Dodgy developers are looking to claim compensation from office suppliers for delivering there workstations later than contracted, which in turn resulted in dodgy developers refurbishment being late and thereby they suffered loss.

Dodgy developers had a contract with office supplies, which stated that office supplies would deliver the workstations on Monday the 28th of November. The contract was made over the phone and it can be assumed that this contract was binding. After this contract was made office supplies sent out there terms and conditions. On trying to seek damages from office supplies for the workstations being late resulting in loss, office supplies referred dodgy dealers to their terms and conditions one of which stated that they would not be liable for any losses or damage however caused.

However these terms can be considered void as dodgy developers received them after the initial contract was made. In the text it says as a result of the conversation i.e. the initial making of the contract, office suppliers sent out there terms. It is the case that any term not those just purporting to exclude or limit liability is considered invalid if has not been incorporated into the contract. And because the terms were sent out after the contract was formed they cannot be consider to be incorporated into the contract. As a general rule, an exemption clauses only incorporated into a contract if notice is given before or at the time of contracting. In Olly v Marlborough court ltd (1949) a married couple booked into a hotel and on entering a room read a sign stating the hotel would accept no responsibility for loss or damage to guest's property. While the couple were out Mrs Olley's fur coats went missing, the hotel disclaimed liability referring to the notice but the court of appeal held that the words had not been incorporated into the contract, because they came to Olley's notice too late. The contract was made at the reception desk, and a new term could not then be added once they reached there room, this is also the case with Thornton v Shoe lane parking (1971). So as a result of these cases evidence suggests that dodgy developers do have

grounds to sue, as they were unaware of the exemption clause when the initial contract was made.

However for exclusion clause to be valid there must be signs of incorporation. Incorporation can come in the form of a signature, by notice as discussed previously or by previous course of dealings. In this case there was no incorporation by signature and there was insufficient notice to warrant incorperation of the the clause into the contract, however there was previous course of dealing between the two parties, but for this to count as incorporation there must be sufficient evidence of consistent course of dealings. The text states that dodgy developers rang office supplies, whom they usually worked with projects of this nature, and in the first line of the text we are told that dodgy developers refurbish derelict premises regularly, so the reasonable man could assume that there is sufficient evidence to suggest that there is consistent course of dealings between dodgy developers annd office supplies. This situation is mimicked in the case of Spurling v Bradshaw (1956) where by the parties had been doing business with each for many years, the defendant delieverd goods to the claimants, a few days after the delivery he received a receipt of the goods, which also reffered him to the clauses on the back which exempted the plaintiffs from “any loss or damage occasioned by the negligence, wrongful act or default” there was a problem with the goods and there was a claim made against him as he refused to pay for the faulty goods. The defendant then counterclaimed, and in respose the plaintiffs pleaded the exemtion clause. The defendant argued that the clause could not affect his rights as he only received the clause after the contract had been made and therefore there was insufficient notice to warrant inclusion f the clause into the contract. However the courts decided that the clause was incorporated into the contract by the course of previous dealings. This illustrates that even though office supplies didn’t include their exemption clause directly into the contract, because of consistent previous dealings between the two parties the exemption clause may be construed to be incorporated into the contract. The only angle dodgy developers have of making a successful claim against office supplies is that they have to prove that there’s not sufficient evidence of a CONSISTENT course of dealing between the two parties. In a the case of Hollier v Rambler Motors (AMC) Ltd (1972) the plaintiff left his car with a repairer, on whose premises it was destroyed by fire, owing to the defendants negligence. The plaintiff had used the same garage three or four times in the previous

five years, and each time had signed an invoice stating “the company is not responsible for dame cause by fire to the customers car” although he didn’t sign the document on this occasion so there was no incorporation as yet the defendants pleaded that previous course of dealing should justify the exclusion clause being incorporated in the contract, this was rejected by the court of appeal. Which held that the previous course of dealings was not sufficient to justify the inclusion of such a clause.

In conclusion dodgy developers in my opinion do not have grounds to sue office supplies for the loss as a result of there workstations being late, as although there was lack of notice there is evidence to suggest there was previous meetings which warrants the clause to be incorporated into the contract. And the clause states that office supplies are not liable for any damages caused to their products.

With regards to shifty shifters, the privity rule states that no third party can sue or be sued in a contract, as they have no rights or obligations within the contract as seen in Tweedle v Atkinson. As we have already ascertained office supplies exclusion contract is valid and so this exclusion clause also protects there sub contractors from liability. The contract (rights of third parties) act 1999 enables third parties to obtain the benefit of an exclusion clause in a contract, if the contract states that its sub contractors will be protected. Therefore shifty shifters are not liable as they are protected by office supplies exclusion clause, which we have already found is valid.