in Zād al-Maʿād that, if the possessed property is taken with the consent of the payer and the payer has received the consideration [whether property or service] in full, there is no obligation to return the payment to the payer, as the payer has released the payment voluntarily and received the consideration in full and so it is not permissible for him to secure both payment and the consideration, as that serves only to strengthen him in his unlawful pursuit and facilitate the same. Thus, the way to release oneself of its burden and complete ones repentance is to donate it. However, if the employee is himself needy he may first meet his own need and then donate the surplus, if any, to charity. Ibn al-Qayyim also furthers some of the same argument at one point in

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Madārij al-Sālikīn\textsuperscript{15} and ascribes the same to Ibn Taimiyya, whereas in Zād al-Maʿād, he states that Ibn Taimiyya did not commit to a settled opinion. However, Ibn al-Muflih positively ascribes this position to Ibn Taimiyya in Kitāb al-Furūʿ\textsuperscript{16} and al-Mirdāwī does the same in al-Inṣāq\textsuperscript{17} and al-Bahūṭī in Kashshāf al-Qināʿ;\textsuperscript{18} although the position of the Ḥanbali School itself is to the contrary. According to the Mālikī School, if a Muslim takes up employment with a non-Muslim for which there is unlawful, the contract will be rescinded if no service has been rendered as of yet. However, if service has been rendered, payment will be secured from the employer and will be donated to the poor as a disciplinary measure for the Muslim employee unless the employee could [reasonably]\textsuperscript{19} not have known it to be unlawful.\textsuperscript{20} The Mālikī jurist, Ibn ʿIlīsh has opined that the apparent of two opinions mentioned by al-Burzulī, Ibn Nājī, Zarrūq and others is not to return the payment to the payer. Ibn ʿIlīsh’s discussion does not differentiate as to whether the payer is Muslim or non-Muslim. In fact, the context would indicate that the payer is Muslim. In a question posed to the Mālikī jurist, al-Wansharīṣī regarding the consumption of the property of another if the latter

\textsuperscript{15} Madārij al-Sālikīn
\textsuperscript{16} al-Mirdāwī
\textsuperscript{17} Inṣāq
\textsuperscript{18} Kashshāf al-Qināʿ
\textsuperscript{19} reasonably
\textsuperscript{20} unlawful
permitted it, he allowed it with the exception of five cases in which the earning was from the fundamentally unlawful adding that they would not be returned to the original owner but rather be spent in avenues of good and righteousness. This shows that there is precedence for this in the Malikī School in particular and is also strongly argued by Ibn al-Qayyim. Notwithstanding, the precautionary opinion is, without doubt, that adopted by the Ḥanafī School.

Therefore, it is not permissible for British Muslims to take up employment wherein the source of income is unlawful, such as interest and conventional insurance, even though they are living in a non-Muslim country. The recorded position of Imām Abu Ḥanīfa regarding Muslims in non-Muslim countries is in relation to Muslims in Dār al-Harb [the abode of war] and arguably not in relation to Dār al-Muwāda‘a [the abode of cessation of bilateral hostilities], Dār al-Aman [the abode of security] and especially Muslim citizens of non-Muslim countries of today. However, the earnings do not have to be returned to the employer. On the contrary, any such earnings not yet consumed should be given to charity without any intention of reward and the individual concerned should repent for the sin incurred.

And Allah knows best.

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