position of a case, notwithstanding that other non-federal questions of fact and law may be involved therein.[809] "Pendent jurisdiction," as this form is commonly called, exists whenever the state and federal claims "derive from a common nucleus of operative fact" and are such that a plaintiff "would ordinarily be expected to try them all in one judicial proceeding."[810] Ordinarily, it is a rule of prudence that federal courts should not pass on federal constitutional claims if they may avoid it and should rest their conclusions upon principles of state law where possible.[811] But the federal court has discretion whether to hear the pendent state claims in the proper case. Thus, the trial court should look to "considerations of judicial economy, convenience and fairness to litigants" in exercising its discretion and should avoid needless decisions of state law. If the federal claim, though substantial enough to confer jurisdiction, was dismissed before trial, or if the state claim substantially predominated, the court would be justified in dismissing the state claim.[812]

A variant of pendent jurisdiction, sometimes called "ancillary jurisdiction," is the doctrine allowing federal courts to acquire jurisdiction entirely of a case presenting two federal issues, although it might properly not have had jurisdiction of one of the issues if it had been independently presented.[813] Thus, in an action under a federal statute, a compulsory counterclaim not involving a federal question is properly before the court and should be decided.[814] The concept has been applied to a claim otherwise cognizable only in admiralty when joined with a related claim on the law side of the federal court, and in this way to give an injured seaman a right to jury trial on all of his claims when ordinarily the claim cognizable

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[809] Osborn v. Bank of the United States, 22 U.S. (9 Wheat.) 738, 822–28 (1824); Siler v. Louisville & Nashville R.R. Co., 213 U.S. 175 (1909); Hurn v. Oursler, 289 U.S. 238 (1933); United Mine Workers v. Gibbs, 383 U.S. 715 (1966).

[810] Osborn v. Bank, 22 U.S. at 725. This test replaced a difficult-to-apply test of Hurn v. Oursler, 289 U.S. 238, 245–46 (1933). *See also* Kokkonen v. Guardian Life Ins. Co., 511 U.S. 375 (1994); Peacock v. Thomas, 516 U.S. 349 (1996) (both cases using the new vernacular of "ancillary jurisdiction").

[811] Siler v. Louisville & Nashville R. Co., 213 U.S. 175 (1909); Greene v. Louisville & Interurban R.R., 244 U.S. 499 (1917); Hagans v. Lavine, 415 U.S. 528, 546–550 (1974). In fact, it may be an abuse of discretion for a federal court to fail to decide on an available state law ground instead of reaching the federal constitutional question. Schmidt v. Oakland Unified School Dist., 457 U.S. 594 (1982) (per curiam). However, narrowing previous law, the Court held in Pennhurst State School & Hosp. v. Halderman, 465 U.S. 89 (1984), held that, when a pendent claim of state law involves a claim that is against a state for purposes of the Eleventh Amendment, federal courts may not adjudicate it.

[812] United Mine Workers v. Gibbs, 383 U.S. 715, 726–27 (1966).

[813] The initial decision was Freeman v. Howe, 65 U.S. (24 How.) 450 (1861), in which federal jurisdiction was founded on diversity of citizenship.

[814] Moore v. New York Cotton Exchange, 270 U.S. 593 (1926).