

Volume 1 | No. 2



**scib**  
**DIGEST**

2ND EDITION  
June 2016

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Sequel to the first edition of Scib digest, this edition revisited the concept of risk management in the energy and communications sector, only to discover that an offshoot of this sector is soon to become the biggest risk exposure of all times! In the Article by Joke Awoderu, she highlighted the impact of emerging risks such as, Cybercrime, Climate change and Political terrorism on businesses and the need for planning for the shocks when they happen.

In meeting our everyday dietary requirements, we often are not aware that there is a value chain behind the delivery of what we eat; this chain has, along each ring, a list of risk exposures that have an impact on the quality, quantity and timelessness of what gets to us. The management of this chain and of the risk exposures, ensures that livestock, fisheries, fruits and the likes gets to our table when, how and where we want them. Olayinka Moses-Sule and Oladapo Olutunfese researched into the various exposures and presented certain solutions in managing them.

Image, they say, is everything, the impact of brand reputation for SMEs was presented by Anthony Gould. The main focus of this article is the Reputation risk exposures on Social media – This has become a major scare for conglomerates, hence the need for SMEs to watch their *“baby”* steps before they slip. Anthony focused on four key elements that a reputational risk policy should cover; you may want to find out what they are. Furthermore, to meet the thirst for insurance technical knowledge, the *“nitty gritty”* of Marine Insurance was enumerated by Victor Adewuyi and Julius Akindele.

Finally, there are articles that deal with contaminated product insurance for knowledge enrichment; an article on *“why you need an insurance broker”* will show you how you can get value for free! *“Achievement Habit!!”* is a book summary that you must read; this is served as a *“desert”* to complete your appetite. A whole lot of new information and refresher knowledge is guaranteed to sustain your interest till the last page!

**Abodunrin Roberts**  
June 2016

# EDITORIAL TEAM

**Ayo Akande**  
*Consultant*

**Abodunrin Roberts**  
*AGM, Client Services*

**Bolanle Anjorin**  
*Assistant Manager, CSU3*  
*Energy, Telecommunications and Hospitality*

**Peter Offiong**  
*Deputy Manager, CSU1*  
*Financial Services and Manufacturing*

**Oluseyi Agun**  
*Assistant Manager, CSU2*  
*Aviation, Conglomerate and Manufacturing*

**Henry Ufuah**  
*Assistant Manager*  
*Business Development*



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# RE-THINKING RISK MANAGEMENT IN ENERGY AND TELECOMMUNICATION

By Ajoke Awoderu

**R**isk in business concept is linked to the possibility of suffering a loss and viewed differently depending on its source.

All life events are risky events. However, the ability to identify, eliminate, manage, improve on or transfer risk is what will guarantee the continued existence of a business and provide succour when unfortunate events occur.

The ability to immediately respond to a crisis situation anywhere in the world will help to mitigate and lessen the effects any potential risk may cause. Most especially for energy companies, risk management needs to be given a much more integral role in operations due to political risk and trade credit issues, threats to supply chains, and other issues associated with multinational operations. Globalization has required them to change not only where they operate, but how they operate.

When you combine that with the high levels of political violence and unrest that we have seen for decades in some energy-exporting countries, energy companies have had to make some adjustments to how they manage risk in international operations. That includes, but not limited to, improving physical security, updating security procedures, training and educating staff with a focus on attitudinal measures and cultural awareness, and hiring more local nationals.

In case of emerging risks for businesses, climate change, cyber threats and political volatility appear to be of greater urgency in the years ahead than ever before. It is therefore important to plan for possible shocks that may occur to businesses. Dealing with emerging risks is something that corporations and the insurance industry have had to repetitively assess, so the challenge is not new. However, the frequency at which new and challenging

risks are emerging is increasing all the time and it will only be logical to attack with drastic solutions.

With regard to the global energy and telecommunication industries, the seriousness of these risks may depend on the particular aspect of the energy business a company is engaged in. Mining risks in third world or developing countries like Nigeria may be more susceptible to political volatility and terrorism risk than those in North America for example. Pipelines vandalism, kidnap and ransom, malicious damage are also issues for concern in Nigeria.

In general, risk management assists in placing disaster recovery plans that respond to these kinds of threats. Insurance therefore should be a careful focus for industries that are committed to the going concern principle as financial compensation to cushion the effects of these misfortunes is what is most reasonable especially when all risk management measures fail.

For Cyber Threats, recent survey by the Business Continuity Institute reported that cyber threats were identified as the top concerns for businesses today. Cyber risk may be the most serious and least understood emerging risk for energy and telecommunication companies, and one that has not been adequately addressed by the insurance industry as a whole. Today, any system that runs on electricity may have a computer controlling it, and is therefore vulnerable to being hacked and tampered with remotely. From control, monitoring and data acquisition systems used in refineries, pipelines and drilling rigs, to electrical grids, company data and accounting systems, these and more are attractive targets for hackers seeking financial gain through theft, advancement of a political agenda, or simply to create malicious mischief.

This may create not only a risk of loss of or damage to property, production and profits, but also a serious potential liability risk and Director's & Officer's exposure, as

stakeholders expect managers to recognize and deal with these issues before they become problems.

Due to rise in the use of social media in the world today, reputation risk is a growing concern. Energy companies therefore must prepare how to respond better and faster when disaster inevitably strikes

However, reputation damage is not actually a risk, but a consequence of some other negative occurrence. Most times, the trick is to determine what the vulnerabilities are and to quickly address them.

Risk function has shifted towards enterprise wide risk management, which takes a holistic view of risk. This risk function reference model has several components, mission and general measurement principles. The main purpose of the Risk Function is to support senior management in defining risk appetite and ensuring this appetite is met as well as support other strategic objectives and facilitating decision making.

Risk Resilience. The term "Business Resilience" goes beyond just an organization's ability to bounce back. The goal should be to focus on not having to "bounce" in the first place. True business resilience delivers a competitive advantage through proactive identification and treatment of exposures, both with a company's own locations and its suppliers.

Resilience requires more than the typical approach to business continuity planning. Today, companies require a holistic plan for being resilient to business and value chain disruptions. Zurich encourages early analysis and quantification of potential impacts of value chain disruptions through Business Interruption Modeling software that can offer a holistic visual mapping of "how you make money."

While many companies may have business continuity plans for their own sites to protect health and safety of employees, safeguard physical assets, and keep operations moving, studies show that only 8



percent of firms have business continuity plans with suppliers. We encourage firms to determine if their plans are robust and “fit for purpose” by doing a regular gap analysis of their own business continuity plans and the plans for their suppliers.

**Minimizing Risk.** As risk management needs have grown more complex, more organizations are utilizing integrated program strategies with various Alternative Risk Transfer and financial features. The business landscape today is more complex than ever and so are companies' insurance needs. Two companies may be in the same competitive space, but have completely different tolerances and approaches to risk. As such, many risk managers are looking for custom-tailored solutions for their company's specific needs. Integrated programs afford customers stability over time, generally being three-year programs, while allowing flexibility to incorporate various harder-to-place or traditionally uninsurable risks by integrating various financial and alternative risk transfer solutions.

While some traditional risk management approaches may have served the industry well in the past, the scope, complexity and interdependencies of emerging risks are forcing many energy and resources companies to adopt a more comprehensive and integrated approach.

Far above putting strategies in place to minimize risks and its effects is a risk transfer mechanism – Insurance. Insurance will give every operator the benefit of risk management advice and cushion financial effects when the unfortunate event occurs.







## INTRODUCTION TO **AGRICULTURAL INSURANCE**

By Olayinka Moses Sule

**D**isasters hit hard. Adverse weather events such as drought, excessive rains, storms and hurricanes cause heavy losses to farmers. Disasters can often not be prevented from happening but they can, to some extent, be predicted and arrangements can be made to reduce their impact. However, in some cases, disasters cannot be predicted and farmers will have to cope with major losses after the event occurs.

Agricultural insurance, including livestock, fisheries and forestry, is especially geared to covering losses from adverse weather and similar events beyond the control of farmers. It is one of the most quoted tools for managing risks associated with farming. Many pilot programmes have been developed over the years, targeting especially small-scale farmers in developing countries, but agricultural insurance remains primarily a business which involves developed country farmers. Only a minor percentage of global premiums is paid in the developing world where insurance is mainly available only to larger and wealthier farmers.

Insurance spreads risk across the farming industry or the economy or, in the case of international reinsurance, to the international sphere. Insurance is sold and bought in a market. The purchasers must perceive that the premiums and expected benefits offer value; the sellers must see

opportunity for a positive actuarial outcome, over time, and profit.

Insurance is not the universal solution to the risk and uncertainties that farmers face. It can only address part of the losses resulting from some perils and is not a substitute for good on-farm risk-management techniques, sound production and farm management practices and investments in technology.

### **Types of Agricultural Insurance**

**Single-Risk Insurance:** This type of insurance provides coverage against a single risk (peril). Among agricultural insurance mechanisms, hail insurance is one of the most widely applied single-risk insurances. The single risk insurance can also be supported by the private insurance companies since the risk is not systematic. Usually, hail affects a limited area. Thus, the accumulated loss from the realization of this risk is limited to that area. Farmer's cooperatives in France and Germany offered crop-hail insurance as early as 1820. **Combined (Peril) Insurance:** This type of insurance is also known as multi-risk insurance in several countries. The insurer provides coverage against more than one risk. Hail and frost is a good example of combined (peril) insurance. In many cases, the coverage is extended to fire, earthquake, lightning, and other nature-related disasters.

**Yield Insurance:** This type of insurance provides coverage against fluctuations in the farm yield. Thus any risk factor that affects the farm's productivity is covered by the yield insurance. These risks can be listed as, but not limited to flood, drought, frost, hail, disease, fire, etc. Anything that affects the insurer with losses is fully or in most cases partially covered by yield insurance. Usually, coverage against these risks is presented under a single policy, namely, multi-peril crop insurance policy. This is a costly coverage since almost all risks are covered.

**Price Insurance:** This type of insurance provides coverage against fluctuations in the product prices. Thus, if the product price falls below a pre-specified level, indemnities are paid according to the insurance terms. Note that price insurance requires price transparency. Thus, the pre-specified price should not be affected by the insurer or the insured. One-way to determine the threshold prices is to use the futures market for each product. One issue in price insurance is to determine the reason why the price was lower than expected. If the price is lower than the threshold due to loss of quality, than that creates a moral hazard issue. Therefore there is a debate regarding the inclusion/exclusion of price decrease due to loss of quality.

**Revenue Insurance:** This type of insurance provides coverage against changes in farm revenues. Since revenue equals price times quantity, revenue insurance offers protection against both price and quantity fluctuations. From that perspective, it is one of the best revenue stabilizers. In the U.S., Risk Management Agency offers crop-revenue insurance programs for several types of crops.

**Whole-Farm Insurance:** This type of insurance provides coverage against changes in the farm's yield or revenue. The farm revenue insurance is a special case of revenue insurance where the farm's entire activities are insured including but not limited to agricultural activities.

**Income Insurance:** This type of insurance provides coverage against the fluctuations in the farmer's incomes. Income is defined as the difference between revenues and costs. Thus, the income insurance covers risky changes in yield, price, as well as cost of production, since it covers all factors affecting the income of the farmers. From the insured's perspective, this is the most desirable type of insurance. It offers a direct protection against income losses. However, from the insurer's perspective, this is riskiest type of insurance. Not only the revenues, but also costs can be significantly affected by the farmer's behavior.

**Index Insurance:** The European Union Research Reports suggests several types of index insurance programs. The definition of the index insurance is based on the type of the index used to determine the losses. The index insurance provides coverage against the fluctuations in farmer's yield, revenue, or any other factor that affects the farmer's income. Usually, an external index, which is highly correlated with farmer's income is used as a threshold parameter. Once the index reaches the threshold, indemnities are released according to pre-determined conditions. There are two types of risks faced by the farmers. The general risk, such as low-yield in the area or high-temperature in the area (draught) is covered by the index insurance. Consequently, index insurance can be easily implemented in homogenous areas where several farmers face similar risks. However, the basis-risk is farmer specific. Thus, it is not covered by the index insurance.

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# AGRICULTURAL INSURANCE: FREEING FARMERS FROM EXTREME WEATHER AND PEST RISK

By Oludapo Olutunfese

Photograph: Design Pics Inc/Alamy

**A**griculture is a main source of income for rural communities in many developing countries. More than 2 billion people depend on smallholder farms for their livelihoods, so improving conditions for smallholders would reduce global poverty levels.

Life for rural smallholder farmers is often marred by difficulties, and there are many constraints limiting their economic potential. Challenges include uncertain weather conditions affecting harvests, insecure land ownership limiting farmers' propensity to invest, restricted access to capital and farm inputs such as fertiliser or seeds, unfavourable trade policies and price fluctuations.

Many of these constraints are beyond the farmers control as they depend on environmental conditions, policies or market players. For example, a farmer in a traditional rural community is unlikely to

own the land he works on. He will have no collateral and, as market prices and demand are volatile and his activity is heavily exposed to natural calamities, creditors could consider his business too risky to invest in. Banks are also unlikely to lend to farmers in disaster-prone regions if the shocks might result in widespread loan defaults.

Agricultural insurance has the potential to address some of these constraints by facilitating access to means of production and changing behaviour by reducing uncertainty. Coverage can enable farmers to invest in riskier but potentially more lucrative farm activities. Timely insurance pay-outs after crop losses can help smallholders smooth consumption and prevent the sale of assets. Insurance can also be a catalyzer, as lenders will be more likely to extend credit to farmers covered by insurance, allowing them to make productivity-enhancing investments.





The real challenge now is to bring such schemes to scale so as to become sustainable. Many of the past programmes have not expanded beyond pilot testing and the next few years will really show how successful agriculture micro-insurance will be as a sustainable risk management solution.

Demand is still low as many smallholder farmers underestimate the severity and frequency of risk, levels of consumer education are still limited, there is a lack of trust in insurance providers and there is an overreliance on traditional coping mechanisms such as selling assets or borrowing from relatives after a shock.

The potential of agricultural insurance lies in contributing to the prevention and management of risks and modifying the behaviour of smallholders towards increased and more lucrative investments while facilitating their use of more financial services. The micro-insurance sector being relatively new, there are of course obstacles to be overcome to effectively reach remote communities, including small size of markets, lack of client familiarity with financial products, lack of necessary infrastructure and limited demand. Basis risk – where indices measured do not perfectly mirror the experienced loss – remains a key issue. From the consumer perspective, efforts need to be continued to promote financial literacy in order to address low demand, and insurance providers must continue to focus on creating products which are both valuable, sustainable and tailored to the context-specific needs of clients.

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# BRAND AND REPUTATION INSURANCE FOR SMES

Insurance Broking Faculty New Generation Group calls for action over brand and reputation insurance for SMES

Author(s): Anthony Gould  
Published Date: 11 April 2016  
Last Updated: 16 May 2016

**Source:** [http://www.cii.co.uk/knowledge/insurancebroking/articles/reputation-risk-in-a-social-media-culture/40298?utm\\_source=http%3A%2F%2Fwww%2Ecii%2Eco%2Euk%2Fqualifications%2Fdipoma-in-insurance-qualification%2F%3Futm\\_source%3Dhomepage%26utm\\_medi&utm\\_medium=Email&utm\\_campaign=Test+email+campain](http://www.cii.co.uk/knowledge/insurancebroking/articles/reputation-risk-in-a-social-media-culture/40298?utm_source=http%3A%2F%2Fwww%2Ecii%2Eco%2Euk%2Fqualifications%2Fdipoma-in-insurance-qualification%2F%3Futm_source%3Dhomepage%26utm_medi&utm_medium=Email&utm_campaign=Test+email+campain)

The CII Insurance Broking Faculty new generation group is calling for brokers and insurers to rise to the challenge of providing brand and reputation risk protection for small and medium sized enterprises. The group's in-depth and well researched paper looks in detail at the need for brand and reputation risk cover; the barriers to insurer participation; the level of coverage currently available; and most importantly how the insurance industry can and should respond.

With a view to driving change rather than just highlighting the issues, the report, Reputation Risk in a Social Media Culture, includes a breakdown of four elements of protection that the group believe a brand and reputation risk policy should cover, namely: prevention risk management; crisis costs & containment; indemnity protection for loss of revenue; and post loss consultancy.

The group's recommendations also include a call for data capture and collection to be developed to allow quantification, with insurers and brokers co-ordinating a shared approach to recording loss data.

In the short-term however, and in the absence of an insurer developing a suitable product, the report argues that the insurance industry should pull together to address the issue. The group suggest the establishment of "a facility to allow the pooling of 'Brand & Reputation' risk across the UK.

The group's view is that once the insurance industry becomes more comfortable with brand and reputation risk, and as data becomes available, the industry will revert to a more traditional distribution model. "This would allow for insurers to begin offering 'Brand & Reputation' cover by way of an extension to Commercial Combined or Liability policies. In the meantime more insurers could provide policy extensions to assist SME companies in prevention, mitigation and crisis management."

The New Generation Group do not want their report to languish on a website gathering proverbial dust and despite the fact that the members of the group have now technically finished the CII programme, they are determined to drive real change and are actively engaging with insurers to garner support for credible insurance solutions to meet this clear customer need. If you want to support this, contact [ant.gould@cii.co.uk](mailto:ant.gould@cii.co.uk) in the first instance.



**TALKING COMPREHENSIVELY:**

# A-Z OF PROJECT CARGO & DELAYED START-UP INSURANCES (1)

By Victor Adewuyi

**A**t the end of the whole series, the reader would have achieved the following learning objectives:

**In this edition:**

- What is Project Cargo?
- Types of risk with Project Cargo: What Can and Does Go Wrong (*A Surveyor's Perspective*)
- How Project Cargo differs from traditional cargo risks
- The Fear of Hidden Damage
- Example of a completed Project-Photos
- Who requires Project Cargo? And Why?

**Coming in the next edition:**

- Project Cargo policy
- Other policy clauses and their meanings
- Usual cover clauses for Project Cargo
- The contract of insurance for Project Cargo and DSU Insurances
- Project Cargo claims - basic principles
- Project Cargo Risk Management: Project Cargo Warranty Surveys (*A Surveyor's Perspective*)
- Key facts



### **DEFINITION: Project Cargo**

According to Wikipedia, it is the transportation, handling and installation of heavy items which are indivisible, and weight generally accepted to be in the range of 1 ton to over 1000 tons and width/height of more than 100 meters that are too large to fit into normal containers or onto conventional transporters. These oversized items are transported from one place to another (*sometimes across borders*) then lifted or installed into place. Characteristics of heavy lift goods are the absence of standardization which requires an individual transport planning.

The items that make up Project Cargo are invariably large, heavy, sometimes having a higher centre of gravity than is ideal for any goods being moved but that's the risk the Project Cargo underwriter accepts.

However, Project Cargo is not necessarily always restricted to cargo that is large and difficult to handle. Smaller pieces of

equipment, such as computers and similar electronic equipment, will usually form an integral part of a project, and may be critical to its whole operation. As severe weather episodes demonstrate, it doesn't take much to knock out a relatively small-sized piece of equipment, such as the case of heavy rain and flooding, which can bring a whole airport complex to a grinding halt. So the lesson to be learned here is, large or small, the criticality of any one item for a project is a significant factor that the Project Cargo underwriter must bear in mind when assessing the risk.

The following typical items are just some of the goods and equipment that fall under the heading of Project Cargo:

- large high power generators;
- reactors for use in manufacturing and processing;
- sails for wind farms;
- masts and associated parts for wind farms;



- generators, towers, casting, heaters, presses
- large items of plant, such as earth movers;
- cranes and other lifting equipment;
- baggage moving equipment for use in an airport
- Locomotives, boats, satellites, military personnel and equipment.
- In the offshore industry, parts of Oil rigs and production platforms are also lifted; some of these are also removed at the end of an installation's working life.

### **The Project:**

The transportation of goods, material and equipment for the purpose of construction, erection, testing, start-up commission, operation and maintenance of the XYZ project and all ancillary and associated works, in conjunction with the construction work.

### **Project Cargo Insurance:**

The materials, equipment and supplies required for the construction of the project described in item 2 of the project overview that is the subject of this insurance; Facts that distinguish Project Cargo from ordinary cargo include the inherent instability of Project Cargo in transit and the greater claims costs, including the extra charges involved in establishing whether the cargo for the project has hidden damage, following any impact during transit or in handling.

Project Cargo also covers the costs involved in a delayed start to the project. This is known as Delayed Start-Up (DSU) insurance. It provides indemnity for the following:

- I. loss of anticipated gross profit,
- II. additional costs to avoid or mitigate a delay,
- III. debt servicing costs or,
- IV. increased cost of working.

The DSU section describes the criticality of any one item of the cargo for the project and its effect on the commencement of the project. This is an important issue for underwriters who insure Project Cargo risks.



Cover is provided under the Institute Cargo Clauses of the London Market. The DSU cover is provided by bespoke wordings for any peril which causes a loss that is covered by those London Market Cargo clauses.

**TYPES OF RISKS WITH PROJECT CARGO: What Can and Does Go Wrong (Surveyor's Perspective)**

So, what about those greater risks inherent in the handling and movement of this type of property? The main risks and elements that can and do go wrong are as detailed below:

- **The Route: Road transport - adverse camber**

Let us consider one of the greatest risks to heavy/large indivisible loads in road transit - the adverse camber. Firstly, what is it, and secondly, how does it present a risk?



A camber describes the sloping of a road from its centre to its sides. It is there to assist with the draining of rain water on all roads except for motorways, which are built with a flat consistency over the whole road and which have good drainage to take the water away. Where the camber falls away from the direction the road is taking on a bend, it is known as an adverse camber.

Think of adverse camber as the arch-enemy of the large and heavy indivisible load in transit by road. Unless it is taken with great care, the large load is liable to topple over, resulting in substantial and, to the underwriter, expensive repairs, assuming it is not damaged beyond economical repair. What is more, if the item in question is critical to the capital undertaking, its loss may cause a delay in the completion and commencement of the capital project. Any

such delay will result in an additional claim under the Delayed Start-Up section of the policy. The closer such a loss occurs to the intended commencement date of the project works, the greater the cost of the Delayed Start-Up element of the claim..

Let us take the example of an industrial sized bread baking oven being delivered to a customer in England, which was damaged beyond economic repair:

The oven was involved in a 'toppling over' claim when it and the carrying vehicle became victim to the adverse camber risk. The oven had been carried some 100 miles without incident and was within just half a mile of its destination when fate, in the form of an adverse camber on the industrial estate to which delivery was to be made, intervened. The cost to the underwriter was £300,000. They were able to recover some of their outlay from the carrier, who carried under conditions of carriage that provided for compensation at £1,300 per tonne, with few defences to liability. The oven weighed 40 tonnes, so  $40 \times £1,300$  produced a recovery of £52,000, leaving the underwriter with £248,000 in claims cost against their premium income. It might be of interest to note that the premium for covering this single transit 15 years ago was £300 or 1/827th of the claim after recovery from the carrier! Or, to put it another way, you would need 827 £300 premiums to cover that one £248,000 net claim, and that is against a gross premium.

Because of market competitiveness, it is likely that only around half that premium level would be secured.

Now consider the same claim but with the bread machine going, for example, by sea. Whilst the compensation level under the Hague-Visby Rules, the conditions under which the ship owner carried these bread ovens, would be similar to those of the UK domestic carrier, the task for the insurer in recovering the claims costs is much more challenging because, under those rules, there are 17 defences to liability available to the ship owner.



The lesson to be learned from this example is that apart from the underwriter getting its terms of cover right, the underwriter will also endeavour to maximise its premium income in order to cater for such claims, plus commissions, expenses and the salaries.

### Mode of transport and toppling risks

Another significantly major risk associated with the transport of large items of Project Cargo involves transferring the goods to a different mode of transport. Sometimes this is done by a crane lift whilst, in other situations, the carrying vehicle may simply drive onto another mode of transport, such as a RO/RO (roll on, roll off) ferry or a RO/RO barge.

In this case, an underwriter will concentrate principally on the size and obvious heavy weight of the item of machinery in relation to the mode of transport. In addition, the fact that a multi-wheeled low loader is being used will tell the underwriter that this carrying involves a heavy item of machinery with a high centre of gravity. The higher the centre of gravity, the more the machine is prone to toppling over. When there is a toppling over there could be a number of possible causes.

Whatever the cause, this sort of incident is the risk to which underwriters consent when accepting Project Cargo business. The underwriter has little control over the chosen mode of carriage, except to insist upon certain standards of vessel and conveyances being used.

- **The People:** Who is in charge? Do they speak the same language - Communication? Do they understand what to do? Are they interested? Team work? Do they have they have the Cargo Insurance interest in mind? Do they have their employer's responsibility to the cargo insurer in mind? Are they interested? Do they have the approved certificate?
- **The Lifting Equipment:** Does it have the sufficient capacity to lift the machine? Correct centre of gravity? Mis-marking and mis-representation of the actual statistics of the dimension.

- **The Cargo:** Loading, Security, the monitoring process, the handling operation.
- **The Conveyance:** Suitability of vessels, land vehicle and aircraft, lifting equipment, lashing equipment, method of employment. Ability and experience of the operators.

### HOW PROJECT CARGO DIFFERS FROM TRADITIONAL CARGO RISKS

Its sheer size means that:

- it is inherently unstable in transit;
- its centre of gravity must be kept as low as possible during carriage;
- lifting to and from conveyances must be planned with great care;
- each lift is a bespoke operation;
- road transit must be planned with great care; bridges must be strong enough to take the heavy load, which is concentrated in a relatively small area;
- adverse cambers must be avoided if the toppling risk is to be reduced.

### How Project Cargo claims differ from those involving traditional cargo

- The cost of recovering the damaged Project Cargo is significantly higher than that for traditional cargo.
- Many of the claims are influenced by "fear of hidden damage", fuelling additional and expensive inspection or survey costs.

### FEAR OF HIDDEN DAMAGE

#### What is it?

Hidden damage is a fear - genuine or imagined - that further damage than is visible has been sustained to the item of cargo.

#### How does it arise?

Following an accident during transit or lifting/moving the cargo, the owners of the Project Cargo will often insist upon a full inspection of the damaged item, to establish whether there is unseen damage. This might involve the use of X-ray or ultra sound examination or by the injection of nitrogen gas into a pressure vessel, such as a reactor, to establish whether any cracks - invisible to the naked eye - are apparent. In

many cases this obligation to examine the damaged item in such detail may be incorporated into the contract of carriage between the carrier and the owner of the cargo. It may also be written into the cargo policy as a Sue and Labour expense.

Consider the following: historically, lawyers like to get a 'foot in the door' of defendants against whom an allegation of negligence has been made.

### **Illustrative Conversation:**

In order to understand the process better, read and reflect on the theoretical exchange outlined here between a claimant's cross-examining lawyer and the defendant carrier who has been accused of negligence. The case seeks to put the blame for the unseen damage to an event that arose whilst the Project Cargo was in transit to the consignees, who are the claimants in this case.

Put yourself in the position of both cross-examining lawyer and defendant. This should help you to understand the process by which a fear of hidden damage is constructed, and how it finds its way into the settlement of a cargo claim.

For the purpose of this short exercise the claimant's barrister is identified as **L** whilst the defendant is known as **D**. The following cross-examination takes place:

**L:** *Was the reactor delivered to my client in impeccable condition?*

**D:** Yes.

**L:** *Did it not suffer any damage at all in transit?*

**D:** Well, just some minor damage.

**L:** *How 'minor' is minor?*

**D:** It cost us \$10,000 to repair some dents.

**L:** *What happened?*

**D:** It fell to the ground during lifting it from the road vehicle to a barge.

**L:** *How did you establish the extent of damage and the cost of repair?*

**D:** We appointed a cargo surveyor to do all that.

**L:** *Did you know that this reactor would work under high pressures?*

**D:** Yes, we designed it with that in mind.

**L:** *Did you know it was going to be installed in a nuclear plant?*

**D:** Yes, of course we did. We negotiated the contract. *(Defendant's lawyer groans!)*

**L:** *Did you consider the dropping might have caused some cracking?*

**D:** We didn't think it fell far enough.

**L:** *How far did the reactor fall?*

**D:** About six feet.

**L:** *How much did it weigh?*

**D:** 100 tonnes.

**L:** *Would 100 tonnes falling six feet create a lot of energy?*

**D:** I don't know.

**L:** *If you don't know, how can you have been sure there was no cracking?*

**D:** We build strong reactors they are designed to withstand enormous pressures.

**L:** *Enormous pressures! From within or from without?*

**D:** From within.

**L:** *But this was pressure from without!*

**D:** That doesn't mean the reactor was cracked!

**L:** *It's a reasonable belief that it was - bearing in mind it was dropped six feet!*

**D:** Well, it was destroyed in the explosion at the nuclear plant, so you cannot prove that it was cracked!

**L:** *I don't have to prove it was cracked. I have only to prove, on the balance of probabilities, that it was cracked! The test set by this court is to prove that the damage was caused 'on the balance of probabilities'. Considering that the reactor was dropped six feet, landing with considerable force, and has subsequently exploded in its normal day to day operation - which, incidentally, does not involve*



*exploding - it must be reasonable to argue that, on the balance of probabilities, the dropping and subsequent impact with the ground caused it to suffer cracking, which is why it failed during its operation and exploded. Do you agree?*

**D:** It's a possibility.

**L:** *It's more than a possibility. It is what is likely to have happened. The Judge wasn't on the scene when the reactor was dropped, nor was I, nor was your lawyer. That is why the court decides these matters 'on the balance of probabilities'. Considering all the evidence, it is reasonable for the court, on balance, to conclude that the reactor suffered minor cracking when it was dropped and that under its designed working pressure the integrity of the structure failed because of that cracking, and the explosion resulted. You, Mr Defendant, are thus legally liable in negligence for your failure to act as a reasonable person would do which, given the circumstances of the accident, should have involved your examining the reactor minutely for any signs of cracking, before delivering it to your customer.*

Now let us consider the definition of negligence in English law.

'Negligence is the omission to do that which a reasonable man, guided upon those considerations that ordinarily regulate the conduct of human affairs, would do, or doing something that a prudent and reasonable man, would not do.'

*Blyth v Birmingham Waterworks Company (1856)*

If you consider the exchange between the lawyer and the defendant, together with the definition of negligence above, of which part was the defendant guilty?

The answer? It is the first part, namely the defendant's failure to have the reactor examined for any hidden crack — the sin of 'omission' in this definition of negligence.

## **Hidden damage: conclusions for consideration**

- Any dropping, heavy landing or knocking during transit, loading or handling will probably call for a minute and detailed examination for signs of cracking.
- It is not necessarily called 'Fear of Loss' but that is what it is and the contract for supplying the Project Cargo will likely contain a provision for inspection costs in order to establish whether there is hidden damage.
- Fear of hidden damage is particularly relevant to heavy machinery that is to work under pressure or to withstand a heavy load, e.g. supporting structures.
- The cost of examination will be high, sometimes much higher than the cost of the damaged item.
- Underwriters will be expected to cater for such a cost as part of the indemnity they are providing as cargo insurers.
- The premium charged should cater for this extra cost.
- Project Cargo insurance calls for a large premium bank.

## **WHO REQUIRES PROJECT CARGO INSURANCE? AND WHY?**

There are two groups who, for different reasons, require Project Cargo Insurance, as outlined below:

**Plant Owners** in respect of:

- physical damage to cargoes;
- resulting loss of revenue;
- access to loss mitigation via surveyors;
- helping to maintain share price integrity.

**Financiers** because:

- major construction projects are usually financed;

DSU cover will identify the financier as an Assured, ensuring that the debt can be serviced in the event of a loss whilst in transit to the project site





To be continued next edition.....

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## MARINE INSURANCE:

# BASIC CONCEPTS

By Julius Akindele

**M**arine is the oldest form of Insurance that was introduced by international traders to protect their interest. The ancient phoenicians, the Greece, the Romans were in the habit guarding themselves against some of the risk of Maritime enterprise by various systems of Insurance, whether in shape of loans or mutual guarantee.

The popular Marine Insurance Act of 1906 gave birth to the principles of Insurance such as:

1. Insurable Interest
2. Utmost Good faith

3. Indemnity
4. Subrogation
5. Contribution
6. Proximate Cause

### **Marine Insurance in Nigeria**

The Nigeria equivalent of Marine Insurance of 1906 is Marine Insurance Act of 1961. However, the Insurance decree of 1976 made Insurance on importation of goods compulsory. This was the era of oil boom in Nigeria. In effect, all import into Nigeria must be Insured with an Insurer registered and domiciled in the country under cost and freight(C&F).



Although, the 1976 decree was aimed at the vast amount of imports into Nigeria, the result and growth in Marine cargo Insurance has tended to translate into rapid growth in other related activities such as:

1. Insurance of Ships
2. Insurance of Stevedoring
3. Business port operators Insurance
4. Ship repairers Insurance

In addition to the above, the Insurance decree 1976 has stimulated demand for services of surveyors, Adjusters and superintendents.

### The National Shipping Policy Act (NSPA) of 1987

- Section 14(3) stipulates that all public sector contracts for the importation and exportation of goods shall be on F.O.B and C and F contracts respectively. This means that cargoes belonging to the government or for use in the execution of government contracts shall be imported into the country on F.O.B basis.
- on the other hand, if the cargoes are meant for export it should be on C and F terms. The clear policy intent is that such imports or exports are to be Insured by a Nigerian registered Insurance Company.

However, the hardship caused by the rather lop-sided policies in NSPA would seem to have been ameliorated by the Insurance decree No. 2 of 1997. Section 76 of the decree deals with Insurance of goods to be imported into Nigeria shall be made with an Insurer registered under the decree.

### Types of Marine Insurance.

There are basically 2 type of Marine Insurance:

- 1. Property Insurance:** Insures against financial loss resulting from damage to, or destruction of property in which the insured has an insurable interest eg Cargo Insurance, Hull and Machinery Insurance and Loss of income insurance.

- 2. Liability Insurance:** Insures against financial loss resulting from some person or organisation making a claim against the Insured for damages because of bodily injury, death, property damage or some other injury for which the insured is allegedly responsible. Examples are Collision Liability Insurance, Protection and Indemnity, ship repairer Insurance, stevedore damage Insurance etc.

### Types of Marine Policies

All Marine Insurance policies whether valued or unvalued come under the one heading thus:

- **Time Policy:** This policy insures the subject matter for a period of time.
- **Voyage Policy:** Insures the subject matter from one place to another, irrespective of the length of time taken.
- **Mixed Policy:** covers both a voyage and a period of time (*as a vessel for a voyage and period in port after arrival*)
- **Construction Policy:** otherwise known as building risk, insures a vessel in course of building irrespective of the length of time taken.

### Types of Losses Covered

**Total Loss:** This can either be

- Actual Total Loss
- Constructive Total Loss

**Particular Average:** This is a partial loss of vessel or cargo. It is a partial loss that is to be borne by only a particular interest.

**General Average:** A damaged property can only be considered general average only if the property was sacrificed in order to save the entire venture or was or was somehow damaged as a result of the sacrifice.

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# HIGHLIGHTS OF CONTAMINATED PRODUCT INSURANCE

By Abiodun Sadiq

Contamination and Product recalls are occurring more frequently and often receive negative media attention. Manufacturers of all sorts are not spared. From cars to baby toys, processed foods, etc. safety concerns as well as organic and inorganic contamination have forced major product recalls. A poorly handled product recall can have a catastrophic impact upon brand reputation, an organization's assets and even their ability to continue trading.

A contaminated product insurance policy is designed to help manufacturers, wholesalers, retailers and distributors of food, beverages, and other topical and ingestible products manage threats to their products, brands, reputation, and financial sustainability.

## What is covered under a Contaminated Product Insurance?

Coverage can include accidental contamination and malicious product tamper/product extortion up to a certain limit. Typical coverage provided by insurers (*especially offshore insurers*) includes the following:

- Recall costs
- Pre-recall expenses
- Business Interruption/loss of gross profits
- Rehabilitation costs
- Third-party recall costs
- Extortion demands
- Cover is on a 'claims made' basis.

## Who should buy Contaminated Product Insurance?

In general virtually all manufacturers require this product but the need is stronger with companies dealing with food and drinks. The various categories of such companies include the following:

Manufacturers, processors, distributors and retailers of topical and ingestible products food, beverage, restaurants, cosmetics, pharmaceutical, tobacco, etc

The next time you are talking to your prospects and clients, please remember the Contaminated Product Insurance.

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# THE NEED FOR AN INSURANCE BROKER

By Kola Akerele

**N**igeria (*and in fact the world as a whole*) is rife about how insurance is really not a risk transfer mechanism but a fraudulent scheme where companies con unsuspecting individuals out of their hard earned money without any intention of paying claims should they crystallize.

A lot of individuals purchase *'fake'* insurance all in a bid to cut cost or they patronize fake or unlicensed agents/brokers without fact-finds to confirm the legitimacy of the insurance they have purchased. Others patronize insolvent companies (*innocently*) which has no financial capacity to make good their

promise in time of claim whilst some more purchase their insurance(s) from companies without the technical know-how to underwrite that particular policy that has been bought. Such Companies issue *'watery'* policies with *'holed'* coverage and it is at the time of claim that their incompetencies are exposed and at this point, it is usually too late to back out as the contract has already been sealed.

It is of utmost importance to verify the insurance one has purchased and confirm that the level of coverage provided there-under meets the requirements of the purchaser and all these (*and more*) needs to be verified at inception of the contract.

But the layman has no experience or knowledge of insurance, one would ask. How then do they verify that they have been fairly treated and professionally serviced by the insurance company? How then do they confirm that the company they have chosen to do business with is a financially stable one and technically competent one?

The answer really is simple. Go through an Insurance Broker.

Who is an **Insurance Broker**? An Insurance Broker is a professional intermediary in insurance and risk management related matters. They are consultants who render insurance related services to clients and are involved in the entire insurance process from arranging the insurance cover itself, to claim recovery to expiry related issues. Brokers act on behalf of their clients and provide advice in the interests of their clients.

This write up seeks to briefly address the values Insurance Brokers add to the mix of everyday Insurance arrangements:



- **What to buy:** How does a layman figure out exactly what they need? Insurance is a service and not a physical product. One can hardly pick and choose between different '*products*' being offered as the service itself is so complex and immersed in terms and conditions that it naturally turns off any potential buyer. Yes, we are all aware that we are exposed to various risks on a daily basis and we all know that insurance is a risk transfer mechanism whereby the risk one is exposed to and the consequences

of those risks are transferred (*to be borne*) to Insurance Companies but how exactly do you determine the type of Insurance to cater for the type of risk(s) one is exposed to? Easy. Employ a broker. An Insurance Broker is an expert at analyzing a client's risk profile to determine exactly what and what they are exposed to with a view to proffering '*off the shelf*' or '*tailor made*' insurance solutions to their exposures. informed decisions for the client.



- **Where to buy from:** After having deciphered exactly what type of insurance policy one needs to purchase, the next important question is '*Where do I buy this from?*' Now, you know what you want, you know there are several companies offering what to buy but how do you select the company who is bound to give you the best type of coverage you need. With over 50 Insurance Companies in the, how do you determine which specializes in that particular class of insurance; which is solvent; which is close to bankruptcy; which is struggling; which pays claims; which processes claims expediently; and a host of other unknowns. The layman has no facts and figures except that which is published in their financial reports and which is subject to change and that is assuming the man on the street even has the patience to digest financial reports. How do you overcome this hurdle in your insurance decision making process? Simple. Pass the baton to a third party; the Broker. Let him worry about these things for you. The Broker knows the market, knows the players and knows their status/positions.





## Pricing? Good question

knowledge of the market and the widest (*albeit not the cheapest*) coverage available and obtainable.

- **Pricing:** Insurance, like every other product and service is negotiable in terms of pricing. The question is: 'How do you take advantage of the relatively flexible prices of the service without compromising on the quality of service/product being offered?'. Yes, one can say "I am a good negotiator" but without the knowledge of the 'service product' itself, one cannot successfully negotiate insurance service products. For example, a man who successfully negotiates a 5% rate in respect of his vehicle insurance might feel fulfilled over his counterpart who enjoys a 6% rate on his. However, the man with the 6% rate might enjoy additional benefits like free tracker on his vehicle, an excess free policy, an increase Third Party Property Damage limit, etc. These are all insurance jargon known to the Insurance Broker who is bound to add value by negotiating the best cover at the lowest of prices/rates possible.



- **Critical assessment of the Client's risk profile:** A risk profile is a quantitative analysis of the types of threats an organization, asset, project or individual faces. An Insurance Broker is a professional, a risk management consultant whose ultimate aim is to analyze the business of their client and determine the risks they are exposed to. A client might not have a comprehensive outlook to the risks they are opened to from an insurance angle and Insurance Companies and their agents are sometimes too focused on getting the business of the client to worry about in-depth analysis of the client's risk profile. The Insurance Broker on the other has the responsibility of critically assessing their client's business vis a vis their risk profile with an aim to proffering solutions and advising on 'off the shelf' or 'tailor made' insurance policies to address the exposures. It is always a wise decision to have an expert in your court who works for you and has your and your Organization's best interest at heart: the Insurance Broker.



- **Service Product Quality:** This is a close corollary to pricing as discussed above. Achieving the lowest price does not necessarily mean one has achieved the best cover available. There are so many ad-ons and extensions possible in an Insurance contract and known to the insurers and the insurance Brokers but unknown to the layman on the street. Hence, the need to employ someone who works for you and has adequate

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# “Without Prejudice”

## - WHEN DOES IT APPLY?

By Oserogho & Associates  
*Legal & Tax Practitioners, Notary Public*

[http://oserooghoassociates.com/?utm\\_source=newsletter\\_257&utm\\_medium=email&utm\\_campaign=legal-alert-may-2016-without-prejudice-when-does-it-apply](http://oserooghoassociates.com/?utm_source=newsletter_257&utm_medium=email&utm_campaign=legal-alert-may-2016-without-prejudice-when-does-it-apply)

### **Introduction**

Transactions marked “Without Prejudice” usually connote a party’s good faith exchange of correspondence, without any admission of liability, or the abandonment of a claim, or counter claim, or a defence, privilege or other rights arising from such transaction correspondence, regarding an existing dispute.

The essence of the above legal rule is to encourage disputing parties to amicably settle their disputes without resort to an expensive and prolonged litigation process.

### **Changes in the “Without Prejudice” Rule**

Section 25 of the repealed Evidence Act, 1945 (*as amended*) provided that no admission will be allowed in evidence if it



was made either under the express condition that such admission will not be used in a judicial proceeding, or in circumstances where a Court can infer that the parties agreed that such admission obtained during a negotiation, will not be used in a judicial proceeding.

The above protection only applied in disputes between the same parties; third parties could not claim or enjoy the protection. See *Nwadike v. Ibekwe (1987)* 12 S.C. 12 @ 31.

The Evidence Act 2011 however repealed the provisions of the Evidence Act 1945 (*as amended*), and as stated above. Section 196 of the Evidence Act 2011 provides that “A statement in any document marked “without prejudice” made in the course of negotiation for a settlement of a dispute out of court, shall not be given in evidence in any civil proceeding in proof of the matters stated in it”. Underling ours for emphasis.

Section 196 above cited therefore implies that documents with admissions in them, marked “Without Prejudice”, will only be protected and inadmissible where (a) there is already a dispute in Court as not all disputes go to Court; (b) there is a good faith negotiation to settle such a dispute which is in Court, out-of-Court.

Section 196 of the 2011 Evidence Act has therefore narrowed the protection or inadmissibility of admissions in correspondence marked “Without Prejudice”, in judicial proceedings, to only disputes that are already in Court.

Another likely situation where a “Without Prejudice” rule will not prevent an admission from been received in a judicial proceeding, even if such proceeding is already in Court, is where it is used as a “fishing expedition”, which will be a bad faith use of this equitable provision.

### **“Without Prejudice” – Admissibility in other Instances**

Like in the repealed Evidence Act provisions, correspondence marked “Without Prejudice”, under the 2011 Evidence Act, though containing admissions, could be admitted in evidence regarding other issues that are not admitted in the subject correspondence. For example, in a land dispute, a correspondence though marked “Without Prejudice”, with an admission of liability in it, could have previous acts of trespass or other infraction that is/are not otherwise admissible in evidence regarding such other matters outside of the admitted facts, been admitted in evidence.

### **Conclusion**

Based on the change in the statutory provision of this subject of “Without Prejudice”, businesses will need to exercise more circumspection or caution in their business communication.

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# THE ACHIEVEMENT HABIT

Stop Wishing, Start Doing and  
Take Command of Your Life

BY BERNARD ROTH

*(Culled from Soundview Executive Book Summaries  
by Peter Offiong)*



## THE SUMMARY IN BRIEF

Co-founder of the Stanford d.school Bernard Roth introduces the power of design thinking to help you achieve goals you never thought possible. Achievement can be learned. It's a muscle, and once you learn how to flex it, you'll be able to meet life's challenges and fulfil your goals.

In *The Achievement Habit*, Roth applies the remarkable insights that stem from design thinking — previously used to solve large-scale projects — to help us realize the power for positive change we all have within us. Roth leads us through a series of discussions, stories, recommendations and exercises designed to help us create a different experience in our lives. He shares invaluable insights we can use to gain confidence to do what we've always wanted and overcome obstacles that hamper us from reaching our potential, including don't try—DO; excuses are self-defeating; believe you are a doer and achiever, and you'll become one; become open to learning from your own experience and from those around you; and more.

The brain is complex and is always working with our egos to sabotage our best intentions. But we can be mindful; we can create habits that make our lives better. Thoughtful and powerful, *The Achievement Habit* shows you how.

## IN THIS SUMMARY, YOU WILL LEARN:

- How you define the meaning of everything in your life.
- Why reasons can sabotage your achievement goals.
- The difference between trying and doing.
- Strategies for getting unstuck and finding assistance.
- The assumptions underlying your self-image and how to redesign it.

**The author:** Bernard Roth is the Rodney H. Adams Professor of Engineering and the academic director of the Hasso Plattner Institute of Design (the d.school) at Stanford University. He is a leading expert in kinematics, the science of motion, and one of the world's pioneers in the area of robotics. In addition, he has created courses that allow students to directly gain understanding and experience about personal issues that matter to them.



## Introduction

Ask people to think about who stops them from accomplishing the things they want. It's always entertaining to listen to them explain how their parents, spouses, children, colleagues, bosses — you name it — prevent them from reaching their goals. These perceived obstacles are simply excuses; in almost every case, when you really dig down, it's you who are sabotaging yourself. Yes, sometimes there are real external obstacles, and most people don't realize that they have the power to overcome them.

When you do, you are using power; when you try, you are using force. In life, if you want to get things done, it is much better to be powerful than to be forceful.

Of course the switch isn't so easy to make in real life. We've all had the experience of making up our minds to do something and then not doing it. In order to make the switch we must understand our behaviour. The classic model (*and popular wisdom*) says that we think things through first and then act on our thoughts. Interestingly, this does not hold up in clinical testing. Most of our action is more the result of habit than reasoning.

So that leads to a question: How do you bridge the gap between trying and doing, between talking about something and acting on it, and ultimately between failure and success?

Design thinking is a set of general practices developed over the years that are effective in solving design challenges. A design challenge can apply to just about any kind of product or experience. It's not just about how to build a better mousetrap (*though that's part of it*); it's also about things that are not physical objects: how to improve the wait time at a popular amusement park, how to clean up a highway, how to more efficiently get food to needy people, how to improve online dating and so on. Design thinking is normally applied outward — toward building solutions for other people's problems in a business or school setting. Here it is used toward improving your own life and interpersonal relationships, designing the best version of yourself.

## Nothing Is What You Think It Is

Let's first acknowledge that the meaning we find in people, objects and our own circumstances is subjective. These things have no inherent meaning. Functional and dysfunctional behaviour both result from choices people make based on meanings they create. This also means that we have the power

to alter our perceptions, revising perceptions that bring us down and enhancing those that help us. To learn how to get a better handle on your perceptions, emotions and behaviour, it is useful to look at how you think.

Take a few deep breaths. Close your eyes for a few minutes. Then open them and move your attention around the room from one object to another. Each time you notice an object, say it has no meaning (*as in, "The chair has no meaning"*). Then think of people in your family and in your life and things you hold dear, such as your biggest accomplishments and most prized possessions. Name each, saying it has no meaning. When you are finished, sit quietly for a few minutes and then reflect on your experience.

The point of the exercise is not to get you to change any of your relationships. Rather, it is to empower you with the realization that you have chosen the meanings you give to all of your relationships. People who do this exercise often become more aware of how important a person or item is to them, and they realize that they have the ability to change the meaning something has to them.

## The Familiar Unfamiliar

To forge a new attitude toward the events and relationships in your life, you must learn to look at them with a fresh perspective.

Most people have a cognitive bias called functional fixedness that causes them to see objects only in their normal context. There are creativity exercises structured so that the use of the materials and tools in their ordinary way will generally lead to no workable solutions or, at the very most, mundane ones. The really exciting solutions come from overcoming functional fixedness and using these everyday items in new ways. To see the possibilities it is helpful to take the viewpoint that nothing is what you think it is. You need to make the familiar unfamiliar.

Just as things in the material world can be transformed from their common use into something different, so too can behaviour and relationships. It's difficult at first to break through preconceived notions; however, once you do it, you'll find it opens the world up to you. Stop labelling things in their usual way. You are not a loser because you lost your job. Make the familiar into the unfamiliar, and the result can be amazing and delightful, as opposed to dull, non-functional and ordinary.

You can remove labels entirely; you can also re-label to great effect. Recent studies reinforce the idea that relabeling can change behaviour. Experimenters have found statistical evidence that, for instance, if you ask people to be voters, you get more voter turnout than if you simply ask people to vote. Similarly, if you ask people not to be cheaters, there is less cheating than if you just ask people not to cheat. The inference is that people are more concerned with reinforcing their self-image than with their actions; thus, to change behaviour, you first change self-image.

Once you learn that it is possible to change your habits and develop new attitudes about things, you have a new tool to use in both your professional and your personal life. For most people it is probably easier to change their attitude toward dishwashing than their attitude toward depression. Yet if you start with the small stuff, you will find it easier to tackle the harder stuff in life.

### Reasons Are Bullshit

The problem with reasons is that they're just excuses prettied up. Our society loves reasons. Perhaps the illusion that there is a single known reason for each thing we do is comforting. Unfortunately, the world doesn't work that way. Reasons exist because if people didn't explain their behaviour, they would seem unreasonable. So we are faced with a paradox: We need reasons so we appear reasonable, yet when we use reasons we are not taking full responsibility for our behaviour. We use them to hide our shortcomings from ourselves. When we stop using reasons to justify ourselves, we increase our chances of changing behaviour, gaining a realistic self-image and living a more satisfying and productive life.

Letting go of the need for reasons to justify your behaviour is useful in every part of the design-thinking process. It can get you unstuck from dead ends and lead to new approaches and insights.

Many reasons are simply excuses to hide the fact that we are not willing to give something a high enough priority in our lives. But not having reasons would lead to a strange existence. Without reasons, you would look like an unreasonable person to everyone else. So where does this leave us?

There is a twofold approach to the problem: one for the external persona and one for the internal self. Externally you use reasons in everyday conversation when you need to, and thus appear

to be perfectly normal and reasonable. Internally you look at the reasons your external self-offers, and question each of them. The internal self also looks at the reasons given by the people you are interacting with. Simply by noticing how reasons are used, you can gain insight into your own behaviour and your relationships with others.

### Getting Unstuck

Once we see an obstacle in our path, we walk around that obstacle. Unfortunately we sometimes have difficulty. We often think we're surrounded. How do you walk around obstacles? The answer lies in changing the way you think about the problem.

Design thinking emphasizes that you always make sure you are working on the real problem. When you can't find the answer, it is often because you are not asking the correct question.

One of the main causes of losing sleep over a problem is that we think we are dealing with a question when in fact we are dealing with an answer (*a solution*) that turns out not to be a good fit to our actual problem.

A way around this dilemma is to ask, "*What would it do for me if I solved this problem?*" The answer to this can then be converted into a new, more generative question.

By changing the question, you alter your point of view and dramatically expand the number of possible solutions.

Changing the question is often enough to lead to a satisfactory resolution and to make the original difficulty disappear.

### Ways to Get Unstuck

Once you have a problem statement, there are many formal methods that can assist you in generating solutions.

- Hard work
- Create a supportive environment
- Relax
- Brainstorming
- Lists
- Meta-lists: lists that contain the names of things from which to make more detailed lists.
- Idea logs
- Humour
- Conversation
- Forced transformations: purposefully modifying your ideas to make the conventional into the unconventional.

- *“What if?”*: a great way to start a question during idea generation. What if there was no gravity? What if there was blast-off house paint?
- Working backward: Imagine that the problem has been solved, and then work back to the beginning. This way you can see what all the milestones are.
- Storyboards
- Mind maps: Mind maps are great for providing a broad understanding of how diverse parts relate to the whole.
- Diagram yourself: In this method you examine your own problem-solving process and strive to make it ambidextrous, meaning that you use both right-brain and left-brain activities equally.

### Finding Assistance

When it comes to achieving what you want in life, it’s rare that you can do it entirely on your own. Often you’ll need a little assistance from your friends. We are all better off when we assist each other to figure things out.

It’s okay to ask for assistance. Look for people in your life who have accomplished things that you want to accomplish, and talk to them about how they did it and what they would do differently if they had to do it over. Get feedback from as many people as you can. You don’t need to follow all or even most of it. Keep in mind that the more input you get, the more you have to sift through for gems.

### Good Artists Copy; Great Artists Steal

Steve Jobs often mentioned that he believed “good artists copy; great artists steal,” a quote he attributed to Pablo Picasso. The truth is, there’s very little new under the sun. Everything you can think of has, at least in part, been thought of before, and it would be stupid to ignore the wisdom of the people who’ve preceded you.

So don’t be too concerned about “stealing.” Of course, don’t take credit for someone else’s work or simply copy something outright without improving it or putting your own spin on it. Understand that it’s okay to build off others’ ideas, and don’t be too possessive of your own. Some people are fiercely protective of their own data and ideas, often for years, until they can publish their work. The public good would be much better served if people worked more collaboratively. Commit yourself to radical collaboration.

### The Curse of Networking

You’ve undoubtedly been told about the power of networking — handing out your business card at social luncheons, showing up at key events and promoting yourself.

But if what you’re really doing is trying to buddy up to people you think are on a higher plane than you are to get help from them, it’s a lecherous relationship and it’s not genuine. Never pretend that you have a relationship with someone that goes beyond what’s really there. Don’t assume it’s okay to use someone’s name to get in the door, even if you consider that person a friend. Ask first, or it’s likely to backfire. Life is not about using other people as you climb to the top.

Stay real, instead, and build friendships. When you forge real relationships, the word networking doesn’t even come into play. You naturally think of each other when opportunities arise. You ask for assistance and they show up, because they are friends and that’s what friends do, not because you gave them a fake smile and a firm handshake at a luncheon. Let people see you as human. Be real. Be proactive in making friendships wherever you land. Invite people out to eat or over to your house. When you hear that a loved one of theirs is sick, follow up and ask about it the next day.

What it comes down to is that if you want people to assist you, you should (a) ask them, because not everyone is that attuned to what you need, and (b) be a decent human being. Do not pretend you know more than you do. Most people are flattered when you have a genuine need and ask for their expertise. When you’re offered assistance, respect others’ time constraints — don’t call every day or expect them to write responses to a hundred questions — and be appreciative.

### Doing Is Everything

There is a big difference between trying to do something and actually doing it. They’re two totally different actions. The difficulty arises when people conflate them. If you try to do something, it may or may not happen. If it does not happen, you might try using an altered strategy, and again it may not happen. Although this could go on indefinitely, usually it lasts until you luck out and succeed, get tired of trying or get distracted by something else. Clearly this is a very unproductive way to go about your life.

If you are doing something, then no matter how many times you hit a barrier or how frustrated



your original strategy becomes, you intend to get the job done, and you bring to bear on it the inner resolve and attention necessary to fulfil your intention. Doing takes intention and attention.

Do — don't try — this: List as many of your core beliefs as possible, and then ask yourself what basis you have for each belief. Unsurprisingly, a large number of core beliefs come from parents, the social and physical environment we grew up in and various peer groups.

The next question to ask is, *"Which of your beliefs still serve you, and which have become dysfunctional and are best discarded?"*

When you make decisions based on *"the research,"* you can easily be led astray by researchers' biases. Even when the data is sound — like the fact that half of all marriages end in divorce — does that mean that you should give up the idea of getting married because it has too high a potential failure rate? Statistics can show you trends; they can't predict your life.

Likewise, consider that the odds have always been against greatness. If one were to decide on a career path just by the odds of financial success, we would have no movie stars, authors, poets or musicians. The odds were against the Beatles, Elvis and the Grateful Dead, too. They could have been *"scientific"* about the whole thing and chosen more reasonable career paths, and what a loss for the world that would have been! If you succeed, the odds are meaningless. Any path may have a 2 per cent success rate, yet if you're in that 2 per cent, there's a 100 per cent chance of success for you. The long shots are often the most rewarding.

### **The Gift of Failure**

Almost without exception, people who have done great things have also experienced great failures — and in many cases, getting fired or a similar devastating failure turned out to be a gift that allowed them to ultimately find great success.

At the d.school, one of the basic principles is a bias toward action: that is, it is better to start to do something and fail than it is to do nothing and wait for the correct path of action to appear. Failure is part of the result to expect if you have a bias toward action. The idea is not to be paralyzed in the face of uncertainty. If you do something and it works, great! If you do something and it fails, maybe even better. You do, you fail and you learn. You do again, you fail again and you learn some more.

If you are mindful about what you have done, failure is a teacher. With a little luck, after enough failures you will succeed. In many cases this is a much better approach than a long, drawn-out investigation into the right way to proceed.

Nobody wants to fail, and yet we all do. Don't be afraid of failure. It is part of the price you pay for action; there's no need to sweep it under the rug and pretend it does not exist. The most liberating way to acknowledge failure is to celebrate it.

### **Watch Your Language**

The way we communicate with people has a significant effect on their opinions of us. It's not just about what we say but about how we say it. Becoming better communicators can heal relationships, lead to better job opportunities and enable us to reach wider audiences with whatever messages we want to share.

Language influences the way we see things. It has long been known that using different labels for the same thing will promote different behaviours. For our purposes it is important to understand what we do to ourselves with our own choice of words and use of language. Once we are aware of our usage, we can adjust our language to be more in keeping with our true intentions and the existential situations we are describing.

### **Have to/Want to**

On the list of words to be used as little as possible is the phrase *"I have to"*. The true situation is usually best described instead by *"I want to"*. To get the flavour of this, change have into want in your mind the next few times you say *"I have to"*. Do this silently; simply repeating to yourself the sentence that you just said out loud, with just the one word changed. This exercise is very effective in getting people to realize that what they do in their lives — even the things they find unpleasant — is in fact what they have chosen.

Next let's look at *"I can't"* and test it against *"I won't"*. A good way to make the test is to use the same procedure as in the previous exercise. So, for example, if you said out loud, *"I can't stop breathing"*, you would then say to yourself, *"I won't stop breathing"*. The simple change of can't to won't is often empowering. Can't implies helplessness; won't signifies volition and choice.

## Conversations

The question of intention lies behind all communication. What is it that you intend to communicate? Simply saying something does not mean it has been actually communicated. Even if all parties agree on what has been said or even if there is a signed, written agreement, it does not mean that everyone is really agreeing to the same thing. There are often honest misunderstandings.

These take place largely because people do not make sure their meanings — not only their words — are shared. Remember, successful communication takes both intention and attention. It requires the explicit intention that the meaning be shared, and it also takes the explicit attention to be sure it has been shared.

Suggestions for good interpersonal communications:

- Speak for yourself. Say *“I know”*, *“I think”*, *“My reaction is”*, not *“Everyone knows”*, *“We all feel”*.
- Don’t be judgmental.
- Acknowledge other people’s issues. People want to know that you’ve heard them.
- Don’t ask why questions. Asking people why they do things puts them on the defensive.
- Really listen. Even if you think you know what they will be saying or you have heard it before.
- When you are telling a story, be clear what your point is. Be prepared to be misunderstood.
- Make sure your communication is heard as intended.
- Make sure you understand what is being communicated to you.

When another person feels understood, you’ve given him a great gift.

## Group Habits

Belonging to groups gives us an important way to express our humanity. Most of us are affiliated with many groups: In addition to family, we have groups of friends; professional, political, health and school groups; and so on. The way you interact within those groups can change the way you feel about each situation and can enrich (*or screw up*) your life.

## Constructive Criticism

The d.school workshops have adopted a system for criticism originally learned from the late George M. Prince in a Synectics workshop. The idea is to give criticism in a supportive way that promotes positive evolution of the students’

work, by saying two *“I like”* statements followed by one *“I wish”* statement. For example, I might say, *“I like the way you took into account concerns about safety, and I like the way it looks”*. Then, after a short pause, I would continue, *“I wish we could find a way to make it smaller.”*

The first thing to notice about this feedback is that there is no *“but”* between the *“I like”* and the *“I wish.”* They are separated by only a short pause, nothing else. The second thing to notice is that *“I wish”* is said in a way that encourages further refinement in a positive way. It enlists everyone who hears the comment, including the commentator, to work on figuring out a solution.

## Minimizing Competition

Whenever there is a hierarchy of positions and pay scales, it’s likely that you’ll also encounter some people who will step on each other as they attempt to climb the ladder. You’ll know them as the office gossips, the back-stabbers, the users, the phonies. Steer clear of this entire culture. It is important to ask yourself what kind of satisfaction you’ll derive from being that kind of person, even if it does mean you get the title you want. Don’t lose sight of your humanity in the pursuit of a fancier car.

Many businesses and academic organizations use competition as a means of encouraging people to do their best — they literally have contests (*sales contests, design contests, etc.*) pitting people against each other. Our culture is habituated to winner-take-all athletics and other zero-sum games. While it can have a strong upside for the winner, it has a strong downside for everyone else. It can lower morale, foster jealousy and hurt relationships.

It’s important to learn to be motivated to do your personal best, regardless of what happens around you. Look for ways to be inclusive rather than competitive — for ways to help the whole team win rather than just one individual. As much as possible, it behoves you to erase the idea of competition in the workplace from your mind. You have to be satisfied only with yourself — not worried about what the Joneses are up to.

## Self-Image by Design

What you can achieve in life has a lot to do with your self-image. If you see yourself as a risk taker and a doer, you’re more likely to take risks and do! If you see yourself as cautious and scared, it may make the road to achieving your goals a lot more protracted and difficult. You may not even know for sure how you define yourself, so let’s



figure out where your self-image comes from and if it suits where you want to be.

### Examine Your Role Models

When we are young, we learn from those around us. Naturally, our parents and siblings have a strong influence on who we become as we start to mature. We may be very fortunate and start life in a warm, supporting environment. We may be less fortunate and start in a harsh, threatening environment. Whether we grow up feeling accepted and loved by our family or harshly judged and rejected, it is almost impossible to escape those imprints.

Examine your family's viewpoints and how they have affected your adult life.

- What do they think about money?
- What do they think is a suitable life path for you?
- What are their views on authority?
- What are their views on hard work? Grades? Blue-collar versus white-collar work? Getting ahead in life? Work versus play? Hobbies? Taking risks professionally and personally? Personal fulfilment?
- Which of their views do you agree with, and which don't you? Have you tailored your life in response to their views? Is it helpful to you, harmful or neutral? Which influences of theirs are better off discarded? Which can you learn from?

If we realize we have a unique persona and a history different from that of our teachers and parents, we can end up being creators of a new synthesis that honours our influences yet is also a true expression of our very being. It is important that we look at our life and work not only from the point of view of its content but also from the question of what our actual intentions are.

Create a list of all the things you intend to accomplish with your work. You can get there by asking yourself a series of questions: What is my intention? Is it simply to get through the day? Is it to get a specific task done? Is it to have a good time? Is it to bolster my ego? Is it to delight? Is it to inspire? Is it to motivate? Is it to escape?

Then, once it is clear what your basic intentions are, the next issue is how to accomplish them. Before you get to that, it is important to be sure your intentions are real and not simply a series of clichés that you have been programmed to recite or have created to appease your self-image. Once you have your basic intentions

clear, you can view the method of implementing them as a creative problem-solving activity that will get you unshackled from past practices and mimicked constraints.

### The Big Picture

Life on every level is full of complexity and uncertainty. As individuals we face a life of unknown duration, during which we are likely to go through periods of family, career or personal crisis. The world around us is even more unpredictable. It's a very good idea to have a general sense of your goals in life and an equally good idea not to get too rigid about your path. Stay open to possibility: Let other people in, and listen when new opportunities present themselves.

### The Blessing of Work

In his classic essay *"Buddhist Economics"*, E. F. Schumacher points out that work serves to feed our basic need for association with other people. In fact, work supplies several of our basic human needs: 1. It gives people a chance to utilize and develop their faculties. 2. It enables people to overcome their ego-centeredness by joining with others in a common task. 3. It brings forth the goods and services for a becoming existence.

With this in mind, Schumacher points out that work is a basic human function that transcends the usual economic meanings associated with it: *"To organize work in such a manner that it becomes meaningless, boring, stultifying or nerve wracking for the worker would be little short of criminal; it would indicate a greater concern with goods than with people, an evil lack of compassion and a soul-destroying degree of attachment to the most primitive side of this worldly existence. Equally, to strive for leisure as an alternative to work would be a complete misunderstanding of one of the basic truths of human existence, namely that work and leisure are complementary parts of the same living process and cannot be separated without destroying the joy of work and the bliss of leisure"*.

The constraints on our career paths tend to be self-imposed. We tend to rise without thinking. There is a ladder that exists in many career paths, and society brainwashes people to think they are supposed to climb it. Not every new award, degree or promotion is a good thing for the individual. Keep asking *"What do I really want?"* over and over, until you feel you have gained insight into your own desires so you're no longer at the mercy of society's ideas of what is good for you.

### Make Achievement Your Habit

The word problem has negative connotations. It implies there is something wrong that needs fixing. However, if a problem is reframed as an opportunity to make things in our life better, then it becomes a positive, and problem solving can be recognized as one of our basic life forces. So what are problems? The word problem describes any situation that we want to change. Usually problems are stated as questions (“How do I get a job?”) or statements (“I cannot afford college”). Generally we want to deal with problems in order to effect a positive change in some situation. Life consists of solving a series of problems. We all have unsolved issues in our lives. There are situations and people that bug us, and there are vexing personal and professional problems.

If you reframe your problem, many possible options become apparent, and the path to a solution often becomes obvious.

### Prototype Your Way to Success

A prototype is a sample or model created to show or test a concept — something to be learned from. In solving problems, an excellent way to move forward is to incorporate prototyping into your process.

Early in the problem-solving process it is best to think of prototypes as simply trial balloons — ideas or statements sent out to gauge people’s reactions to your ideas. Prototypes do not necessarily have to resemble a physical object. They can take any form. They could be conversations, written drafts, short movies, skits, physical embodiments of social or personal problems or actual physical models of objects. Prototypes can be in any form that gives information. They do not need to look like or work like the final solution, and they certainly do not need to do both.

The road to a final solution is strewn with ideas that have been prototyped as ways to get information, directions to take, ideas to modify and ideas to abandon. Prototyping is a great way to show people what you have in mind, so you can elicit their feedback.

The next time you are asked to do something, don’t spend too much time thinking. Simply charge ahead. Do this by taking the first idea that comes into your head and make a quick prototype. Then think about what you have learned from this. If you are brave enough, try it out on some people and get their thoughts.

### Be the Cause in the Matter

Being the “*cause in the matter*” means taking full responsibility for whatever you’re dealing with and whatever happens in your life, even when it seems that things are not totally in your control. It’s a declaration of choice: Instead of playing the role of passive protagonist in your life, choose to take charge of your future. Resolve to get things done, whatever it takes, and no matter how many valid “*reasons*” pop up.

Adopt an attitude of willingness to give things a chance; allow yourself to test things out and see what happens without thinking you know the outcome. To test things, you need to give them your attention. Attention begins with noticing your behaviours and interactions. Notice both yourself and the people you interact with. What works and what doesn’t? What could work better? Then test the various tools and exercises by inserting them into your everyday interactions.

Realize that your mind is trickier than you think and is always working with your ego to make you believe you are doing better than you really are. That’s the human condition. What you have going for yourself is that, if you choose to, you can be mindful about controlling both your intentions and your attention to make your life better for yourself and for those around you. You can choose to be the cause in the matter of the circumstances of your life, and you can instil in yourself the habit of achievement for a more functional and satisfying life.

### RECOMMENDED READING LIST

If you liked The Achievement Habit, you’ll also like:

1. **The Power of Habit by Charles Duhigg.** Duhigg brings to life a whole new understanding of human nature and its potential for transformation.
2. **Triggers by Marshall Goldsmith.** Goldsmith details six engaging questions that can help us enact meaningful and lasting change in order to become the person we want to be.
3. **Springboard by G. Richard Shell.** Springboard will help you re-evaluate your future and envision success on your own terms. It may even change your life.