American Restatement 2nd of the Law of Contracts

Chapter 6

§ 154 - When a Party Bears the Risk of a Mistake

A party bears the risk of a mistake when

(a) the risk is allocated to him by agreement of the parties, or

(b) he is aware, at the time the contract is made, that he has only limited knowledge with respect to facts to which the mistake relates but treats his limited knowledge as sufficient, or

(c) the risk is allocated to him by the court on the ground that it is reasonable in the circumstances to do so.

§ 155. When Mistake Of Both Parties As To Written Expression Justifies Reformation

Where a writing that evidences or embodies an agreement in whole or in part fails to express the agreement because of a mistake of both parties as to the contents or effect of the writing, the court may at the request of a party reform the writing to express the agreement, except to the extent that rights of third parties such as good faith purchasers for value will be unfairly affected.

§ 157 - Effect of Fault of Party Seeking Relief

A mistaken party's fault in failing to know or discover the facts before making the contract does not bar him from avoidance or reformation under the rules stated in this Chapter, unless his fault amounts to a failure to act in good faith and in accordance with reasonable standards of fair dealing.

Chapter 9 - The Scope of Contractual Obligations

Topic 2 - Considerations of Fairness and the Public Interest

§ 206 - Interpretation against the Draftsman

In choosing among the reasonable meanings of a promise or agreement or a term thereof, that meaning is generally preferred which operates against the party who supplies the words or from whom a writing otherwise proceeds.
Chapter 16 - Remedies

Topic 2 - Enforcement by Award of Damages

§ 356 Liquidated Damages and Penalties

(1) Damages for breach by either party may be liquidated in the agreement but only at an amount that is reasonable in the light of the anticipated or actual loss caused by the breach and the difficulties of proof of loss. A term fixing unreasonably large liquidated damages is unenforceable on grounds of public policy as a penalty.

(2) A term in a bond providing for an amount of money as a penalty for non-occurrence of the condition of the bond is unenforceable on grounds of public policy to the extent that the amount exceeds the loss caused by such non-occurrence.

Referring Principles:

- IV.5.4 - Interpretation against the party that supplied the term
- IV.5.5 - Falsa demonstratio rule
- IV.7.3 - Right to avoid the contract for mistake in fact or law
- VI.4 - Promise to pay in case of non-performance