# TRO in District Court

1. **Temporary Restraining Order (TRO):** A protective order from the court that tells a party that he or she cannot harass another party
	1. **Harassment**:
		1. Physical harm, bodily injury, or assault (or the imminent threat of)
		2. Intentional action directed at an individual that seriously and consistently alarms, disturbs, or bothers the individual, and serves no legitimate purpose and would cause a reasonable person to suffer emotional distress
2. Petitioner has right to live in a safe environment, free from threat or harm
	1. Can seek protection by obtaining a TRO against perpetrator
		1. Length of TRO:
			1. Ex Parte: 90 days (or until the date of TRO court hearing)
			2. Can extend protection for up to 3 years through the District Court
	2. TRO can be issued against any person where there is probable cause of harassment or threat of harassment may be imminent
3. Limitations of TRO in District Court (differs from TRO in family court):
	1. Respondent cannot be:
		1. A relative
		2. Married/previously married with petitioner
		3. Previously living with petitioner
		4. Someone who has child with petitioner
		5. Someone the petitioner was/is dating
4. Process of the District Court TRO
	* 1. Apply for Ex Parte TRO at the District Court
		2. Petitioner must provide ample amount of detail or petition can be denied
			1. Dates of abuse/threats
			2. Description of physical/psychological abuse
			3. Information of property damage
			4. Other documentation of harassment/abuse (medical/police reports)
		3. Pay $15 filing fee
		4. TRO granted, Respondent must be served a copy by the police
		5. Hearing must be no later than 15 days after TRO is granted
		6. TRO is effective after signed by judge but not enforceable until respondent is served
	1. To extend the order
		1. TRO/Injunction hearing is required
		2. Both parties have opportunity to present their case
		3. Judge can either dissolve TRO & dismiss petition OR issue an injunctive order up to the max 3 years
	2. Even with injunctive order, petitioner should take proper safety precautions
5. Enforcement of the TRO
	1. Broken by:
		1. Contacting petitioner
		2. Coming to petitioner’s home or workplace
		3. Destroying petitioner’s property
		4. Threatening petitioner
		5. Coming within a certain distance
		6. Any other prohibited acts by TRO
	2. If broken, petitioner should report it to 911 immediately

# Consumer Law & Debt Collection

1. **Assumpsit**: Legal process used to collect a debt from a borrower or to enforce a contractual obligation
	1. **Debts**:
		1. Contracts or credit obligations signed/cosigned
		2. Medical services (even if covered by insurance)
		3. Services provided by agreement (i.e. utilities)
		4. A spouses necessities of life incurred during the marriage
		5. Debts of one’s children and/or pets
	2. **Creditor**: Someone who is *owed* a debt
	3. **Debtor**: Someone who *owes* a debt
	4. **Collection agency**: Third party that attempts to collect the debt when the creditor is unable to
2. **Rules for debt collection:**
	1. Creditors & collection agencies must follow state and federal regulations under the Fair Debt Collection Practices Act (FDCPA)
	2. **Creditors & collection agencies are prohibited from:**
		1. Garnishing wages before obtaining judgment against debtor
		2. Taking any property unless it is used as collateral for loan/have a court order
		3. Threatening to send debtor to jail
		4. Threatening to have a debtor’s child taken away
		5. Harassing a debtor
			1. i.e. calling at unreasonable hours, repeated communication with intent to annoy/harass
		6. Telling third parties about the debt or collecting the debt
			1. i.e. cannot contact employers or other members of the household even when unable to get into contact with the debtor – violation of FDCPA
		7. Using obscene or profane language
		8. Threatening to take legal action UNLESS they intend to take the action and have the legal right to take the action
		9. Lying about the amount that is owed in an attempt to collect more fees
	3. **Under the affirmative duties, collection agencies must:**
		1. Give their company name, the name & address of original creditor – if asked by debtor
		2. In all forms of communication, must indicate they are making contact about the debt & all info received will be used to collect the debt
		3. Mail a letter within 5 business days from the first contact by phone stating:
			1. Total amount of debt
			2. Name & address of collection agency
			3. Name of original creditor
			4. Notice explaining the borrower has 30 days to mail a letter either disputing the debt and/or asking for verification of the debt
		4. Be licensed or registered to do business in Hawaii; contact 587-3222 to verify
		5. If any of the above are violated by creditor/collection agency there are grounds to file a lawsuit and/or counterclaims
	4. **If debt is validated and borrower is unwilling to pay debt, creditor and collection agency can:**
		1. Repossess and sell any goods that are collateral for the loan
			1. If goods are sold for less than what is owed, borrower may still owe the difference
		2. Call or write letters in an attempt to get debt paid – under FDCPA
		3. File suit in court
		4. Refuse to do business with the borrower
		5. With a court order, take wages via set off/garnishment
3. Court Process
	1. Borrower unable/refuses to pay debt
	2. **Answer date** – tell the court if borrower admits/denies the allegations
		1. Admit – immediate judgement is given
		2. Deny – next hearing is scheduled
	3. **Pre-trial** – gives opportunity for two parties to come to an agreement outside of court
		1. Court will confirm the settlement and dismiss both parties
		2. If not settlement is reached, another hearing will be scheduled for the trial
	4. If either borrower or creditor is not present for any of the court hearings, party that is present is given judgement by default
	5. **Post-judgement collection** – Means a Creditor can use to collect:
		1. Examination of judgement debtor
			1. Find out what is owed; place of employment; sources of income; and where bank accounts are to collect on debt
		2. Bench warrant can be placed on debtor if he/she does not go to examination
		3. Garnish a portion of wages
		4. Place a lien on any real or personal property worth over $1,000
	6. **Judgement proof**:
		1. Certain sources of income that are protected by law and cannot be collected
			1. **Protected income**:
				1. Welfare, supplemental security income, social security, social security and disability, temporary disability, unemployment compensation, workers compensation, pensions for government employees, most private pensions, veteran’s benefits, and child support
				2. If these are the only sources of income, the judgement cannot collect
				3. If creditor mistakenly tries to garnish money from bank account (assumes it is unprotected) bank must freeze account to determine if protected or not
		2. Through employment, debtor is earning less than $217.50/week (after taxes)
		3. An account at a bank that a debtor also owes money to; Bank has right to set off the debt
			1. **Set off**:
				1. Seize the money that is owed by the debtor directly from the bank account
4. Once debts have been paid off
	1. Creditor files for satisfaction of judgement, releasing debtor from obligation of collection or seizures
5. Statute of Limitations
	1. 6 years for debt collection
	2. Domestic judgement has expiration date of 10 years; possible to renew judgement another 10 years
	3. Foreign judgement must be registered within 4 years from original judgement

# Q&A Oahu First Circuit & District Court

District Court TRO

1. Many misconceptions about what the court is able to do through the TRO
	1. Go over statute of limitations and encourage mediation
2. For injunction must show threat of future harm
	1. Without threat of future harm, injunction may not be granted

Consumer Law

1. Not being able to pay a debt is not a defense
	1. Could be judgement proof at one time, but at another may not be
2. Free debt counselling services > debt consolidation companies; which charge fees
	1. Creditors/collection agencies don’t have to agree to consolidation